LEGISLATIVE COUNCIL

Tuesday 6 June 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 Her Excellency the Governor:

MARIE BASHIR, Governor — Office of the Governor, Sydney 2000

Professor Marie Bashir, Governor of New South Wales, has the honour to inform the Legislative Council that she re-assumed the administration of the Government of the State on 28 May 2006.

28 May 2006

ASSENT TO BILLS

Assent to the following bills reported:

Crimes Amendment (Organised Car and Boat Theft) Bill
Crimes (Sentencing Procedure) Amendment Bill
Electricity Supply Amendment (Protection of Electricity Works) Bill
Independent Commission Against Corruption Amendment (Operations Review Committee) Bill
Legal Profession Amendment Bill
Local Government Amendment (Miscellaneous) Bill
Constitution Amendment (Governor) Bill
Conveyancers Licensing Amendment Bill
Judicial Officers Amendment Bill
Pipelines Amendment Bill
Summary Offences Amendment (Display of Spray Paint Cans) Bill
Totalizator Legislation Amendment (Inter-jurisdictional Processing of Bets) Bill
Valuation of Land Amendment Bill
Drug Misuse and Trafficking Amendment Bill

NSW OMBUDSMAN

Report

The President tabled, pursuant to the Ombudsman Act 1974, a special report entitled "Services for Children with a Disability and their Families—Department of Ageing, Disability and Home Care (DADHC): Progress and Future Challenges", dated May 2006.

Ordered to be printed.

AUDIT OF EXPENDITURE AND ASSETS

Production of Documents: Dispute of Claim of Privilege

The PRESIDENT: I report that the Clerk received correspondence from the Hon. Greg Pearce disputing the validity of a claim of privilege on documents lodged with the Clerk on 15 May 2006 relating to Audit of Expenditure and Assets. According to the standing orders, the Clerk has released the disputed documents to an independent legal arbiter for evaluation and report as to the validity of the claims of privilege.

SYDNEY HARBOUR DIOXIN LEVELS

Production of Documents: Dispute of Claim of Privilege

The PRESIDENT: I report that the Clerk received correspondence from the Hon. Duncan Gay disputing the validity of a claim of privilege on documents lodged with the Clerk on 17 May 2006 relating to dioxin levels in Sydney Harbour. According to the standing orders, the Clerk has released the disputed documents to an independent legal arbiter for evaluation and report as to the validity of the claims of privilege.

LUNA PARK LEASES AND AGREEMENTS

Production of Documents: Dispute of Claim of Privilege

The PRESIDENT: I report that the Clerk received correspondence from the Hon. Catherine Cusack disputing the validity of a claim of privilege on documents lodged with the Clerk on 30 November 2005 relating to Luna Park leases and agreements. According to the standing orders, the Clerk has released the disputed documents to an independent legal arbiter for evaluation and report as to the validity of the claims of privilege.

POWERCOAL ASSETS SALE

Production of Documents: Dispute of Claim of Privilege

The PRESIDENT: I report that the Clerk received correspondence from Ms Lee Rhiannon disputing the validity of a claim of privilege on documents lodged with the Clerk on 17 May 2006 relating to sale of PowerCoal assets. According to the standing orders, the Clerk has released the disputed documents to an independent legal arbiter for evaluation and report as to the validity of the claims of privilege.

SNOWY HYDRO LIMITED SALE

Production of Documents: Dispute of Claim of Privilege

The PRESIDENT: I report that the Clerk received correspondence from Ms Sylvia Hale disputing the validity of a claim of privilege on documents lodged with the Clerk on 30 May 2006 and 31 May 2006 relating to the Snowy Hydro Limited further order. According to the standing orders, the Clerk has released the disputed documents to an independent legal arbiter for evaluation and report as to the validity of the claims of privilege.

GENERAL PURPOSE STANDING COMMITTEES

Portfolio Responsibilities

Motion by the Hon. Tony Kelly agreed to:

That the resolution appointing five general purpose standing committees reflecting Government Ministers' portfolio responsibilities adopted by this House on 3 July 2003 be amended to reflect the changes to Government Ministers' portfolio responsibilities as follows:

(a) General Purpose Standing Committee No. 1

Premier
State Development
Citizenship
Education and Training
Commerce

Finance
Industrial Relations
Treasury
Infrastructure
Hunter
The Legislature

(b) General Purpose Standing Committee No. 2

Health
Community Services

Youth
Ageing
Disability Services
Tourism and Sport and Recreation
Women
Aboriginal Affairs

(c) General Purpose Standing Committee No. 3

Police
Attorney General
Justice
Juvenile Justice
Emergency Services
Lands
Rural Affairs
Gaming and Racing
Central Coast

(d) General Purpose Standing Committee No. 4

Planning
Redfern Waterloo
Science and Medical Research
Local Government
Roads
Housing
Transport
Western Sydney
Fair Trading

(e) General Purpose Standing Committee No. 5

Environment
Arts
Water Utilities
Regional Development
Illawarra
Small Business
Natural Resources
Primary Industries
Mineral Resources
Energy
Ports
Waterways

STANDING COMMITTEE ON SOCIAL ISSUES

Government Response to Report

The Hon. John Hatzistergos tabled the Government's response to report No. 36, entitled "The Funeral Industry", tabled on 9 December 2005.

Ordered to be printed.

TABLING OF PAPERS NOT ORDERED TO BE PRINTED

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

TUNNEL FILTRATION

Production of Documents: Order

Motion by Ms Lee Rhiannon agreed to:

1. That this House notes that, on the advice of the Crown Solicitor as to the effect of prorogation, the Government has advised that no documents will be produced in respect of the Standing Order 52 resolutions regarding tunnel filtration.

2. That this House notes that there are many established conventions recorded in the Journals of the Legislative Council where the Government has complied with an order of the House for State papers in the subsequent session, notwithstanding the prorogation of the House.

3. That under Standing Order 52 there be laid upon the table of the House within 14 days of the date of the passing of this resolution the following documents, not previously provided with a return to order of the House, in the possession, custody or control of the Cabinet Office, the Roads and Traffic Authority [RTA], the Premier's Department, the Department of Planning, the Department of Environment and Conservation [DEC], NSW Health, or the responsible Ministers:

   (a) all documents relating to the tunnel "Filtration trial" announced in March 2004, and any investigations and or cost benefit analysis on the redesign of the ventilation system or the provision of electrostatic precipitators or other air treatment of filtration systems for the M5 East tunnel, the cross city tunnel and the Lane Cove tunnel,

   (b) all documents referring to the costs associated with advice sought from consultants and contractors concerning air quality or filtration issues relating to the M5 East, cross city or Lane Cove tunnels,

   (c) all documents relating to the Inter-Agency Working Party [IAWP], including the study undertaken into pollution levels inside the M5 East tunnel,

   (d) the audit conducted by the Department of Planning of the RTA's compliance with the approval conditions for the M5 East, and any documents relating to the audit,

   (e) the review of NSW Health's 2004 study entitled "Investigation into the possible health impacts of the M5 East Motorway stack on the Turrella community" Phase 2, and any document relating to the review and any responses to concerns raised by community members,

   (f) any document relating to the review by Lane Cove Council, and their agents, regarding the validity of the conclusions and findings of NSW Health's 2004 study,

   (g) any document relating to the tapered element oscillating microbalance correction factors committee set under the RTA/RAPS agreement of 2001,

   (h) any document which relates to the compliance with approval conditions for the operation of the M5 East tunnel or the M5 East stack, including incidents and complaints relating to air quality, closure of lanes or emissions of tunnel gases from portals, including times, volumes, in-tunnel and portal monitoring records and associated traffic incidents,

   (i) any documents which refer to occasions since May 2004 when in-tunnel carbon monoxide levels have exceeded 87 ppm for 15 minutes at any monitor in the tunnel, or exceeded a time weighted average of 80 ppm over a period of five minutes, with or without triggering incident response plans,

   (j) any document which refers to the costs associated with increased traffic volumes in the M5 East tunnel and any modifications and variations made to the ventilation system since the opening of the tunnel,

   (k) any document which refers to air quality monitoring and traffic management plans for the Lane Cove tunnel, and

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

REDFERN WATERLOO STREET TEAM

Production of Documents: Order

Motion by Ms Sylvia Hale agreed to:

1. That this House notes that, on the advice of the Crown Solicitor as to the effect of prorogation, the Government has advised that no documents will be produced in respect of the Standing Order 52 resolutions regarding Redfern Waterloo Street Team.

2. That this House notes that there are many established conventions recorded in the journals of the Legislative Council where the government has complied with an order of the House for state papers in the subsequent session, notwithstanding the prorogation of the House.

3. That under Standing Order 52 there be laid upon the table of the House within 14 days of the date of the passing of this resolution the following documents created since January 2005 in the possession, custody or control of the Premier's Department, the Minister for Community Services, the Department of Community Services, the Minister for Redfern Waterloo or the Redfern-Waterloo Authority:

   (a) any document relating to the evaluation of the Redfern Waterloo Street Team, and in particular the document produced by R. P. R. Consulting entitled "Evaluation of the Redfern Waterloo Street Team",

   (b) any document relating to the financial management or auditing of the Redfern Waterloo Street Team, and

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

AUDIT OFFICE

Report

The Clerk announced the receipt, pursuant to the Public Finance and Audit Act 1983, of a performance audit report of the Auditor-General entitled "The Cross City Tunnel Project", dated May 2006.

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

LEGISLATION REVIEW COMMITTEE

Report

The Clerk announced the receipt, pursuant to the Legislation Review Act 1987, of a report entitled "Legislation Review Digest No. 8 of 2006", dated 2 June 2006.

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

GENERAL PURPOSE STANDING COMMITTEE NO. 3

Report: Issues Relating to the Operations and Management of the Department of Corrective Services

The Clerk announced the receipt, pursuant to standing orders, of report No. 17, entitled "Issues Relating to the Operations and Management of the Department of Corrective Services", dated June 2006, together with transcripts of evidence, tabled documents, submissions, correspondence and answers to questions taken on notice.

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

The Hon. AMANDA FAZIO [2.42 p.m.]: I move:

That the House take note of the report.

Debate adjourned on motion by the Hon. Amanda Fazio.

PETITIONS

Snowy Hydro Limited Sale

Petitions 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 **Mr Ian Cohen**, **the Hon. Rick Colless, the Hon. Jennifer Gardiner**, **Ms Sylvia Hale** and **the Hon. Melinda Pavey**.

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 socio-economic study is undertaken, and real data on endangered species is made available, received from **the Hon. Robyn Parker**.

Anti-Discrimination Legislation

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

Desalination Plant Proposal

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

Unborn Child Protection

Petition requesting statistical reporting of abortions, legislative protection of foetuses of 20 weeks gestation, and availability of resources for post-abortion follow-up, received from **Reverend the Hon. Dr Gordon Moyes**.

Shellharbour City Council Rate Structure

Petition opposing a 9.5 per cent rate increase proposed by Shellharbour City Council, received from **Ms Sylvia Hale**.

SNOWY HYDRO LIMITED SALE

Production of Documents: Further Return to Order

The Clerk tabled, pursuant to the resolution of 25 May 2006, documents relating to a further order for papers regarding Snowy Hydro Limited received on 30 and 31 May 2006 from the Director General of the Premier's Department, together with an indexed list of documents.

Production of Documents: Claim of Privilege

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

SYDNEY HARBOUR DIOXIN LEVELS

Production of Documents: Return to Order

The Clerk tabled, pursuant to the resolution of 3 May 2006, additional documents relating to dioxin levels in Sydney Harbour received on 2 June 2006 from the Director General of the Premier's Department, together with an indexed list of documents.

BUSINESS OF THE HOUSE

Withdrawal of Business

Business of the House Notice of Motion No. 1 withdrawn on motion by Reverend the Hon. Dr Gordon Moyes.

BUSINESS OF THE HOUSE

Postponement of Business

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

Government Business Orders of the Day Nos 1, 2 and 5 postponed on motion by the Hon. Tony Kelly.

JOINT SELECT COMMITTEE ON THE CROSS CITY TUNNEL

Membership

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

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

JOINT SELECT COMMITTEE ON TOBACCO SMOKING

Membership

The PRESIDENT: I inform the House that the Clerk has received the following nominations for membership of the reappointed Joint Select Committee on Tobacco Smoking:

Government member: The Hon. Greg Donnelly
Opposition member: The Hon. Don Harwin

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

Membership

The PRESIDENT: I inform the House that from 29 May 2006 the Hon. Penny Sharpe will replace the Hon. Amanda Fazio as the Government member on the Joint Standing Committee on Electoral Matters.

GENERAL PURPOSE STANDING COMMITTEE NO. 2

Reference

The Hon. PATRICIA FORSYTHE: I inform the House that on 14 March 2006 General Purpose Standing Committee No. 2 resolved to adopt the following terms of reference:

> That General Purpose Standing Committee No. 2 inquire into and report on the implementation of the Government's response to the recommendations of the report of the committee into "Complaints handling within NSW Health".

GENERAL PURPOSE STANDING COMMITTEE NO. 2

Reference

The Hon. PATRICIA FORSYTHE: I inform the House that on 14 March 2006 General Purpose Standing Committee No. 2 resolved to adopt the following terms of reference:

> That General Purpose Standing Committee No. 2 inquire into and report on the health impacts of air pollution in the Sydney basin, and in particular:
>
> (a) changes in the emissions of various air pollutants and the impact of those changes on air quality in the Sydney basin over the past three decades, including any "hot-spots" where pollution is concentrated,
>
> (b) the impact of New South Wales air pollution laws (including the Clean Air Act 1961, the Protection of the Environment Operations Act 1997 and any regulations made under those Acts) on air quality over the past three decades,
>
> (c) the causes of air pollution in the Sydney basin over the past three decades,
>
> (d) the health impacts of air pollution on any "at risk" groups,
>
> (e) the financial impacts of air pollution of the New South Wales health system,
>
> (f) the effectiveness of current laws and programs for mitigating air pollution,
>
> (g) strategies to reduce the health impacts of air pollution, and
>
> (h) any other relevant matter.

BUDGET ESTIMATES AND RELATED PAPERS

Financial Year 2006-2007

Copies of Budget Paper No. 1—Budget Speech 2006-2007, Budget Paper No. 2—Budget Statement 2006-2007, Budget Paper No. 3—Budget Estimates 2006-2007 Volumes 1 and 2, Budget Paper No. 4—Infrastructure Statement 2006-2007, Budget Paper No. 6—NSW Long-Term Fiscal Pressures Report 2006-2007, and Budget Summary 2006-2007 tabled.

Ordered to be printed.

The Hon. JOHN DELLA BOSCA (Minister for Finance, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, and Vice-President of the Executive Council) [3.01 p.m.]: I move:

> That the House take note of the Budget Estimates and Related Papers for the financial year 2006-2007.

I seek leave to incorporate the Treasurer's Budget Speech in *Hansard*.

Leave granted.

Today I present the first State Budget of the Iemma Labor Government.

A budget that meets new challenges with new directions.

A budget that leverages the State's sound balance sheet to invest for the future.

A budget that achieves more for hard-working families with record spending on health, education, transport and police.

A budget that looks after the most vulnerable in our society.

A budget that boosts preschools funding, reduces class sizes, and increases the number of hospital beds.

A budget that invests record amounts in infrastructure.

A budget that provides the necessary settings for business to invest.

A budget that does all this while cutting taxes by $3.2 billion over the next four years.

BUDGET OVERVIEW

The State's structural dependence on property taxes, the end of the property boom, and significant tax cuts to support growth, mean that in 2006-07 the budget will be a deficit of $696 million.

This is higher than the December mid-year review estimate of $533 million because of provision for the redundancies outlined in the February economic and financial statement, and to fund further tax cuts I will announce today.

The budget will return to a surplus of $378 million in 2007-08, with forecast surpluses of $707 million in 2008-09 and $1.1 billion in 2009-10. These healthy surpluses are projected to be achieved without any new tax measures.

This is a responsible approach that allows the Government to continue to deliver—and in many cases expand—essential services at a time when the State's tax base is recovering from the end of the housing bubble.

Unlike the Coalition, which ran six consecutive budget deficits, the Iemma Labor Government sees this relatively small deficit as a short-term consequence of the property market downturn.

And the deficit should be viewed in the context of cumulative budget surpluses of $11.3 billion between 1995-96 and 2006-07.

Our goal—one the Treasury Secretary has named the Costa golden rule—is to have the budget result as a share of total State revenue average 2 per cent to 3 per cent over the course of the property cycle.

In 2006-07 and the first few years of the forward estimates period, this ratio will be below the target.

This budget forecasts a return to long-term average revenue growth, which means by 2009-10 the ratio will be 2.3 per cent.

During the forward estimates period, any cyclical improvement in revenues will be utilised to ensure the average of 2 per cent to 3 per cent over the property cycle is met.

It is only because of my predecessors' efforts in paying off the legacy of $10 billion of inherited debt that we are now able to ride out these cyclical fluctuations in our revenue base in a fiscally responsible manner.

It is only because of our nine budget surpluses and our reduction of the State's debt legacy that we are able to increase our borrowings to fund a record investment in infrastructure without jeopardising the triple-A credit rating recently reaffirmed by both Moody's and Standard and Poor's.

A triple-A credit rating that, according to Moody's, reflects "the strength and diversity of the State economy".

A triple-A credit rating that we are determined to keep, unlike the Opposition, who put the State on credit watch the last time they were on the Treasury benches.

NEW SOUTH WALES ECONOMY

I have said on a number of occasions that, given a choice, I would rather be Treasurer of New South Wales—with its mature, diverse economy and the country's largest manufacturing base—than Treasurer of the boom-and-bust economies of the frontier States.

Despite the doom-mongering of the Opposition, the New South Wales economy is experiencing good, solid rates of growth.

We are enjoying historically low unemployment rates, higher-than-average full time employment, high per capita income, and strong business investment.

There is no doubt New South Wales is not growing as fast as the resource-rich, GST-recipient States like Queensland and Western Australia.

But as the latest OECD economic outlook noted, economies such as Australia's "could be significantly affected by abrupt changes in oil and commodity prices."

Queensland and Western Australia are exposed to this risk.

There are a number of historical reasons for New South Wales current economic performance:

- New South Wales was first into the housing bubble, and it was more pronounced in New South Wales;
- Higher interest rates have had a greater impact in New South Wales because of our higher levels of housing debt; and
- The higher Australian dollar associated with the commodity boom has dampened New South Wales manufacturing and service exports.

The Iemma Government is pro-growth and makes no apology for its pro-growth bias.

We are starting to see the benefits of this pro-growth stance, with population growth increasing, faster growth in retail sales, and a lift in housing demand for owner-occupiers.

A significant threat to the New South Wales economy is further interest rate rises, which would dampen business confidence and stall a recovery of the property market.

The recent Federal budget has increased this risk.

The key strength in the New South Wales economy over the last four years has been business investment, which in real terms has grown by 65 per cent.

This is business voting with their dollars by investing in the New South Wales economy.

The outlook is for even more business investment growth in 2006-07, particularly in manufacturing and mining.

Business investment is expected to set a new record in 2006-07, both in dollar terms and its share of State final demand.

FISCAL CONTEXT

Growth in the New South Wales economy is returning to trend, but the biggest emerging challenge remains the ageing of our population and the inability of Australia's current taxation system to adequately deal with this.

By 2044, the number of people in New South Wales aged over 65 will more than double from under 1 million in 2005 to over 2 million.

This will add significantly to demand in areas such as health, disability services, housing and transport.

It will also put pressure on revenues with the slowing growth of the traditional working-age population.

A critical long-term challenge—and this was backed by the independent study undertaken by respected tax expert Dr Neil Warren—is that the State's revenue is too dependent on inadequate Federal funding to be able to fund essential frontline services required by our ageing population.

Dr Warren's report found that Australian States collect around 16 per cent of total tax revenue yet are responsible for around 40 per cent of total government expenditure, while the Commonwealth collects around 80 per cent of tax revenue but is responsible for just 54 per cent of government expenditure.

This is compounded by inadequate Commonwealth grants, which have been growing at an average of just 3.7 per cent over the last four years.

At the same time growth in health expenditure has averaged 7.4 per cent a year, and growth in community services expenditure has grown at 6.6 per cent.

State government provided services are under pressure across the nation at the same time as the Federal Government sits on a $10.8 billion surplus, $18 billion in its Future Fund, and revenue growth of 6.9 per cent a year.

There must be structural reform of the fiscal relationship between Canberra and the States before our ability to deliver essential services is irretrievably compromised.

Earlier this year I wrote to the Federal Treasurer requesting he convene a national summit on the financial implications of Australia's ageing population.

I also forwarded a copy of Dr Warren's interim report to the Treasurer in the hope that—in light of his own tax review—we might see some genuine reform of the nation's tax system in this year's Federal budget.

I am sorry to say I was disappointed on both fronts.

This is not a matter of party politics or Canberra bashing.

All of us, no matter what side of politics or tier of government, have a responsibility to deal with this issue. More importantly, the community expects us to deal with it.

That is why last week I announced the New South Wales Government would host a national summit on Dr Warren's report, with a particular focus on how we will fund services for our ageing population.

SAVINGS

While the Federal Government continues to deflect its responsibilities on this matter, the New South Wales Government is undertaking steps to ensure we are prepared, within our resources, to meet the coming ageing wave.

If nothing is done about the State-Federal fiscal imbalance, an unsustainable gap between spending requirements and revenue capacity of around $23 billion in today's dollars could open up by 2044.

The New South Wales Government recognises the challenge of working within these fiscal constraints.

That is why the forward estimates include measures to align the rates of expenditure and revenue growth, which means maintaining the expenditure growth rate at an average target of 3.8 per cent per annum.

These measures are being introduced following the February economic and financial statement and include:

- A $300 million saving in 2007-08 from non-essential services across government, building on the 2 per cent saving to discretionary expenditure already in place;
- Staff reductions of 5,000 in non-frontline positions to be achieved through natural attrition and voluntary redundancies in line with the Government's established policy;
- Establishment of a Property Authority to better manage the Government's $80 billion property portfolio—expected to save up to $300 million a year by 2009-10, including $80 million a year in recurrent savings; and
- Streamlining public sector recruitment with savings growing to $38 million by 2008-09.

We will continue to seek ways to slow the growth.

This will be achieved by better managing our assets and capital expenditure, and more agency efficiencies.

A rigorous expenditure review process has seen savings of at least $270 million achieved during 2005-06.

Savings of nearly $600 million are targeted for 2006-07.

Across-the-board reductions in expense growth have been extended to 2007-08 and in this budget will be further extended through to 2008-09.

This will mean total savings of $4.4 billion to 2009-10.

The Iemma Government is proud that it has increased salaries for essential frontline staff.

We now have the highest paid nurses, teachers, and police officers in the country.

The Government is committed to maintaining the real value of wages for frontline workers, with additional scope to reward workers for further productivity gains.

Of course, fairer GST arrangements would help the State better fund its essential services, because contrary to the claims of the Leader of the Opposition, there has been no windfall for New South Wales out of the GST.

The facts are that New South Wales—no matter how the Opposition tries to spin it—will receive $380 million less in funding in 2006-07 than was estimated when the GST was introduced in 2000.

In 2006-07 New South Wales taxpayers will be cross-subsidising other States to the tune of almost $3 billion—around $370 from every person in the State.

The NSW Government will continue to fight for a better deal.

INFRASTRUCTURE

In the recent Federal budget the Commonwealth allocated $5.7 billion on infrastructure nationwide.

In 2006-07 the Iemma Government will spend a record $9.9 billion on infrastructure—in New South Wales alone.

Last week the Premier released a comprehensive 10-year infrastructure plan for New South Wales—the State Infrastructure Strategy.

The strategy maps out plans for a decade of infrastructure investment, including a $41.3 billion commitment over the next four years, 45 per cent higher than the previous four-year budget period.

This massive investment is estimated to directly and indirectly support approximately 130,000 jobs each year—providing a significant boost to employment opportunities.

The strategy identifies the main drivers of infrastructure spending over the next decade—such as population movements and growth, the ageing of the population, and new technology—and better links future capital spending to these demands.

It identifies specific projects, when they will be built, and how they are to be funded.

It ensures our infrastructure investment and delivery maintains pace with growth.

It represents a new direction in infrastructure procurement and delivery.

The $9.9 billion of infrastructure spending contained in Budget Paper No. 4 represents a 22.8 per cent increase over 2005-06.

Over the next four years an estimated $17.4 billion will be borrowed to fund capital expenditure, including $5.4 billion in 2006-07.

Capital expenditure of $110 billion is projected over the next 10 years, with average growth of 4.6 per cent a year over the life of the strategy.

Over the next decade private sector financing of infrastructure projects is targeted at 10 per cent to 15 per cent of the State's total capital expenditure.

The largest area of capital expenditure funded in today's budget is public transport at $1.6 billion.

In 2006-07 this massive public transport investment will include:

- $129 million to purchase corridors for the metropolitan rail expansion;
- $207.8 million to continue the rail Clearways program;
- $327 million for work on the Epping to Chatswood rail line;
- $275 million to purchase new rolling stock and upgrade the existing fleet;
- $45 million for bus priority measures; and
- $36 million for the first stage of a $254 million program to purchase 505 new 'clean-diesel' and natural gas powered buses.

The 2006-07 infrastructure budget also includes a capital works program of $633 million for the Department of Health as part of a four-year infrastructure program totalling over $2 billion, including:

- $11 million for new facilities at Auburn and Liverpool hospitals as part of a $244.6 million, four-year project;
- $18 million for upgrades in rural hospitals and health facilities, including redevelopments at Ballina and Manning Base hospitals;
- $4.5 million as part of a $55.8 million, four-year project for new and improved mental health facilities in Sydney, the Central Coast, Illawarra, and mid-western New South Wales;
- $18.5 million to upgrade and replace ambulance stations, vehicles and equipment, including new stations at Dubbo, Auburn and Liverpool; and
- $5.8 million for the airconditioning upgrade at John Hunter Hospital.

In addition, the 2006-07 budget includes $435.5 million to continue work on other major projects including:

- $57.5 million to redevelop or upgrade 19 rural hospitals and health services, including Junee, Batlow, Nyngan, Warialda, Merriwa, and Walcha;
- $47.4 million to redevelop Bathurst, Orange and Queanbeyan hospitals;
- $41.3 million to continue upgrading Royal Prince Alfred Hospital and to increase the capacity of the planned mental health facility at Concord Hospital;
- $35.8 million for stage 2 redevelopment works at Royal North Shore Hospital;
- $30.8 million to continue improving mental health facilities at Lismore, Coffs Harbour, Newcastle, Shellharbour and St George, services for older persons in the Illawarra, and various psychiatric emergency facilities in the Sydney metropolitan area; and
- $29.4 million to improve hospital, clinical and community services at John Hunter Hospital, Mater Hospital and Belmont Hospital.

A modern State road network is critical to our economy. That is why in 2006-07 the Government will spend $1.4 billion on road infrastructure, including:

- $356 million for the continuation of the three-year, $1.3 billion State-Federal Pacific Highway upgrade program;
- $113 million towards the upgrade of Windsor Road and the Windsor flood evacuation route;
- $8.2 million to start the upgrade between Oak Flats and Dunmore as part of the $380 million Princes Highway upgrade program;
- $15 million to extend the Northern Distributor and $5 million to start the construction of the Kiama ramps in the Illawarra;
- $26 million to continue the $460 million program to upgrade the Great Western Highway between Penrith and Orange;
- $11 million towards widening the Spit Bridge; and
- $47 million for Central Coast roads, including $12 million to widen The Entrance Road between Ocean View Drive and Tumbi Road, and $8 million to complete the widening between Terrigal Drive and Carlton Road.

Students and teachers in New South deserve first-class facilities in which to teach and learn, and over the next four years more than $2 billion will be spent on education infrastructure, including:

- 10 schools delivered under the second stage of the very successful new schools PPP;
- $120 million to clear the current school maintenance backlog;
- $164 million for TAFE upgrades, including at Bathurst, Castle Hill, Coffs Harbour, Granville, Miller, Newcastle, Queanbeyan, Ryde, Ultimo, and Wagga Wagga; and
- $262 million to upgrade 24 primary schools and 33 high schools.

Infrastructure spending on law and order is driven by crime patterns and new technologies. In 2006-07 $462 million will be spent in this area, including:

- $53.5 million to build new police stations and upgrade existing stations—including at Burwood, Granville, Kempsey, Wyong, Windsor, and the Port Stephens area;
- $1.5 million for a forward-looking infrared sensor and camera for day or night intelligence operations;
- $3.4 million as part of a $5.1 million project to purchase more than 500 portable fingerprint devices, enabling police to check suspects' fingerprints on the spot;
- More than $123 million to build new courthouses and upgrade existing facilities, including almost $75 million towards the $330 million Parramatta Justice Precinct and more than $26 million to improve courthouse facilities in regional and metropolitan New South Wales;
- $57 million for completion of the new Western Region Correctional Centre at Wellington;
- $15 million towards construction of a new 500-inmate capacity prison in the Illawarra and expansion of prisons at Cessnock and Lithgow to accommodate a further 500 inmates; and
- Commencement of the $63.9 million, 85-bed prison hospital at Long Bay Correctional Centre, part of a $137 million joint project with NSW Health, which also includes construction of a forensic hospital.

A key priority for this Government is improving the lives of some of the most marginalised and disadvantaged people in our community—such as those who rely on public housing and those who live with a disability. That is why $244 million will be spent over the next five years on infrastructure for the Department of Ageing, Disability and Home Care, including $16.5 million in 2006-07 to upgrade and refurbish Lachlan and Grosvenor residential accommodations.

$712 million will be spent on social housing infrastructure in 2006-07, including $322 million for new public housing, and $21 million for additional Aboriginal housing.

The Government is investing a record $9.1 billion upgrading and expanding the State's electricity network over the next four years.

The State's electricity infrastructure will receive a $2.3 billion boost in the 2006-07 budget to meet increased demand and ensure continued reliable supply, including:

- $262 million to expand and upgrade the New South Wales high-voltage electricity network;
- $17.5 million to replace infrastructure and increase capacity and reliability in Sydney's CBD;
- $5.5 million for a zone substation at Lennox Head and $5.6 million to install high-voltage transformers at Lismore; and
- $19.4 million to upgrade the Penrith transmission substation.

In 2006-07 Sydney Water will invest $645 million on water for the greater Sydney region, a boost of almost $130 million, with recycling a key focus.

New South Wales country towns and villages will receive $70 million in 2006-07 to upgrade their local water supply and sewerage systems.

$51 million will be spent on capital works in Sydney's ports, more than $56 million will be allocated to continue the massive upgrade of Port Kembla harbour, and more than $4 million will be spent upgrading and improving the port of Newcastle.

A HEALTHY COMMUNITY

I have already canvassed the long-term impact of the ageing population on State Government services.

In the short-term the New South Wales Government is meeting those challenges with a record $11.7 billion budget for the Department of Health.

This is an increase of $828 million on the 2005-06 budget, and will be used to provide more beds, more staff and more elective surgery.

It also provides for an unprecedented enhancement of $939 million over five years to improve services for the mentally ill.

Having put mental health on the national agenda, Premier Iemma has now exceeded the Commonwealth's call to match its efforts by more than $300 million.

This will go towards providing more mental health beds, community-based services, early intervention, and the Aboriginal mental health program.

Spending in 2006-07 in this area will total $946 million—$93 million more than 2005-06.

This includes new mental health facilities in Orange, Gosford, Shellharbour, Lismore, Coffs Harbour, Newcastle, Sutherland and St George.

In the economic and financial statement, the Government stated that in spite of the tightening fiscal position and the need to curb public sector spending, we would be allocating more resources to frontline services.

Today I am pleased to be able to deliver on that commitment.

The budget contains funding for an extra 426 equivalent public hospital beds to allow more elective surgery and faster emergency care. This builds on the 800 new beds announced in last year's budget.

We will also invest $10 million on new intensive care beds.

New adult intensive care beds will be provided at Westmead, St Vincents, Blacktown, Port Macquarie, Concord and the Mater Newcastle hospitals.

New neonatal intensive care cots will be provided at John Hunter, the Royal Hospital for Women, Liverpool, Nepean and Royal North Shore hospitals.

The record 39,000 nurses in New South Wales enjoy the highest basic wage rate in Australia and we must do all we can to recruit and retain the best health personnel available.

In 2006-07 $38.5 million will be spent on new initiatives to recruit, train and retain the nurses and doctors we need to meet growing demands.

$7.9 million will be spent recruiting 93 new ambulance officers and purchasing new equipment to improve emergency care.

We are finding smarter ways of working, and backing that with extra resources.

The Predictable Surgery Program, for example, has led to a dramatic reduction in the number of people waiting more than 12 months for elective surgery despite record numbers of patients seeking emergency treatment.

The long-wait list has also been slashed by three quarters in the last 12 months from 10,364 cases in March 2005 to 2,525 cases in March 2006.

The overall waiting list has been reduced by 12 per cent.

An additional $15 million for elective surgery will continue our innovative strategy to reduce elective surgery waiting times.

This is on top of $35 million in recurrent funding to reduce elective surgery waiting times.

As the Warren report found, Australia is almost alone when it comes to shared responsibility for health service delivery.

Unfortunately, there continues to be a lack of political will at the Federal level to grapple with this problem.

That is why the 2006-07 budget contains measures to address the disconnect between Commonwealth-funded GP services and State-funded hospitals and health facilities.

This includes support for 10 after-hours general practice services co-located with hospital emergency departments to ease the strain on emergency departments and the Ambulance Service.

The New South Wales Government is working with divisions of general practice to establish the first after-hours services at Liverpool and Nepean, with negotiations continuing for a service at Ryde.

Up to $4 million in capital expenditure will be spent on establishing integrated primary health and community care services, combining GPs, community health workers, allied health and other medical professionals in "one stop shops".

In 2006-07 expenditure through the New South Wales Cancer Institute will be $126 million, including new cancer prevention campaigns targeting smoking and skin cancer.

And $10 million will be spent on a new anti-tobacco campaign to reduce smoking prevalence by a further 1 per cent, or 50,000 smokers.

BUILDING A FAIRER NEW SOUTH WALES

The Premier, on taking office, identified disability services as one of this Government's highest priorities.

97 per cent of people with a disability are cared for by their families, and this is a budget that recognises and supports their efforts.

This budget delivers a record 13.5 per cent increase in funding to the more than 200,000 people under the age of 65 in New South Wales with a severe or profound disability, their families and their carers.

$1.76 billion has been allocated to the Department of Ageing, Disability and Home Care, an increase of $209 million on 2005-06.

Over the next five years more than $1 billion in additional funding will be spent providing disability services.

The additional money supports a comprehensive recasting of disability services under our 10-year Stronger Together Strategy.

This historic funding boost will provide thousands of families with additional support and flexible care that best suits their needs.

Major initiatives in the 2006-07 budget include:

- A $20 million boost to community participation programs to ensure every young person with a disability receives four days per week, and five days for those with very high support needs;
- 180 new supported accommodation places at a cost of $46 million;
- 200 new therapy places for children with a disability;
- 820 additional respite places in 2006-07 for children and adults with a disability at a cost of $8.3 million; and
- 70 new intensive in-home support places at a cost of $5.3 million.

We are taking action to help children at risk of harm or neglect with a further tranche of the Government's $1.2 billion, five-year community services reform package announced in 2002.

In 2006-07 $308.4 million will be provided for the reform program, an increase of $89.8 million on the $218.6 million provided in 2005-06.

Families, children, and young people will benefit from a record Department of Community Services budget of $1.13 billion.

This is an 11.4 per cent increase on 2005-06 and brings major funding increases to DOCS key programs including early intervention, child protection and out-of-home-care.

2006-07 reform funding will allow for a series of initiatives including:

- $24.4 million for an additional 200 child protection and early intervention caseworkers and support staff;
- $17 million for services to assist vulnerable and at-risk families; and
- $52.2 million for out-of-home care programs, including another 25 dedicated caseworkers.

As part of an $85.2 million plan, the Iemma Government will commit $8.8 million a year from 2006-07 to improve the viability of community-based preschools and increase access and affordability for New South Wales families.

And, from 2008-09, the Government will deliver an additional $21 million a year to community-based preschools to provide subsidised places for a further 10,500 children.

In 2006-07 the Government will invest $712 million in public housing—a $38 million increase on 2005-06—providing assistance to 450,000 residents.

This is an additional $269.8 million over and above our obligations under our agreement with the Commonwealth.

Maintenance of public housing will receive an investment of $197.5 million.

LEARNING FOR THE FUTURE

The 2006-07 budget invests record amounts in the education of our children and young people.

The Education and Training budget will reach $10.7 billion—an increase of $518 million on the previous year—to provide a first-class education for all New South Wales students.

The budget includes an additional injection of $120 million over four years for school maintenance—bringing total expenditure on school maintenance to $857 million over the next four years.

This means we are investing an additional $82,000 a day in maintenance to get our schools into better shape.

Other budget highlights include an extra $18 million over four years to set up 10 trade schools—part of an innovative plan to provide hundreds of school-based apprenticeships and traineeships and help address the skills shortage.

Through the new contractual arrangements with private bus operators, apprentices in the metropolitan area will now be able to access the same transport concessions currently available on other public transport services.

This will be progressively rolled out to regional areas.

More than $10 million will be allocated to help keep schools safe and secure, with 67 schools receiving security fences.

And school facilities will be further improved with a $10 million commitment to toilet upgrades at 90 schools from Parkes to Petersham.

The Government's successful $710 million class-size reduction program will continue, with $603 million over the next four years to help employ extra teachers, as well as the $107 million already being spent over four years to build new classrooms.

We have already met our commitment to reduce kindergarten class sizes to a statewide average of 20 students and year 1 class sizes to a statewide average of 22 students.

This funding will ensure we fulfil our commitment to reduce year 2 class sizes to a statewide average of 24 students by 2007.

Targeted funding of $616 million over four years will be committed to literacy and numeracy.

$65 million over four years has been allocated from 2005-06 to improve education results for Aboriginal students.

As part of the Government's Respect and Responsibility Program, $65 million will be spent over four years to better manage disruptive students, including eight new behaviour schools and seven new tutorial centres by 2007.

A total of $3.3 billion will be allocated over four years to support students in government schools with special needs. This includes more than 660 new teachers' aides over three years.

RESPECT AND RESPONSIBILITY

Keeping crime rates low and making our communities safer is another key priority of the Iemma Government.

Crime is continuing to fall across New South Wales—the result of this Government backing our police with the powers and resources they need.

A Bureau of Crime Statistics and Research report into long-term crime trends released in April shows that robbery with a firearm, burglary and car theft are at their lowest levels in 15 years.

That same report showed that since 1995, the rate of robbery with a firearm is 39 per cent lower, murder 37 per cent lower, motor vehicle theft 44 per cent lower, and break and enter (dwellings) 26 per cent lower.

The Iemma Government will continue to build on these achievements.

That is why in 2006-07 the Police budget will be increased by $160 million or 7.9 per cent—more than twice the rate of inflation—to almost $2.2 billion.

This includes funding for record police numbers and new counter-terrorism and intelligence- gathering measures.

The Premier recently announced an extra 750 officers will be ready and trained for duty by 30 January 2007—boosting the average authorised strength to a record 15,206.

This is an extra 2,299 frontline police—an increase of 17.8 per cent—since 1995.

We are committed to ensuring our frontline police officers have the resources, equipment and facilities they need to continue to drive down crime.

$1.8 million has been allocated for counter-terrorism activities, including maintenance of bomb disposal equipment.

A further $1.6 million is allocated to establish the permanent Middle Eastern Organised Crime Squad.

In 2006-07 the $924.8 million Corrective Services budget continues the massive capital works spending program of the past decade.

This record budget comes at a time when our prison population is growing—a direct result of our crackdown on crime.

A record $765 million emergency services budget will ensure the community has even greater protection in times of natural disasters and other major emergencies.

This is an increase of $65 million—9.3 per cent—on the 2005-06 allocation.

The Iemma Government continues to ensure our emergency services have the world-class equipment and resources they need to protect the people of New South Wales.

We will continue upgrading the emergency services vehicle fleet, providing almost $53 million next year for bushfire tankers, fire engines and emergency response vehicles.

In 2006-07 the Fire Brigades budget will be a record $523 million, and includes $18 million for 50 new fire engines and other specialist vehicles and equipment, and $7.1 million to upgrade more than 12 fire stations across the State.

We all know the shocking toll fires can take on rural communities. That is why the Rural Fire Fighting Fund will be provided with an unprecedented $168 million—a 20 per cent increase on 2005-06.

This includes a major investment of $10 million to build new stations and upgrade existing stations and fire control centres for our volunteer firefighters.

$34.1 million will be spent on more than 260 new bushfire tankers for the Rural Fire Service.

A further $2.7 million will be provided under the joint State-Commonwealth Bushfire Mitigation Program for fire trail construction, maintenance and signage.

$41.6 million will be spent by the State Emergency Service, including new road crash rescue equipment, new emergency response vehicles for SES units around New South Wales, and a new 24-hour Operations Communications Centre to deploy SES units to emergencies.

KEEPING NEW SOUTH WALES MOVING

The 2006-07 budget increases spending in the Transport portfolio by $435 million.

This means the budget will fund $3.4 billion for railways and public transport.

This will see funding for rail increase by more than 18 per cent to $2.4 billion—an additional $367 million on the 2005-06 budget.

The 2006-07 allocation for rail will almost double the 2001-02 budget for CityRail and CountryLink.

And this is in addition to major projects worth more than $15 billion over the next 15 years.

Key budget highlights for 2006-07 include:

- School Student Transport Scheme benefits will remain the most generous in Australia, worth an estimated $446.2 million, with a further $50 million to provide subsidies for community groups;
- $49.2 million for 18 new and continuing Easy Access station upgrades, as well as major capital works at Town Hall, North Sydney and Chatswood.
- $20 million for rail transport in the Lower Hunter, including upgrading the Newcastle rail corridor;
- More than $130 million for maintenance of the country rail network, and $32 million for new signalling and train control systems;
- State Transit funding of $267.6 million, an increase of $10.5 million, including $37.1 million for Newcastle buses; and
- $554.5 million for privately operated bus services.

At $3.3 billion, 2006-07 marks the biggest ever roads program for New South Wales, an increase of $415 million, or 14.4 per cent, over the 2005-06 budget.

A total of $1.59 billion has been allocated towards road construction.

Communities outside the Sydney metropolitan area will particularly benefit from the 2006-07 budget, with $1.84 billion, or 66 per cent of the road outlays, to be spent on rural and regional roads.

Local councils across New South Wales will be provided with $144 million for regional roads.

COUNTRY NEW SOUTH WALES

The Iemma Government has reaffirmed its commitment to drought-affected parts of the State, increasing support measures for farmers and rural communities doing it tough.

The New South Wales Government has already provided more than $200 million in drought support measures since July 2002.

And we recently announced a $5.5 million package to expand and extend drought transport subsidies through to the end of August, when the program will be reviewed based on conditions at that time.

That package also enabled us to extend our valuable Drought Support Workers Program for another six months through to the end of the year.

Earlier this year, we announced funding of $13.8 million to ensure farming families had continued access to financial and emotional support, such as rural financial counsellors and the Emergency Household Relief Program.

In 2006-07 the Government is committing $612.7 million to support natural resources management across the State.

A key feature of the Government's 2003 reforms was the creation of catchment management authorities, which receive $167 million in the 2006-07 budget.

Key investment areas for Natural Resources in 2006-07 include:

- $12.3 million over three years to implement native vegetation structural reform initiatives; and
- $9 million as part of a two-year, $13.4 million wetland recovery strategy.

Primary industries contribute to the State's economy, delivering jobs, investment and export income.

Most importantly, they drive regional prosperity.

Measures that help support their profitability and sustainability are critical not only to their future success, but also to the health of regional and rural communities.

The Government will invest $390 million to support the State's farming, fishing, forestry and mining industries in 2006-07, a $30 million increase on 2005-06.

Key investment areas for Primary Industries in 2006-07 include:

- $250 million for applied research, technology and extension to help boost the profitability and sustainability of the State's primary producers; and
- $7.9 million to fight noxious weeds across the State.

The 2006-07 budget delivers record funding of $561 million for environmental services through the Department of Environment and Conservation.

The landmark City and Country Environment Restoration Program will attack illegal dumping, return water to our rivers, fund two new marine parks at Batemans Bay and Port Stephens and provide unprecedented environmental funding to councils and community groups.

The Government will continue working to protect the landscape with an addition of 21,000 hectares to the national park system.

REVENUE MEASURES

This budget does not raise taxes, it cuts them.

The New South Wales Government, while remaining fiscally responsible, is ensuring our taxation regime remains competitive and does not act as a brake on the economy.

That is why the Premier listened to the community and announced the abolition of vendor duty as one his first acts.

A tax cut worth $382 million in 2006-07, and $1.67 billion over the next four years.

That is why we lifted the land tax threshold, exempting almost 390,000 investment property owners who paid land tax last year.

A tax cut worth $53 million in 2006-07, and $234 million over the next four years.

That is why we announced payroll tax concessions for businesses in areas of high unemployment.

A tax cut worth $95 million and benefiting approximately 1,400 businesses.

That is why we reached agreement with the clubs on poker machine tax.

A tax cut worth $233 million over the next four years.

It is why we cut workers compensation premiums twice—by 5 per cent and by a further 10 per cent.

In March I was able to reach agreement with the Commonwealth on a fiscally responsible time frame for the abolition of the five taxes outlined for review in the intergovernmental agreement.

This means New South Wales will be able to remove these taxes in a way that will not jeopardise essential services like schools, hospitals and police.

The taxes to be abolished are stamp duties on:

- Hire of goods—to be abolished 1 July 2007;
- Leases—to be abolished 1 January 2008;
- Unlisted marketable securities—to be abolished 1 January 2009;
- Mortgages and loan securities—to be cut by half on 1 January 2010 and abolished on 1 January 2011; and
- Non-real property transfers—to be abolished 1 July 2012.

This means home loans, rental agreements and leases will all be cheaper.

That is a total of nine tax cuts announced by the Iemma Government, plus two reductions in workers compensation premiums, in just ten months.

Or, to put it another way, we have delivered $424 million of tax cuts in just 44 weeks.

Today I can announce further changes to land tax.

Large fluctuations in land tax liabilities resulting from volatility in annual land values are a major source of taxpayer concern.

From the 2007 land tax year, land values will be calculated using the average over the previous three years.

The land tax threshold will also be averaged. New South Wales is the only State that indexes the tax-free threshold each year.

These changes to land tax are worth $57 million in 2006-07, and $395 million over four years.

To put this in perspective, changes to land tax announced in the Victorian budget last week are worth $167 million over four years.

Our cuts are worth more than double that amount.

The Government will also implement a new regime to simplify and make fairer the objections and appeals process for land valuations.

In addition, I can announce changes to the taxation of family-held unit trusts.

A 2005 High Court decision changed the taxation of commercial unit trusts, but also removed the benefit of the land tax threshold for many family-held unit trusts.

To address this unexpected consequence, the Government is today announcing two measures.

First, we will grandfather the previous tax treatment for existing family unit trusts with land valued up to $1 million previously able to access the tax-free threshold.

Second, we will give taxpayers a 12-month period in which to restructure their unit trust to a fixed trust.

This will mean they can retain access to the land tax threshold without incurring State taxes on the restructuring transactions.

For taxpayers who restructure before 31 December 2007, the Government will also reassess their land tax for the 2006 land tax year to allow them to receive the benefit of the threshold.

For those trusts that have already paid land tax for 2006, refunds will be provided.

These measures are expected to cost $3 million a year.

Not only does this budget contain no new taxes, but combined with other decisions made since August 2005, it cuts taxes by $484 million in 2006-07 and by $3.2 billion over the next four years.

These tax cuts give back billions of dollars to New South Wales businesses, property investors and home buyers.

They support growth, investment and jobs.

And they continue Labor's record of reducing the tax burden on New South Wales families and businesses.

In fact, for every year since 1995 we have reduced the State tax burden in New South Wales by an average of $88 million each year.

This compares to the abysmal record of the Coalition, which increased the tax burden by an average of $134 million each year they were in office.

BUDGET RESULT AND NET WORTH

The State's balance sheet remains in a strong financial position despite the cyclical impact of a downturn in the property market on short-term budget results.

The value of our physical assets is projected to increase from $173 billion to $199 billion by 2010, reflecting the impact of the Government's record $41.3 billion capital works program.

State sector net financial liabilities are forecast to increase from 15.9 per cent of gross State product at 30 June 2006 to 16.9 per cent in 2010.

General government sector net financial liabilities for the same period are estimated to fall from 8.7 per cent to 8 per cent.

State sector underlying net debt will increase by $19.6 billion for the four-year period ending 30 June 2010, with the main increase in the public trading enterprise sector resulting from additional capital expenditure.

State underlying net debt levels will remain prudent, being forecast at 9.1 per cent of gross State product at 30 June 2010. Interest expense will be less than 5.2 per cent of total revenue over 2009-10.

General government underlying net debt will increase to $9.1 billion by 30 June 2010, and will be 2.3 per cent of gross State product. This drops to 1.7 per cent if the impact of the additional contribution to superannuation is removed.

This result maintains our sound management of the economy.

By way of comparison, the Victorian Government last week announced that its general government sector net debt is forecast to increase to 2.5 per cent of gross State product by 2010.

Forecast higher underlying debt levels will still result in a relatively low interest expense/revenue ratio of 2.9 per cent in 2009-10.

The increase in general government underlying net debt will fund higher levels of capital expenditure compared to the previous four years, in the context of an initially smaller surplus being available from operating activities.

Current forecasts suggest that general government superannuation obligations are on track to be fully funded by 30 June 2030.

The State's self-insurance scheme, the Treasury Managed Fund, has reduced member agencies' overall premiums by 10.4 per cent for 2006-07.

This is a direct result of lower claims expenses following the Government's workers compensation and tort law reforms.

Several agencies have also decreased workers compensation claims through improved management of occupational health and safety.

Finally, the New South Wales Government will, by 30 June 2006, have paid about $11 million of reimbursements to various local councils to enable them to meet their HIH claim debts.

CONCLUSION

The first State budget of the Iemma Labor Government recognises the new realities we confront as a State and sets a new direction for managing these challenges within a fiscally responsible budget strategy.

It boosts spending in areas of need, and provides a massive injection of funds to the State's infrastructure stock.

It builds on Labor's record of responsible tax reductions, supporting economic growth and investment.

This budget is socially responsive and fiscally responsible. It builds not just for a year, but for a decade.

And it does so while cutting taxes and charting a rapid return to healthy surpluses.

As one of my esteemed predecessors used to say, I look forward to returning next year.

I commend it to the House.

Debate adjourned on motion by the Hon. Michael Gallacher.

GENERAL PURPOSE STANDING COMMITTEES

Budget Estimates and Related Papers 2006-2007

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [3.02 p.m.]: I move:

1. That the Budget Estimates and related papers for the financial year 2006-2007 presenting the amounts to be appropriated from the Consolidated Fund be referred to the general purpose standing committees for inquiry and report.

2. That the committees consider the Budget Estimates in accordance with the allocation of portfolios to the committees.

3. For the purposes of this inquiry any member of the House may attend a meeting of a committee in relation to the Budget Estimates and question witnesses, participate in the deliberations of the committee at such meeting and make a dissenting statement relating to the Budget Estimates, but may not vote or be counted for the purpose of any quorum.

4. The committees must hear evidence on the Budget Estimates in public.

5. Not more than two committees are to hear evidence on the Budget Estimates simultaneously.

6. When a committee hears evidence on the Budget Estimates, the Chair is to call on items of expenditure in the order decided on and declare the proposed expenditure open for examination.

7. The committees may ask for explanations from Ministers in the House, or officers of departments, statutory bodies or corporations, relating to the items of proposed expenditure.

8. The report of a committee on the Budget Estimates may propose the further consideration of any items.

9. That a daily *Hansard* record of the hearings of a committee on the Budget Estimates be published as soon as practicable after each day's proceedings.

10. That the Leader of the Government is to provide to each committee, by Friday 9 June 2006, a schedule outlining the attendance of relevant ministers to appear before each committee, for the committee's consideration.

11. The committees may hold supplementary hearings as required.

12. The committees are to present a final report to the House by the last sitting day in November 2006.

I remind honourable members that General Purpose Standing Committee sitting times for consideration of budget estimates traditionally have been set by the Government after a lengthy consultative process with the Ministers to ensure that Ministers and their staff are available to attend at least the first of relevant estimates committee meetings. The sittings of those estimates hearings have been set down for all day, starting at 5.30 p.m., on Monday 28 August, Tuesday 29 August, Wednesday 30 August and Thursday 31 August—

The Hon. Melinda Pavey: A sitting week!

The Hon. TONY KELLY: Yes. The honourable member has been to them before. It is what we have always done. Estimates hearings have been set down for Friday 1 September, a non-sitting day, and Monday 4 September 2006. I ask the House to reaffirm the position that has been in operation for many, many years, so that, at least for the initial meetings, Ministers and staff will be able to attend. As has been pointed out, and as has happened in the past, Ministers and departmental people can be called back before subsequent hearings. In addition, schedules have been split, to accommodate, in particular, Ministers who have a large workload over a number of portfolios, such as the Hon. Ian Macdonald. For the first time, his portfolios will be spread over two sittings of the estimates committee. My portfolios and the portfolios of the Hon. Bob Debus also will be spread over two sittings of estimates committees. I commend the motion to the House.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [3.04 p.m.]: I move:

That the question be amended as follows:

1. Paragraph 5. Omit "two". Insert instead "three".

2. Paragraph 10. Omit the paragraph. Insert instead:

10. That the initial hearings be held over nine days, commencing each day no later than 10.00 a.m., according to the following schedule:

Monday 21 August 2006
GPSC 1: Premier, State Development, Citizenship
GPSC 2: Ageing and Disability Services, Aboriginal Affairs
GPSC 3: Lands, Emergency Services, Rural Affairs

Tuesday 22 August 2006
GPSC 1: Treasurer, Infrastructure, Hunter
GPSC 2: Health
GPSC 3: Justice, Juvenile Justice

Wednesday 23 August 2006
GPSC 1: Industrial Relations, Commerce, Finance, The Legislature
GPSC 2: Community Services, Youth
GPSC 3: Police

Thursday 24 August 2006
GPSC 1: Education and Training
GPSC 2: Tourism and Sport and Recreation, Women
GPSC 3: Attorney General, Gaming and Racing, Central Coast

Friday 25 August 2006
GPSC 4: Planning, Redfern and Waterloo, Science and Medical Research
GPSC 5: Environment, Arts
GPSC 1: Reserve Day, if required

Monday 28 August 2006
GPSC 4: Housing, Local Government, Western Sydney, Fair Trading
GPSC 5: Water Utilities, Regional Development, Small Business, Illawarra, Energy, Ports, Waterways
GPSC 2: Reserve day, if required

Friday 1 September 2006
GPSC 4: Roads
GPSC 5: Primary Industries
GPSC 3: Reserve day, if required

Monday 4 September 2006
GPSC 4: Transport
GPSC 5: Natural Resources, Mineral Resources

Friday 8 September 2006
GPSC 4: Reserve day, if required
GPSC 5: Reserve day, if required

3. Insert the following paragraphs at the end:

13. Members may lodge with the Clerk to the committee proposed issues for questioning up to seven days prior to the holding of the initial hearing for that portfolio.

14. Members may lodge questions on notice with the Clerk to the committee during a Budget Estimates hearing and up to two days following.

It would come as no surprise to honourable members that I have moved this amendment. I thought it appropriate to read that lengthy amendment onto the record to ensure that it is recorded for history, given that, from what we have read in recent times, those who helped prepare the Opposition's proposition no longer will support it. Be that as it may, I think it worthwhile to give an historical perspective to the Opposition proposal, and what it seeks to achieve, and to note the contributions that individuals have made to it. It would be fairly clear that not many members of this Chamber, other than Government members, are happy with the budget estimates procedures or timetables that have been adopted over the past few years. We have witnessed some disgraceful behaviour—none worse, in my mind, than that of the Hon. John Watkins, who sought to use all the time allocated to the Opposition in answering just one question, and for that entire time waffling on and on and on. Members were not therefore able to bring the Minister to account.

At question are not only estimates committee procedures but also their timetables. Regarding procedure, it is extremely important, not only for the present but also for the future, as this House continues to determine its evolving role, to consider the considerable successes of other Houses of review. In that regard, I have looked at Senate estimates procedures and what this House could learn from those and import to the New South Wales system.

Even though in the past two years we have made considerable inroads in a number of key areas, when one considers the way in which the Government has shut down freedom of information applications, made a mockery of question time, fights tooth and nail on Standing Order No. 52 at every opportunity to claim cabinet and commercial in confidence, and fights against transparency and accountability, one of the last vehicles left to members of the public is the Legislative Council budget estimates process to examine in detail each item in the budget and associated matters to identify how they will impact on communities throughout New South Wales. As we have seen from the attitude of the Treasurer, the Minister for Roads and Ministers in this House and the other House, it is quite often a waste of time asking them any questions about their portfolio because they either do not know or they are not interested. They show nothing but disdain for the public when they refuse to answer questions.

The Opposition amendments seek to put in place a process that will ensure an opening up of each of the portfolio areas far beyond the facade of the estimates process. I would hardly say that we enjoy them: we are subjected to them by the Government, which sets the time and place at which the committees will meet and who will attend. The Government runs the entire process, which makes an absolute mockery of the concept that this House is somehow a House of review. Under the current format it simply responds to the wishes of the Government. The Opposition amendments seek to turn the process away from that to which we are currently subjected to one that resembles the process utilised by the Senate to ensure that this House retains some relevance. There is no doubt that, as this House continues to attract criticism from those outside who lose faith in our ability to hold the Government accountable because they see what is happening in this House, these amendments are important for every member in the Chamber who is interested in a particular issue that is beyond the purview of questions in this House—we do not get answers in question time—as the House continues to evolve and refine its true role of keeping the government of the day far more accountable.

We cannot do one without the other. If the procedures are to work we must have an appropriate timetable. I have had the opportunity to look at the Government's timetable, which is a continuation of the disgraceful timetable we have had previously. Only two hours have been allocated for the Roads portfolio, which is a serious issue for the people of New South Wales. If the Government soaks up its time, which the Minister for Roads, who is not in the Chamber, does quite often when he gets into some difficulty, one can find oneself with only 45 minutes to work out the best questions to ask on the day rather than spend the time going through the entire portfolio to ensure that when the process is complete the community has a better understanding of what is going on within the Roads portfolio. The timetable set out by the Government is the same sad, sorry budget estimates timetable that is determined primarily by the clock.

The Hon. John Della Bosca: You were happy with it last year.

The Hon. MICHAEL GALLACHER: No. The Minister for Commerce said that we were happy with it last year. We have never been happy with this process. I have had numerous discussions with members of the crossbench to encourage them to realise that the current system is past its use by date and to ensure that as the estimates committee process evolves it offers true transparency and accountability. The shadow Ministers behind me could contribute to hearings into their shadow portfolios. Community Services and Youth is a huge portfolio that deserves more than a two-hour hearing. It is a disgrace, given the level of Government contempt for the police force in New South Wales, that the Police portfolio has been buttressed in for two hours between 5.30 and 7.30 on a Tuesday night. Arguably up to one million passengers a day in Sydney travel by rail, bus or ferry, yet, according to the Government's timetable, the estimates committee hearing for Transport will take place on 29 August from 8.00 p.m. until 10.00 p.m. It is a disgrace! For some time we have said that the Government's offer does not match the responsibility of the House to continue and maintain the budget estimate hearings. I do not believe that members of the crossbench believe it is appropriate, either.

A couple of months ago I convened a small party of members of the crossbench, which included Reverend the Hon. Fred Nile, the Hon. Dr Arthur Chesterfield-Evans and Ms Lee Rhiannon, to discuss what I considered were areas that needed review. Based on early discussions we resolved that I would get back to them on a number of proposals, one of which was to ensure the inclusion of a provision that Ministers be available for questioning. Reverend the Hon. Fred Nile thought that provision was extremely important. The Hon. Dr Arthur Chesterfield-Evans saw the need for us to flag to the respective Ministers our desire to ask questions in certain areas to ensure that they had suitable personnel with them to answer questions if they were not in a position to answer them in detail. The Opposition amendments will ensure that those provisions are met. We met with the Clerks, whom I will not verbal, and we are confident that our proposals can be met. My original proposal was that the House commence hearing budget estimates within 14 to 21 days immediately after the House rose to meet the needs of all members of the crossbench and to ensure that any debate on the budget was relevant—because the budget is a live issue we should commence estimates hearings immediately.

Crossbench members had a number of concerns about the timetable in my original proposal. Consequently, I redrafted the timetable for the estimates hearings to reflect their needs, which means that estimates hearings would commence just before the House resumes in August. The Government proposes, and continues to propose, that the budget estimates process take place when the other House is sitting. The estimates process has always been difficult for members of the non-Government forces. Ministers are dragged away and distracted from their responsibilities to answer questions, which can result in a dysfunctional process. The amendments propose that the hearings be held outside the normal sitting times of the Legislative Assembly to ensure that this House has some currency and relevancy in ensuring greater transparency. It is all about going back to procedure and the timetable.

The proposal to which I have referred has been circulated today. It meets the commitment I gave to members of the crossbench that the Opposition would not propose estimates committees being convened at difficult times for them in June, that the timetable would include estimate committees hearings during the week before Parliament resumes in August, and that the timetable would include 28 August and 1 September, which are a Monday and a Friday of a sitting week, to ensure the timetabling presents the least difficulty in members meeting their commitments while in Sydney. A concern has been brought to my attention. I gave an undertaking in the preliminary meeting with Reverend the Hon. Fred Nile, the Hon. Dr Arthur Chesterfield-Evans and Ms Lee Rhiannon. At a subsequent meeting of the crossbench members I gave an undertaking that before the Opposition moved the amendment I would ensure that the Minister for Justice had a copy of it and that there would be an opportunity for the Opposition and the crossbench to discuss it. I state for the record that on Wednesday 24 May I hand delivered to the Minister for Justice a copy of the proposal outlining changes to the estimates timetable.

The Hon. John Ryan: When was this?

The Hon. MICHAEL GALLACHER: On Wednesday 24 May. I said to the Minister for Justice on 24 May—I want this on the record—"Here are our changes. Have a look at them. Duncan Gay, Don Harwin and I are available tomorrow to meet with you to have a look at them." On the following Thursday I spoke to the Minister for Justice in this House and I said, "What do you want to do? Do you want to meet in relation to this? What are your views?" He said, "We are not going to support it. We are not going to support your amendments." I said to him, "I did not think you would be likely to support them." That was the end of the conversation.

Any suggestion that I have not fulfilled my commitment to the crossbench to discuss this matter with the Government is an absolute disgrace and a lie. I did discuss the amendment with the Government. The Government was given a copy of the amendment. Crossbench members should not be bamboozled for one moment into thinking that I have broken any of the commitments I gave them. I need all the members of the crossbench on side if my amendment is to be passed. The community needs all the crossbench members to make this work. Crossbench members should not be fooled into thinking that the Opposition has done anything to resile from the pledge given to them or, indeed, the pledge that the Opposition will give to the community. We want to make sure that this Government is held accountable. The Opposition has not resiled from its pledge.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [3.22 p.m.]: This is an important issue. I have been using the estimates committees to the best of my ability. I have encouraged estimates committees to stand up to the bullying of Ministers since I have been a member of this House. Some of the amendment's protocols are simple, such as estimates committees being willing to take questions on notice prior to the hearings so that Ministers have less opportunity to say their usual, "I have only just seen this; I want to take it on notice", just to fob it off. The answers to questions usually come weeks and weeks later in the form of some sort of euphemistic nonsense, and the Ministers escape having to answer. Public servants are more frightened of the Government than they are of the committee system. In a sense they take the Government's lead and take questions on notice, in contrast to the Federal estimates procedures, which is an important factor to take into account. There is a problem with the Government's timetables because Government members take up time by asking dorothy dixers.

The Government effectively treats the estimates committee process as would an undergraduate in a viva voce: as long as the Minister is still standing when the bell rings, he or she gets the prize. It is my view that the estimates process belongs to the Parliament, not to the Government. I have a great deal of sympathy for the Opposition's amendment. I have been trying to encourage the Opposition to take a stronger line in the determination of the order of business in this House than has been the case hitherto. Indeed I have tried to encourage the Opposition to take a greater interest in parliamentary accountability. I have asked the Opposition for support for my open government bill, which, if forthcoming, would mean that we would not have to fiddle-faddle with freedom of information applications. It is noteworthy that the Government has spent up to $200,000 to prevent the release of minor council documents relating to the Sydney markets. I asked the Government whether it had spent $200,000 to prevent Mr Cianfrano, who has taken an interest in this issue, from obtaining access to the most simple documents supporting his allegation that the Government sold Sydney markets to one of its mates for a song.

I have long advocated for open government and I have also suggested the establishment of a business of the House committee so that all members of the House determine the order of business to prevent ambushes. Such a committee would ensure that timetabling of matters is determined fairly, without the usual situation of the Government bringing substantive matters on for discussion at three o'clock in the morning in the last couple

of days of the session, having scheduled few sitting days, and then criticising the House for not sitting for adequate periods, as though members of this House are lazy people who sit around on red couches sipping sherry. The Government cannot have its way in all matters. Ministers evade answering questions through managing the program of the House. I wish to return control of the process from the Government to this House. That is why I met the Leader of the Opposition, the Hon. Michael Gallacher, in relation to his proposal for the estimates committees.

While there may be flaws in the Opposition's amendment—three committees will be convened at once, which makes it difficult to ensure media scrutiny and for members who are part of more than one committee, and there will be no breaks for committees that will sit day after day—I am disappointed that the Government gave me the impression that the Leader of the Opposition did not discuss it with a member of the Government. As the Leader of the Opposition stated earlier, he did his best to discuss the proposal with a member of the Government. I understood from a meeting with the Government that the Opposition had not attempted to meet with the Government in relation to this issue and, if my understanding is correct, that is very unfortunate. I believe that each of the proposals from the Government and the Opposition has some merit. I believe that the House should determine its own destiny. I think it would be much better if the Government and the Opposition discussed the issue. I think it is quite important for that to happen. Therefore, I move:

That this debate be now adjourned.

The House divided.

Ayes, 20

Mr Brown	Miss Gardiner	Mrs Pavey
Dr Chesterfield-Evans	Mr Gay	Ms Rhiannon
Mr Clarke	Ms Hale	Mr Ryan
Mr Cohen	Mr Lynn	Dr Wong
Ms Cusack	Reverend Dr Moyes	*Tellers,*
Mrs Forsythe	Reverend Nile	Mr Colless
Mr Gallacher	Ms Parker	Mr Harwin

Noes, 17

Mr Breen	Ms Griffin	Mr Roozendaal
Ms Burnswoods	Mr Hatzistergos	Ms Sharpe
Mr Catanzariti	Mr Kelly	Mr Tsang
Mr Della Bosca	Mr Macdonald	*Tellers,*
Mr Donnelly	Mr Obeid	Mr Primrose
Ms Fazio	Ms Robertson	Mr West

Pair

Mr Pearce	Mr Costa

Question resolved in the affirmative.

Motion for adjournment of debate agreed to.

LIQUOR AMENDMENT (2006 FIFA WORLD CUP HOTEL TRADING) BILL

Second Reading

The Hon. JOHN DELLA BOSCA (Minister for Finance, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, and Vice-President of the Executive Council) [3.33 p.m.]: I move:

That this bill be now read a second time.

The 2006 FIFA World Cup will be held from 10 June until 10 July 2006 in Germany. This event will generate unprecedented interest in football given Australia's participation. It is expected that there will be certain calls on

hotel trading. Therefore, the bill seeks to make amendments to hotel trading legislation. As the Government's remarks have been delivered previously in the other House, I seek leave to incorporate the balance of my remarks in *Hansard.*

Leave granted.

It is expected that many Australians, including those who may only have a passing interest in football at other times, will be keen to watch the telecast of matches from Germany. There will be strong interest in the outcome of most World Cup matches because of the multicultural nature of Australian society, and the many different nationalities of residents and visitors.

Unfortunately, the time difference between Germany and Australia will result in match telecasts beginning late at night or in the early morning hours. Telecasts for World Cup stage 1 group matches to be held from 10 to 24 June 2006 will begin at 11.00 p.m., midnight, 2.00 a.m., and 5.00 a.m. New South Wales time. Telecasts for stage 2 matches to be held from 25 to 28 June 2006 will begin at 1.00 a.m. and 5.00 a.m. local time. The telecast of quarter-finals, semi-finals and finals matches to be held from 1 to 10 July 2006 will begin at 1.00 a.m., 4.00 a.m. and 5.00 a.m. local time. Many people will choose to watch those telecasts in licensed venues, principally hotels and registered clubs. They want to share the experience; they want to share in the atmosphere with friends. Hotels also have facilities such as large screen displays, which may not be available in their own homes. Under the Liquor Act, standard hotel trading is limited to midnight closing on Monday to Saturday, and 10.00 p.m. closing on Sundays.

A number of hotels already have extended trading past midnight Monday to Saturday approved under the Act. These hotels are located in metropolitan and regional areas and their trading hours vary from a range of closing times through to 24-hour operations. With these limits in mind, the Government has considered the issue of hotel trading during the 2006 FIFA World Cup. There are concerns that some matches, particularly those commencing at 11.00 p.m., will be part-way through when many hotels are required to close for the evening at midnight. Closing hotels part-way through matches will create difficulties for licensees in asking patrons to leave and in dispersing them from the immediate surrounds of the hotel. To reduce the likelihood of these issues, the Government supports a limited general extension of hotel trading hours for those matches beginning at 11.00 p.m. only. This will allow patrons to view the entirety of these matches.

The bill before the House achieves this by amending the Liquor Act so that hotels can automatically trade until 1.00 a.m. on the following day for each day from 10 to 19 June 2006. The Government understands that these are the only days on which match telecasts begin at 11.00 p.m. This is a modest but reasonable extension to accommodate matches which will have already begun during standard trading hours for most hotels. The bill allows the sale of liquor for consumption on the licensed premises only during the extended period, and does not permit take away sales. Further, the extension will not overrule any previously imposed trading restrictions or other conditions that apply to an individual hotel licence.

This includes restrictions resulting from a complaint about disturbance to the neighbourhood. The noise and disturbance complaint provisions of the liquor laws will be unaffected. Hotels will continue to be subject to the liquor laws requiring the responsible service of alcohol and the responsible operation of licensed premises, otherwise disciplinary action can be taken. Also, the bill does not specifically overrule planning approvals administered by local councils. As I have already noted, some hotels already have extended trading approved under the existing liquor laws. This proposal will not restrict the trading rights of those hotels. The Government does not support a general extension of hotel trading to accommodate other World Cup matches beginning at or after midnight. Those matches will not be completed until after 2.00 a.m. New South Wales time; in fact, some will not be completed until after 7.00 a.m. The amendments in this bill apply to hotels only.

While registered clubs are also a popular venue to view sporting telecasts, clubs generally have no restrictions on their trading hours and are therefore able to trade during and after these events. The Government does not consider it necessary or desirable that an extension of trading hours be made available to licensed restaurants or other licensed venues. Those venues are generally not used by the public for viewing sporting events. Finally, there is a precedent for this bill. The Liquor Act was amended in 2002 to extend hotel trading for the final of the 2002 FIFA World Cup held in Japan. I commend the bill to the House.

The Hon. MELINDA PAVEY [3.34 p.m.]: I lead for the Opposition in not opposing the Liquor Amendment (2006 FIFA World Cup Hotel Trading) Bill in respect of hotel opening times for the World Cup. There is some disquiet within the industry at the way that the Government has handled this matter. Is that any surprise, considering that the Minister responsible for the bill is Grant McBride who, during the second budget estimate hearings in a row, pointed out that he had no vision for the industry? The World Cup Stage 1 group matches commence on 10 June and continue until 24 June. Although the bill covers many of those games, it does not cover the main match that Australia will play, with the world champion, Brazil—and this is only the second time, after 32 years, that Australia has qualified to play in the World Cup.

In hotels across New South Wales there will be enormous interest in that game, which starts in the early hours of the morning. However, the bill makes no provision for trading hours for that significant match for Australians. Although some people will be able to enjoy the viewing of the match in the comfort of their own home, many others will not be able to do so. The industry is concerned that it was not consulted prior to the introduction of the bill. The industry is very concerned that the round one game against current world champion Brazil will not be able to be watched in licensed establishments across New South Wales.

Although the Opposition does not oppose the Government attempting to extend liquor trading hours so people can watch the games in licensed premises, it is concerned that the first game, Australia versus Brazil, will not be able to be seen in licensed premises. Everyone in Australia is incredibly excited about the World Cup.

I have a seven-year-old son, so I am a tragic soccer mum. Along with many Australians who have not been closely associated with the game of soccer, our young children, girls and boys, play soccer in their early years. That participation has given much more of the population access to this wonderful game. It is disappointing that the Government, through lack of consultation, has not addressed this issue. These concerns have been raised with me by the shadow Minister in the other place, the Hon. George Souris. As a shadow Minister he is accessible to all sections of industry and has asked me to put on record the industry's concerns about the Government's ineptness on the viewing of the Australia versus Brazil game.

Generally, the Opposition will not oppose the bill. However, I point out a precedent; the Liquor Act was amended in 2002 to extend hotel trading for the finals of the 2002 FIFA World Cup that was held in Japan. It is in the community's interest to enable people to come together to enjoy the game. I expect that the hotel industry will act in a responsible way in relation to this privilege of extension of trading hours. There was some community concern throughout Australia, not particularly in New South Wales, about the trading hours extension during Anthony Mundine's recent World Boxing Council fight. There were some ugly incidents, particularly in South Australia.

In accordance with the New South Wales responsible service of alcohol legislation it will be incumbent both on hotels to ensure the proper behaviour of their patrons and most importantly on the patrons to conduct themselves in a manner that is appropriate, as expected by the community. I make a special plea for patrons leaving pubs, especially those in the highly populated areas, whether in the inner city areas of Sydney, Newcastle or Wollongong, or in the major regional centres.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [3.39 p.m.]: The Australian Democrats have no problem with the Liquor Amendment (2006 FIFA World Cup Hotel Trading) Bill. Its object is to amend the Liquor Act 1982 to allow hotels to trade until 1.00 a.m. on certain nights during the early stages of the 2006 Fédération Internationale de Football Association [FIFA] World Cup in Germany. The nights on which extended hotel trading will be permitted coincide with a number of stage one matches during the period between 10 and 19 June that will start at 11.00 p.m. local time but not finish until approximately 1.00 a.m. The extended hotel trading permitted by the proposed Act will apply only to the sale or supply of liquor for consumption on the licensed premises.

On behalf of the New South Wales Democrats, I congratulate the Socceroos on the great teamwork and skills they have displayed so far and wish them all the best for their first game in Germany in less than two weeks time. Australia last competed in the World Cup 32 years ago in Germany, so this is a highly symbolic event for all Australians. Everybody loves a winner, and to emphasise the diversity and range of soccer talent I also congratulate the Hunters Hill All Saints Under 8 Orange team, which remains undefeated this season. However, we are not asking for an extension of pub trading hours for that team. Until 10 years ago soccer, or football, was seen as a game played by, to quote SBS television sports commentator and author Les Murray, "wogs, sheilas and poofters" by the majority of Australians, whose sport is dominated by rugby league, the Australian Football League and rugby union in summer and by cricket in summer.

However, following the Alcohol Summit and the alcohol-fuelled violence we have seen of late, it is somewhat ironic that the Government is happy to extend hotel trading hours for this major sporting event. I note that the Minister for Tourism and Sport and Recreation, Sandra Nori, did not talk up the Socceroos' participation in the World Cup. The music industry, which tries constantly to convince the Government to take an interest in live music in hotels and to legislate accordingly, is still experiencing difficulties in this regard. So, while I support the bill, I urge the Government to show a similar interest in live music performances in licensed premises.

Ms LEE RHIANNON [3.42 p.m.]: The Fédération Internationale de Football Association [FIFA] World Cup is a wonderful event.

The Hon. John Della Bosca: I thought it was a global conspiracy.

Ms LEE RHIANNON: I will have to take that idea on board. Perhaps the Minister is linking it with why his Government lost out on the sale of Snowy Hydro Limited. Like the Olympic Games, it is a sporting event that can capture the attention of the whole world. It is exciting to see Australia competing at this level for only the second time. It goes without saying that we are all looking forward to the competition and hoping that the Socceroos make it to the quarter finals—and, who knows, perhaps even further! It is not hard to see why fans will want to get together at a pub to watch the games. It is always better to watch sport in a group and for

many it will be an occasion to remember. I am sure that pubs across New South Wales will be overflowing with fans supporting the Socceroos and other teams to which Australians might have an allegiance.

The Greens do not oppose the bill but we are very mindful of its potential impact on residents who live near pubs. For those residents, up to three hours extra noise at night for nine consecutive nights could be a real imposition. Families with young children could be particularly affected. For that reason I suggest that it is very much in the interests of pubs to ensure that crowd noise is minimised, particularly when patrons leave at the conclusion of the games. The World Cup will come around again and if we are inundated with complaints from irate residents this time the Greens will be far less inclined to support similar legislation in the future. This bill is certainly doing pubs, and of course the sporting public, a favour but it comes with a responsibility. I hope that that is understood.

I also point to the inconsistent way in which entertainment is regulated in New South Wales. Large-screen sporting events, such as the World Cup, and poker machines are exempt from entertainment compliance, building code assessment and the complications that arise from these combined processes. However, there is a real double standard when it comes to live music. An acoustic guitar or even a kazoo must pass fire compliance and negative impact statements from the local area, not to mention council development application processes with associated expenses. If we are to have a thriving live music culture in New South Wales this double standard must be addressed. I believe some of the restrictions on live music are too onerous. There is no logical reason why an acoustic guitar performance, for example, would be louder or more problematic than a sporting fixture that packs a pub with patrons. The logical solution is to make entertainment regulation about crowd numbers and noise, not the type of entertainment. I wish all the best to everybody enjoying their FIFA matches at the pub. Good luck to the Socceroos.

Reverend the Hon. Dr GORDON MOYES [3.45 p.m.]: The object of the Liquor Amendment (2006 FIFA World Cup Hotel Trading) Bill is to amend the Liquor Act to allow hotels to trade until 1.00 a.m. on certain nights during the early stages of the 2006 FIFA World Cup. Last year choruses of jubilant Australians joined in celebrating Australia's first entry into the FIFA World Cup since 1974, and today we find ourselves amazed at how well the Socceroos are playing. I join other honourable members in wishing our team all the best in its endeavours at this special world tournament.

The bill will apply only to hotels and not licensed restaurant or clubs. This is because clubs are generally permitted to trade for 24 hours without restriction and no policy reason was found for extending the trading hours of licensed restaurants or other licensed venues. The bill will also allow only for the sale or supply of liquor for consumption on the premises. I find it rather strange that the Government is seeking to extend hotel trading hours only for those matches that will be played early in the tournament and not for later games. It seems to me that the Government does not have much faith that our Socceroos will progress to the later rounds!

In the context of this debate it is important to note that an international drugs conference was held in the past fortnight at which there was discussion about binge drinking and how people with alcohol problems are stressed by late-night events and extended hotel trading hours. Given that the bill will allow people to continue to consume alcohol until the early hours of the morning, I am philosophically opposed to the rationale behind it. In light of the devastation that alcohol causes to the lives of countless people and families and the social impacts arising from the excessive consumption of alcohol, I do not feel inclined to support the legislation. A novel idea would be for the Government to support the World Cup tournament by encouraging people to fly high on the rush and excitement of the games rather than promoting indirectly the consumption of alcohol.

My first venture into the area of public speaking involved urging voters in Victoria to "stick to six in '56"—a slogan that could be pronounced only by a sober person. This was a reference to limiting hotel trading hours in the run-up to the 1956 Olympic Games. I still believe restricted trading hours benefit society but this is a limited extension for a limited purpose in order to avoid social chaos that could be caused by the enforcement of the current closing hours. Given my stance on the consumption of alcohol in society and the damage it causes at all levels, I obviously cannot commend the bill to the House. I encourage responsible retailers to limit the sale of alcohol, particularly during their final hours of opening. My protest has to do with the social ramifications of excessive alcohol consumption; I do not wish to limit fans' enjoyment of soccer. Thus this limited extension has my limited support.

The Hon. JOHN DELLA BOSCA (Minister for Finance, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, and Vice-President of the Executive Council) [3.48 p.m.], in reply: In response to the concerns that the Hon. Melinda Pavey raised during her

remarks, the Australian Hotels Association had some discussions in relation to the Australia versus Brazil game. The Government believes an extension of trading hours until 1.00 a.m. during the early stages of the first round of the World Cup is a sensible measure that will allow fans to watch with their friends and families at licensed premises games that kick off at 11.00 p.m.

If any hotel wishes to trade beyond the 1.00 a.m. general extension—for example, for the Australia versus Brazil game later in the round—it is able to apply to the Licensing Court for a further extension. Other venues may be available to patrons, including registered clubs, which are generally permitted to trade for 24 hours without restriction. The obvious point raised by Ms Lee Rhiannon in relation to potential noise and disturbance around hotels is taken as a given, and I am sure that all honourable members will take into consideration the way in which the industry behaves in this matter when requests such as this are considered in the future. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

CIVIL LIABILITY AMENDMENT BILL

Second Reading

The Hon. JOHN DELLA BOSCA (Minister for Finance, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, and Vice-President of the Executive Council) [3.51 p.m.]: I move:

That this bill be now read a second time.

This bill deals with the so-called *Sullivan v Gordon* damages awarded in New South Wales courts in relation to certain negligence actions. The bill was presented by the Attorney in the Legislative Assembly. I seek leave to incorporate the speech in *Hansard* as it is reasonably lengthy.

Leave granted.

Until October 2005, so-called *"Sullivan v Gordon"* damages were awarded by courts in New South Wales in negligence actions.

Such damages were said to compensate injured people for the cost of domestic services they were no longer able to provide to others because of their injury.

In October 2005, the High Court overruled the award of such damages.

The court highlighted a number of uncertainties concerning these damages.

It found that these damages are inconsistent with the principles on which damages are awarded in tort actions.

The court also noted the difficulty faced by courts in trying to identify boundaries for *Sullivan v Gordon* damages when there are no clear underlying principles for such damages.

The High Court said that it should be a matter for Parliament, and not the courts, to decide whether, and in what circumstances, these damages should be awarded.

This bill provides the Parliament with an opportunity to do just that.

The recent inquiry by the General Purpose Standing Committee No 1 of the Legislative Council recommended that the Government consider reinstating these damages.

The proposals contained in this bill have already been the subject of public consultation.

When the Government released an exposure draft of the bill in early April, we referred to two particular cases which highlight the potential hardship that might arise if these damages are no longer available.

The first case involved an Adelaide woman dying of mesothelioma who sought damages for the care involved in raising her nine-year-old triplets.

The woman was the primary care giver to her children as their father worked full-time to support the family. If *Sullivan v Gordon* damages were no longer available in such a case, the family would have much more limited means to raise and care for these children.

The second case was that of a New South Wales man who was also diagnosed with mesothelioma. He was awarded *Sullivan v Gordon* damages for the cost of providing care to his legally blind wife. She relied on him to do all of the household shopping and household chores including cleaning windows, vacuuming, cleaning the bathroom and showers. He also drove his wife to her medical appointments and accompanied her whenever she went out.

The man has since died of mesothelioma and I understand that the *Sullivan v Gordon* damages are now subject to an appeal because of the High Court's decision.

The bill responds to such cases by providing a right for seriously injured people to recover damages for the domestic services they are no longer able to provide to their dependants in cases of the greatest need.

The bill also extends the existing cap on the hourly rate for *Griffiths v Kerkemeyer* damages under the *Civil Liability Act* 2002 to dust diseases claims.

Seventeen submissions were received in response to the exposure draft of the bill and the discussion paper. I thank all of those who made a submission.

As the Government anticipated, some submissions argued that *Sullivan v Gordon* damages should be reinstated without any limitations. Generally, these submissions also argued that, if there must be limits, they should be more generous to claimants than proposed in the draft bill.

Again as anticipated, other submissions argued that *Sullivan v Gordon* damages should not be reinstated at all. Generally, these submissions also argued that, if the damages must be reinstated, they should be more restrictive than proposed.

The Government has given careful consideration to all of the submissions.

The bill is in substantially the same form as was released for public consultation.

That is, it provides a partial reinstatement of *Sullivan v Gordon* damages, with limitations to ensure that those damages are available only in the cases of greatest need.

The Government has made some amendments, however, to address specific concerns raised in submissions. I will highlight those amendments as I speak to the provisions of the bill in more detail.

I turn now to the provisions of the bill.

I will start with item [11] of schedule 1 to the bill.

It inserts proposed section 15B into the Civil Liability Act to partially reinstate *Sullivan v Gordon* damages.

The definitions in proposed section 15B (1) have been amended as a result of public consultation.

First, in the definition of "dependants", the exposure draft bill referred to persons who are dependent at "the time of the injury".

This language has been clarified in the bill before the House.

It now refers to "the time that the liability in respect of which the claim is made arises".

The clarification is most relevant in cases of latent injury. For example, the relevant time for assessing dependency in a mesothelioma case will not be the time at which the claimant was exposed to asbestos. Rather, it will be the time at which the claimant is diagnosed with mesothelioma and can therefore proceed to claim damages.

Equivalent changes have been made in other provisions in proposed section 15B to ensure a consistent time is used.

The second amendment to the definitions in proposed section 15B(1) is that the term "dependants" is now defined to include only persons with certain relationships to the claimant.

Essentially, only dependants who stand in a specified family relationship to the claimant or who are members of the claimant's household are included.

The claimant's husband or wife and de facto partner are specified first.

The other family relationships specified in the definition of "dependants" are the claimant's parents, grandparents, children, grandchildren, aunts, uncles, nieces and nephews, including where such relationships are established by marriage or adoption.

Any other person who is a member of the claimant's household and who is dependent on the claimant is also included.

The categories of relationship to the claimant were introduced to this definition as a result of concerns expressed in some submissions on the exposure draft of the bill.

In particular, some submissions expressed concern that, in the absence of such limitations, damages could be awarded where the claimant provided voluntary services to neighbours and others.

Some submissions also drew attention to comments made by the High Court as to the difficulty for courts in identifying who should be a "dependant" if no clear guidance is given.

The Government has therefore accepted the need to give greater guidance in this area.

The categories of relationship to the claimant are not designed to be unreasonably narrow. They are, for example, considerably broader than the categories of relationship recognised under the *Compensation to Relatives Act*.

They draw the line, however, around those relationships where it would be more reasonable to expect that the claimant would continue to provide gratuitous domestic services.

These are also the relationships where an award of damages to the claimant is more likely to benefit the relative or household member who needs the domestic services.

The third amendment to the definitions in proposed section 15B(1) also affects the definition of "dependants".

The Government has accepted those submissions which noted that the exposure draft bill would not have permitted damages to be awarded in respect of children who had been conceived but not born at the time of the claimant's injury.

The definition of "dependants" has therefore been extended to cover such unborn children.

The fourth amendment to the definitions in proposed section 15B(1) is the inclusion of a definition of "assisted care".

This definition is used in a new provision which has been inserted as proposed section 15B(3).

Some submissions expressed concern that short and occasional periods of respite care, or care by a non-custodial parent, might disentitle a person to damages.

This concern arises because of the requirement that the claimant would, but for the injury, have provided the services for at least nine hours per week for a period of six consecutive months.

Some submissions argued that claimants who care for aged or disabled relatives who occasionally have the benefit of short-term respite care should not be disentitled to damages for that reason alone.

Similarly, where the claimant has custody of children, but those children spend some time—perhaps a fortnight during school holidays—with the non-custodial parent, the claimant should not be disentitled to damages only because of these arrangements.

The Government has responded to these concerns by permitting periods of assisted care to be disregarded in determining whether the test of nine hours per week for six consecutive months is met.

Assisted care can be disregarded if the assisted care is only short-term and occasional and if it is not provided in more than four weeks during the six-month period.

Assisted care is defined in proposed section 15B(1) to cover two types of care.

First, assisted care covers respite care involving the provision of accommodation to a dependant who is aged or frail or who suffers from a physical or mental disability.

Second, assisted care covers care involving the provision of accommodation to a minor by a parent of the minor, other than the claimant. This second limb of the definition of assisted care will cover circumstances where a child spends short-term and occasional periods of time with their non-custodial parent.

As a final matter on proposed section 15B(1), some submissions called for the Government to define – and therefore limit – domestic services by listing categories of domestic services for which *Sullivan v Gordon* damages could be paid.

The Government has not adopted this approach. The particular domestic services that might be reasonable in a given claim will depend upon the particular circumstances of the case.

The Government considers that the other elements of proposed section 15B are sufficient protection against abuse of these damages. In particular, the need for the domestic services must be reasonable in an objective sense.

For example, basic garden maintenance might be reasonable in a particular case. It would not, however, be reasonable in any claim to expect services to maintain a prize-winning garden at its previous standard.

The award of *Sullivan v Gordon* damages will be subject to the limitations set out in proposed section 15(2).

In particular, under proposed section 15(2)(a), it will be necessary to show that the claimant provided the services to the dependants before the time that the liability in respect of which the claim is made arose.

This test will not, of course, apply to the unborn children who are now included in the definition of "dependants". Such children will not receive gratuitous domestic services from the claimant before they are born.

The other requirements in proposed section 15B(2) have not changed as a result of public consultation.

Under proposed section 15B(2)(b), the court will need to be satisfied that the claimant's dependants were not—or will not be—capable of performing the services themselves by reason of their age or physical or mental incapacity.

For example, adult children with no particular disabilities or incapacities should be able to cook their own meals and do their own washing and cleaning, even if a now injured parent used to do these tasks for them. No damages will be payable in respect of such persons.

Similarly, older children without disabilities should not need the same amount of care as a newborn baby because there will be some things older children can do for themselves.

Under proposed section 15B(2)(c), it will also be necessary to demonstrate that there is a reasonable expectation that, but for the injury, the claimant would have provided the services to the claimant's dependants for at least nine hours per week and for a period of at least six consecutive months.

The time requirements are designed to ensure that damages will be payable only where the claimant's dependants have an ongoing need for significant services previously provided by the claimant and, but for the injury, the claimant would have provided those services.

Evidence of the amount of time the claimant spent providing the services before the claimant was injured will be important.

Demonstrating that there is nothing—other than the claimant's injury—to suggest the claimant would not have continued to provide the services for at least nine hours per week and for at least six consecutive months will also be necessary.

For example, if the claimant's health was deteriorating independently of the injury such that the claimant, even if uninjured, would not have been able to provide the services for those hours and months, then damages would not be payable.

Similarly, if the claimant was planning to travel or move away from the claimant's dependants such that the claimant would not have been able to provide the services for those hours and months, damages would also not be payable.

Under proposed section 15(2)(d), it will be necessary to show that the services are needed for at least nine hours per week and for at least six consecutive months, and that that need is reasonable in all the circumstances.

This directs attention to two additional requirements.

First, the services must in fact be needed for at least the minimum amounts of time.

Second, the need must be reasonable in an objective sense.

It will not be sufficient that the claimant used to help his or her dependants and the dependants wish to continue to receive such help. The fact that a claimant provided services does not necessarily mean that the services are needed, or that they need to be provided for as many hours as the claimant spent in providing them.

Rather, the services must in fact be needed for at least the minimum amount of time and this need for these services must also be objectively reasonable, taking into account the circumstances of the case.

I have already addressed the recognition the bill gives to assisted care in proposed section 15B(3).

Proposed section 15B(4) requires that the rate at which these damages are to be calculated is to be determined in accordance with the hourly rate which applies to gratuitous attendant care services.

That rate is one-fortieth of the average weekly total earnings of all employees in New South Wales, currently $21.60.

Proposed section 15B(5) of the bill is intended to ensure that claimants are only to be compensated in respect of the loss of capacity to provide domestic services in accordance with proposed section 15B.

Claimants are not to be compensated for this loss by any other means, for example, by way of an amount awarded as part of damages for non-economic loss.

If a claimant does not meet the requirements of proposed section 15B so that he or she is not entitled to be compensated for the loss of capacity under proposed section 15B, then he or she will not entitled to any damages for that loss.

Subsections (6), (7), (8) and (9) of proposed section 15B address potential overlaps between damages under proposed section 15B and other damages, whether at common law or under the statutory schemes referred to in proposed subsections (8) and (9). These provisions ensure that there will be no double recovery for the one loss.

As a result of public consultation, subsections (6) and (7) of proposed sections 15B have been clarified to make express reference to recovery by the legal personal representative of a deceased claimant.

Proposed section 15B(10) has been inserted to address the potential overlap between damages for attendant care services—so-called *Griffiths v Kerkemeyer* damages—and damages under section 15B.

This issue arises where a loss could be compensated under either head of damages.

For example, where a parent who is the primary carer of children is injured, the parent, in certain circumstances, could recover *Griffiths v Kerkemeyer* damages for the assistance he or she needs to look after the children. Alternatively, the same assistance could be characterised as being for the children rather than the parent and therefore recovered as *Sullivan v Gordon* damages.

Section 15B(10) will require claimants to characterise losses as *Griffiths v Kerkemeyer* losses where possible, and only claim *Sullivan v Gordon* damages if the loss cannot be characterised as a *Griffiths v Kerkemeyer* loss.

This protects the integrity of the different requirements which apply to each type of damages.

Consistent with the position under common law, proposed section 15B(11) requires the courts to take into account the claimant's capacity to provide the services before the claimant was injured and to make an allowance for the vicissitudes or contingencies of life.

For example, an already elderly claimant might reasonably be expected to have a declining capacity to provide services as he or she ages.

Proposed section 15B(11) has also been amended as a result of concerns raised in some submissions on the exposure draft bill.

The proposed section now also requires the courts to take into account the extent to which a person will benefit from the services in circumstances where an award of damages cannot be made in respect of such a person.

Many domestic services are provided on a household basis, rather than being provided to each member of the household individually. For example, cooking a meal for the household or maintaining the house and land will generally benefit all members of the household.

For example, the claimant might have prepared family meals both for young children and for his or her spouse, who is not suffering any disabilities. If, following the injury of the claimant, damages are awarded to cover this service, they should be reduced to take account of the fact that the claimant's loss of the capacity to provide services to his or her spouse would not qualify for assistance under proposed section 15B.

The Government has chosen not to be prescriptive as to how damages should be reduced to take account of this issue.

Generally, the courts have taken a very practical approach to calculating *Sullivan v Gordon* damages. As with *Griffiths v Kerkemeyer* damages, the courts generally have recognised the need to do justice between the parties without attempting to achieve a level of precision which simply would not be possible in these areas.

The Government intends that the courts adopt the same, practical approach they adopt to deal with issues of future contingencies and the like.

As is the case for *Griffiths v Kerkemeyer* damages under section 15 of the Civil Liability Act, interest will not be payable on damages awarded under proposed section 15B.

I turn to the first six items in schedule 1 to the bill.

As honourable members might recall, the Civil Liability Act does not apply to certain types of claims.

In the absence of amendments to section 3B of the Civil Liability Act, the partial reinstatement of *Sullivan v Gordon* damages under proposed section 15B and the other changes in the bill would not apply to these types of claims.

The first six items in schedule 1 to the bill ensure that the changes in the bill, particularly the partial reinstatement of *Sullivan v Gordon* damages, apply to motor accident claims, dust diseases claims, tobacco and smoking claims and claims involving intentional torts or sexual assault.

The last amendment I wish to discuss is item [7] of schedule 1 to the bill.

The *Civil Liability Act 2002* does not currently apply to dust diseases claims.

As I have already mentioned, it is proposed to extend the partial reinstatement of *Sullivan v Gordon* damages to dust diseases claims. Without this change, the common law position would continue to apply and *Sullivan v Gordon* damages would not be recoverable in dust diseases claims, other than through damages for non-economic loss.

The Government considers it to be more certain for claimants and defendants if the partial reinstatement of *Sullivan v Gordon* damages is extended to dust diseases claims.

Extending the partial reinstatement of *Sullivan v Gordon* damages to dust diseases claims without further changes, however, would create a significant discrepancy between *Sullivan v Gordon* damages and *Griffiths v Kerkemeyer* damages.

The discrepancy would arise because *Sullivan v Gordon* damages would be payable at the capped hourly rate of one-fortieth of average weekly total earnings of all employees in New South Wales, while the hourly rate for *Griffiths v Kerkemeyer* damages in dust diseases claims would be uncapped.

As there is no good reason for this discrepancy, proposed section 15A extends to dust diseases claims the same hourly rate that applies to *Griffiths v Kerkemeyer* damages for claims other than dust diseases claims and that will apply to *Sullivan v Gordon* damages under proposed section 15B.

This change will ensure that the bill does not increase the overall cost of dust diseases claims to any defendant.

The bill does not, however, extend to dust diseases claims the cap on weekly damages of 40 hours per week which generally applies to *Griffiths v Kerkemeyer* damages under the *Civil Liability Act 2002*.

> Such a cap would work particular injustice in mesothelioma cases where it is usually recognised that claimants need around-the-clock care for their last several weeks of life.
>
> This bill provides for *Sullivan v Gordon* damages to be available in cases of the greatest need, while ensuring that the changes are affordable for the community.
>
> Given the uncertain state of the law, and because there are cases currently before the courts that will be affected by the reforms, the Government considers that these reforms should proceed as soon as possible.
>
> I commend the bill to the House.

The Hon. DAVID CLARKE [3.52 p.m.]: The Civil Liability Amendment Bill is an important bill of some complexity. Its overriding purpose is to enable certain claimants who have personal injury claims to recover damages for the loss of their capacity to provide gratuitous domestic services to their dependants. The Opposition supports the general thrust of the bill and will not oppose its passage. It will, however, be seeking to amend the bill so that its provisions operate in a fairer and more equitable way for claimants. The background to the bill is that in 1999 the New South Wales Court of Appeal in *Sullivan v Gordon* permitted an injured claimant to recover damages in a personal injury negligence claim for the loss of capacity to perform gratuitous domestic services for those who were dependent upon the claimant.

In October 2005, however, the High Court in *CSR Limited v Eddy* disallowed damages for the loss of capacity to perform gratuitous domestic services for dependants awarded in *Sullivan v Gordon* and determined that such a head of damage should likewise be disallowed in all other similar cases. It was the view of the High Court that such a head of damages was inconsistent with existing legal principles applicable to the award of damages. Its view was that for this reason, and also for the reason that there were problems in ascertaining the exact perimeters applicable to damages awarded in *Sullivan v Gordon*, the matter was best left for the Parliament and not the courts to sort out and legislate upon if it so decided.

It was the view of the High Court that if there were to be a *Sullivan v Gordon* head of damage then the Parliament should make that decision and should also ascertain in what circumstances, and within what boundaries, such a new head of damage should operate and apply. A recent inquiry of General Purpose Standing Committee No. 1 of this Chamber recommended that the State Government reinstate the *Sullivan v Gordon* head of damages. In April of this year the State Government released a draft detailing and examining the proposal. There appears to be a consensus view that such a head of damage is appropriate and should be reinstated. The result is the Civil Liability Amendment Bill which, subject to certain amendments proposed by the Opposition, has the support of the New South Wales Law Society. An overview contained in the bill summarises the history leading to the bill and its purpose. It states that in 1977 in *Griffiths v Kerkemeyer*:

> … the High Court held that in a claim for personal injury, the plaintiff is entitled to recover damages for the cost of nursing and domestic services that have been provided in the past and will be provided in the future to the plaintiff by his or her family or friends. Section 15 of the *Civil Liability Act 2002*… limits the circumstances in which such damages may be recovered and the amount of damages that may be [paid].
>
> Relying in part on the decision in *Griffiths v. Kerkemeyer*, the NSW Court of Appeal held in *Sullivan v Gordon* (1999) … that a plaintiff who has a claim for personal injury may recover damages to compensate the plaintiff for his or her loss of capacity to provide domestic assistance to a dependant (in that case, the plaintiff's ill wife).
>
> Damages of the kind awarded in *Sullivan v Gordon* differed from those awarded in *Griffiths v Kerkemeyer* because they are awarded for the loss of the plaintiff's capacity to provide services to another person rather than for the cost of services that the plaintiff has required or will in the future require.
>
> In *CSR Limited v Eddy* (2005) … the High Court overruled a line of cases of which *Sullivan v Gordon* forms part. As a consequence, the position at common law in Australia is currently that a plaintiff in a personal injury claim cannot recover special damages to compensate the plaintiff for the loss of the plaintiff's capacity to provide domestic services to his or her dependants.
>
> The object of this Bill is to amend the [Civil Liability Act 2002] …:
>
> (a) to enable certain claimants who have personal injury claims (including in respect of intentional acts, sexual misconduct, motor accidents, dust-related conditions and smoking and tobacco products) to recover damages for the loss of their capacity to provide gratuitous domestic services to their dependants, and
>
> (b) to provide a cap on the hourly rate for calculating the amount of *Griffiths v Kerkemeyer* damages that claimants with personal injury claims in respect of dust-related conditions may recover.

The bill defines "dependants" to include only persons with certain relationships to the claimant being those who stand in a specified family relationship or members of the claimant's household. It includes the claimant's husband or wife, de facto partner, parents, grandparents, children, grandchildren, aunts, uncles, nieces and

nephews, including where such relationships are established by marriage or adoption. It also includes any other person who is a member of the claimant's household and who is a dependant. It is a broad definition, and certainly broader than that contained in the Compensation to Relatives Act.

The bill covers children who have been conceived but not born at the time of the claimant's injury and therefore includes unborn children. It would appear that the bill may not have factored in situations which will increasingly arise in the future where in-vitro fertilisation procedures have been undertaken by a claimant prior to injury where the child has not yet been conceived but is conceived and born subsequently. Will such dependant children be covered? I will be interested in the Government's response to that situation. The bill provides that the need for domestic services provided by the claimant must be reasonable. For an award of *Sullivan v Gordon* damages, it will be necessary to show that the claimant provided the services to the defendant before the time that the liability in respect to which the claim is made arose, although that test does not apply to unborn children who are now defined as dependants.

The court will have to be satisfied that the claimant's dependants were not or will not be capable of performing the services themselves by reason of age, physical or mental incapacity. The provisions do not apply in respect to gratuitous domestic services provided by claimants for people who can provide such services for themselves. It will be necessary to establish a reasonable expectation that, but for the injury, the claimant would have provided the services to the claimant's dependants for at least nine hours per week and for a period of at least six consecutive months. However, if the claimant's health was deteriorating independently of the injury the subject of the claim, such that the claimant would not have been able to provide the services, then damages will not be payable.

Similarly, if it were established that the claimant was planning to move away and therefore would not be in a position to provide domestic services then no damages under the *Sullivan v Gordon* principle would be awarded. To maintain a claim under this bill the claimant must establish that such services were needed for at least nine hours per week and for at least six consecutive months, and also that the need is reasonable in all the circumstances. In drafting the bill the question arose of what impact there would be on a claimant seeking a *Sullivan v Gordon* head of damages where similar domestic services were provided for a limited period for the same dependant by a non-claimant during the period in which the claimant had to establish that, but for the injury, he or she would have provided gratuitous domestic services for nine hours per week for six consecutive months.

Would the claimant fail in his claim because of occasional periods of respite care provided by a non-claimant—for example, by a non-custodial parent—to a dependant child? To ensure that such a situation does not extinguish a claim in a *Sullivan v Gordon* claim, limited periods of assisted care by non-claimants can be disregarded if such assisted care does not amount to more than four weeks during the six-month period. This assisted care is defined in the bill as: (1) respite care being care that includes accommodation provided by a non-claimant to a dependant who is aged or frail or has a physical or mental disability with the primary purpose of giving the dependant or claimant a break from their usual care arrangements; (2) if the dependant is a minor, any care provided to the dependant by a non-claimant where the person is a parent of the dependant, and the care includes the provision of accommodation to the dependant.

The fact that a claimant has provided services does not necessarily mean that they were needed by a dependant or indeed needed for the period for which they were provided. Therefore, the fact that a claimant has provided gratuitous domestic services to a dependant does not automatically qualify them as services that come within the ambit of a *Sullivan v Gordon* claim. The bill sets a threshold of nine hours per week for services for the purposes of a *Sullivan v Gordon* claim, rather than a threshold of six hours, which is applicable for a claim under *Griffiths v Kerkemeyer*. The rationale relied upon by the Government in the debate in the other place for making this distinction is that *Sullivan v Gordon* damages do not arise directly from the injury, whereas *Griffiths v Kerkemeyer* damages do arise more directly.

This rationale by the Government to justify its raising of the threshold from six to nine hours for *Sullivan v Gordon* damages is, in the view of the Opposition, not a valid one. The inability of a claimant to provide gratuitous domestic services to dependants is as equally foreseeable as is the head of damages arising from the *Griffiths v Kerkemeyer* situation. Also, as the Law Society of New South Wales points out, financial implication should not be a factor as insurers have, since 1999, been collecting premiums on the understanding that *Sullivan v Gordon* damages applied. There would be no further cost to the insurers or the insured, or indeed any unexpected future costs that have not already been factored in by insurers should the threshold be amended to six hours. The Opposition will be moving an amendment to the bill for the threshold for *Sullivan v Gordon*

damages to be reduced from nine hours to six hours, and I understand the Government has agreed to accept our amendment. We congratulate the Government for doing so. The rate at which damages provided for under this bill are to be calculated is to be determined in accordance with the hourly rate which applies to gratuitous attendant care services—

Pursuant to sessional orders business interrupted.

QUESTIONS WITHOUT NOTICE

POLICE STATIONS BUDGET

The Hon. MICHAEL GALLACHER: I direct my question without notice to the Leader of the Government, and Minister for Finance. Can the Minister explain why Leichhardt, Cronulla, Macksville, Tenterfield, Ermington, Quakers Hill, Coffs Harbour and Camden police stations have received no funding in today's State budget? This is despite all eight of those stations identified in the Sinclair Knight Merz independent study of police stations as being some of the 27 police stations with the highest priorities for replacement or refurbishment. Given those police stations were also left out of the Minister's rehashed State Infrastructure Strategy, why is he telling Leichhardt, Cronulla, Macksville, Tenterfield, Ermington, Quakers Hill, Coffs Harbour and Camden communities that they will have to wait at least 10 years for a decent police station?

The Hon. JOHN DELLA BOSCA: The Leader of the Opposition has completely misunderstood the nature of the budget papers. His suggestion about the length of time that the police service or any local communities will be required to wait is a furphy. I would think he understands that. The substance of the question relates to the administration of the Minister for Police. I will refer the honourable member's question to the Minister for Police. I am sure the Leader of the Opposition will get a detailed answer, which the rest of the House no doubt will enjoy reading as well.

DISABILITY SERVICES BUDGET

The Hon. KAYEE GRIFFIN: I ask a question of the Minister for Disability Services. Can the Minister advise the House what the Iemma Government has done to help people with a disability and their families in New South Wales?

The Hon. JOHN DELLA BOSCA: I thank the honourable member for her question. Today's budget funds in full the Iemma Government's landmark 10-year plan to deliver better services for people with a disability and their families. With more than $1 billion in additional funding over the first five years, the Stronger Together plan represents a new direction for disability services. This is the biggest funding increase for disability services in the history of New South Wales. Only nine months ago the Premier listed disability services as a key priority for the Government. We have backed this commitment with a massive increase in spending. We are putting the needs of people with disabilities and their families first. People with a disability and their families have told me they need more respite, more therapy, more accommodation, day care and certainty about the services they receive. Stronger Together contains the increased resources and fundamental changes to deliver that vision.

The plan includes: $514 million, over five years, to fund 990 new supported accommodation places, including 180 this year. That is nearly 20 per cent in the first year. There will be $235 million, over five years, to fund a major increase to community participation programs to ensure every young person with a disability receives four days per week, and five days for those with very high needs. The plan includes 200 new therapy places this financial year for children with a disability, with 2,880 extra therapy places for children and adults over five years; 450 additional respite places for children and young people over five years, and a further 810 flexible respite places for adults, the first 750 places to be delivered this financial year. That is more than half in one year; up to $80 million, over five years, in partnership with the Commonwealth. The goal is to prevent young people from entering nursing homes, to improve their circumstances, and to develop alternative models of care. Over the next five years, $66 million will be allocated to fund 320 new intensive in-home support places, with the first 70 to be delivered in 2006-07. That is, nearly 22 per cent in the first year; and 100 new case managers to help 4,000 people with a disability and their families.

While Stronger Together includes a billion dollar increase in funding, it also contains fundamental changes to deliver more and better assistance. Support will be based on need, not disability type. Services will be measured and funded on the outcomes they deliver for people with disabilities and their families. We will help families avoid breakdown and the high cost of crisis by offering practical solutions earlier, including respite, day services and other flexible options. Stronger Together also funds more options for people who require specialist accommodation and care—1,000 places over the last five years, another thousand places over the next five years. This plan is the result of extensive statewide consultation with people with a disability, families, carers, peak bodies, advocates, academics and service providers.

In just nine months the Iemma Government has listened to parents and carers and people with a visibility and delivered a plan that provides real hope and is backed up by real dollars. Our approach is in stark contrast to that of the Opposition. The shadow Minister for Disability Services and his leader, the member for Vaucluse, have no plan. Their approach has been driven by cheap media stunts that do nothing to improve services. There has been no commitment from the Opposition to fund this increase in services for people with a disability. He makes no commitment because he knows the Coalition intends to slash funding to those vulnerable people, as they have in the past.

DEPARTMENT OF PRIMARY INDUSTRIES BUDGET

The Hon. DUNCAN GAY: I direct my question without notice to the Minister for Primary Industries. Why does the heading on the Minister's media release today say that the Department of Primary Industries budget will be nearly $400 million when it is clearly $389 million—which, for a start, is an $11 million lie? Furthermore, how can the Minister justify that the Budget Speech indicates that the Department of Primary Industries budget increased by $30 million for 2006-07—

The Hon. Amanda Fazio: Point of order: The question asked by the Deputy Leader of the Opposition is not in accord with the standing orders, because it is full of argument, which questions are not to contain.

The PRESIDENT: Order! It is true that a question must not contain argument, and this question had a certain argumentative element to it. The Minister may answer that part of the question that has been asked.

The Hon. DUNCAN GAY: Madam President, I had not finished asking the question. I was interrupted before I had finished asking it.

The PRESIDENT: Order! The time for asking the question has expired.

The Hon. DUNCAN GAY: Madam President, I refer to what occurs when Government members raise points of order during the asking of a question. I did not have a chance to respond to the point of order before you gave your ruling.

The PRESIDENT: Does the Deputy Leader of the Opposition wish to respond to the point of order?

The Hon. DUNCAN GAY: Thank you, Madam President, and I would like to respond to the point of order by indicating that the member is quite wrong. It is not argumentative. In fact, it was stated quite clearly that the heading of the Minister's press release said there would be nearly $400 million when, in fact, there was only $389 million in the budget estimates. The question also said that the speech indicated that the Department of Primary Industries budget had increased by $30 million, when, in fact, the actual funding had decreased by $10 million. The Minister is lost, once again.

The PRESIDENT: That is certainly out of order.

The Hon. IAN MACDONALD: What a dopey question!

The PRESIDENT: Order! The Minister must not debate the question.

The Hon. IAN MACDONALD: Nearly $400 million, and he says it is $389 million. We were trying to round it out so that people could understand it.

The Hon. Melinda Pavey: Point of order: The Minister is debating the question. He is not answering the question.

The PRESIDENT: Order! The Minister must not debate the question.

The Hon. IAN MACDONALD: I am not debating it. Your ruling is accurate. I was a little bit too aggressive there. You are quite right, Madam President. I will not debate the question. I want to talk more about The Nationals and what went on last week when Andrew Stoner—

The Hon. Duncan Gay: Point of order. I am sure the Minister would like to talk about what he wants to talk about, but there is a specific question before the Chair, an important question about his portfolio. If he wants to duck and weave, like everyone in New South Wales knows he does, and not answer the question it will be on his head. He is a loser.

The PRESIDENT: Order! The Minister's answer must be relevant to the question asked.

The Hon. IAN MACDONALD: The Minister is relevant, and I will not debate the question. But I want the House to hear what Andrew Stoner said on 2DU, "If I was based in the city and I chose to become involved in politics—"

The Hon. Rick Colless: Point of order: Clearly the Minister is evading the question that my colleague asked him.

The Hon. Eddie Obeid: What is your point of order?

The Hon. Rick Colless: The point of order is relevance, and the Hon. Eddie Obeid should know that. I ask you to call the Minister back to the question before the Chair.

The PRESIDENT: Order! The Minister's answer must be relevant.

The Hon. IAN MACDONALD: I think the future of this rabble over here is very relevant to this question.

The Hon. Dr Arthur Chesterfield-Evans: Point of order: The Minister is simply flouting your ruling and abusing the Opposition. He is here to answer the question. That is what he ought to do. That is what the standing order provides.. I ask that you uphold the standing orders and perhaps ask the Minister to speak into the microphone because anyone who is not in this Chamber misses the Minister's wonderful words.

The Hon. IAN MACDONALD: I must say that that is another scintillating interjection by the Australian Democratic Party, showing its relevance and how it will get re-elected at the next election. I am disturbed about this, as are most of my colleagues, because we really want to know what party is going to run at the next election. Is it going to be The Nationals-Liberal candidate, like this postmistress, Leslie Williams, who will stand as both a National and a Liberal in the State seat of Port Macquarie in next year's poll?

The Hon. Duncan Gay: Point of order.

The Hon. IAN MACDONALD: She says she is a Nationals-Liberals candidate.

The PRESIDENT: Order! The Minister will take his seat. The Deputy Leader of the Opposition has the call.

The Hon. Duncan Gay: My point of order is relevance. The Minister quite clearly was asked a question on this budget day about his portfolio and his loss in the budget. The answer that he is giving, which he wanted to give, has nothing to do with the question asked. That is why he has had a 71 per cent loss in his portfolio since he has been the Minister. The bloke is a loser, and we are suffering because he is a loser.

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

The Hon. IAN MACDONALD: I am very relevant again. If honourable members were to go to the ABC web site, as I do quite often, they would see some good names for the party that the Deputy Leader of the Opposition is helping to form when he is leader of The Nationals, for instance, the seaside hayseeds. What about that one?

The Hon. Duncan Gay: Point of order.

The PRESIDENT: Order! The Minister will resume his seat. The Deputy Leader of the Opposition has the call.

The Hon. Duncan Gay: We are in the worst drought in 100 years, and this bloke is a joke. My point of order is relevance to the question that has been asked.

The Hon. Michael Gallacher: People are going to the wall and he wants cheap jokes.

The Hon. IAN MACDONALD: What does Mr Anthony have to say about this? [*Time expired*.]

SENTINEL EVENTS REVIEW COMMITTEE MENTAL ILLNESS REPORTS

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: My question is directed to the Minister for Health. Is the Minister aware that the Sentinel Events Review Committee report on suicide, homicide and natural deaths of people with a mental illness while under the care of NSW Health has not yet released its report for 2005? This report was due to be released three months ago. Will the Minister please clarify whether this report has been completed, and, if not, is this due to the failure of processing the reappointment of committee members whose terms have expired, or another reason? Given this delay on an issue that involves three to four potentially preventable deaths per week, when will the Minister take steps to ensure that such a delay will not occur in the future? Why cannot NSW Health's Centre for Mental Health supply the death figures, which are reported directly to it, to Parliament on a six-monthly or annual basis?

The Hon. JOHN HATZISTERGOS: The New South Wales Mental Health Sentinel Events Review Committee was established in May 2002 as a ministerial advisory committee to report directly to the Minister for Health. The committee, chaired by Professor Peter Baume, comprises representatives of consumer, carer and professional groups. As part of its functions it investigates fatal incidents involving persons suffering or suspected of suffering from mental illness. The committee seeks to identify systemic issues that may be addressed in preventing further deaths. The first report of the committee in 2003 made 52 recommendations. The Government has supported the broad direction of the report. The formal response was published in December 2004. In its second report, "Tracking Tragedy 2004", the committee reviewed data that related to possible suicide deaths of patients who died within a month of discharge from inpatient care from 1999 to 2003, and homicides perpetrated by patients in care from 2000 to 2004. The second report of the committee was submitted to the Premier, the then Minister for Health, in April 2005. A response from the Government to the second report was released in December 2005. The Sentinel Events Review Committee, which has been reappointed, is currently working on a third report. Once received, a formal Government response will be published.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I ask a supplementary question. Can the Minister give us a time frame as to when the 2005 report will be released? The report released in December 2005 was the 2004 report, was it not?

The Hon. JOHN HATZISTERGOS: I need to get some advice on that, but my understanding is that it is later this year, around August or September. It has to be received and then it will be responded to. It will be sometime later this year.

HEALTH BUDGET

The Hon. IAN WEST: My question without notice is directed to the Minister for Health. What is the latest information on the New South Wales Government's investment in the health of the people of this State?

The Hon. JOHN HATZISTERGOS: This is an important question because the State budget, which was handed down today, demonstrates another record investment in the health of the people of New South Wales—an investment of $11.7 billion. It is a budget that provides more beds, more nurses, more doctors and more elective surgery, and new ways for people to access health services. Unlike the Commonwealth's recent Dickensian budget for health services, which will not spend one measly cent of its massive billion dollar surplus on public hospitals, does nothing for health care reform and fails to invest in the future of our medical work force, this budget does completely the opposite and invests in the health of the people of New South Wales. While I am on the subject of the Federal budget, it is not only me who has been criticising the Federal health

expenditure. Very recently the Leader of the Opposition engaged in a brazen attack on the Commonwealth's management of the health system when he said, "I think the big saving for Australia is actually removing the duplication of bureaucracy in health and I'd like to see the Federal bureaucrats go."

The Hon. John Della Bosca: Who said that?

The Hon. JOHN HATZISTERGOS: That is what the Leader of the Opposition said. He wants to see the Federal bureaucrats go. Honourable members can understand why he would say that, because it is the only bureaucracy that runs a health department that does not treat a single patient. The Leader of the Opposition got it right for once. The New South Wales budget for health services represents an increase of $828 million, or 7.6 per cent on the 2005-2006 budget. It will fund an additional 426 public hospital beds and bed equivalents on top of the 800 beds that were announced in last year's budget, allowing for more elective surgery and faster emergency care.

It will open over 30 new intensive care beds and cots for people who are recovering from major illness or surgery and includes $40 million over four years to provide increased dental services—services which are the constitutional responsibility of the Federal Government but which the Federal Government, in particular the current Federal Government, continues to ignore. The budget provides $7.9 million for 93 new ambulance officers to improve emergency care in Sydney and rural areas.

The budget contains $633 million for new and upgraded hospitals and equipment to enhance services for patients; $245 million over four years to build major new facilities at Auburn and Liverpool hospitals; and $74 million over four years, including $18 million during the 2006-07 financial year, to redevelop services at Ballina and Manning base hospitals. The budget contains $55.8 million over four years for mental health facilities to expand capacity and develop new services in Sydney, the Central Coast, Illawarra and mid-western New South Wales; $47.2 million over four years to upgrade and replace ambulance vehicles, equipment and stations; and $9.8 million over two years for the upgrading of airconditioning at John Hunter Hospital.

The public health system continues to face increasing demand and pressures that are driven by an ageing population, longer life expectancies, increased public expectation and technological change. That is why the New South Wales Government is finding creative solutions to its health care challenges and backing that with extra resources. The predictable surgery program is leading to a dramatic reduction in the number of people waiting more than 12 months for elective surgery, despite record numbers of patients seeking emergency treatment. This financial year the Government will be investing a further $15 million in the predictable surgery program to enhance its success.

The Government will also fund a number of initiatives to improve integration between Commonwealth-funded general practitioner [GP] services and State-funded hospitals and health facilities, including $4 million capital funding to commence construction of integrated primary health and community care services—services which combine GPs, community health workers and allied health professionals in one-stop shops to provide team-based care. [*Time expired.*]

METROPOLITAN WATER PLAN

Mr IAN COHEN: I direct my question to the Minister for Lands, and Minister for Rural Affairs, representing the Minister for Water Utilities. The 2004 Metropolitan Water Plan states that the current transfers from the Shoalhaven occur through natural river channels which can disrupt natural ecosystem processes, including important platypus nesting areas, erode river banks and inundate lands resulting in serious impacts on adjacent local environment and land uses, yet the 2006 Metropolitan Water Plan seems to have abandoned these concerns. Is it true that in the 2006 Metropolitan Water Plan the New South Wales Government has abandoned the proposed infrastructure options that are designed to remove the potentially serious adverse environmental effects of water transfers from the Shoalhaven River on the upper Nepean and Wingecarribee rivers, which are currently treated as nothing more than water supply canals? What action does the Government now intend to take to fully investigate and prevent potential ongoing degradation of these important streams? What is the time frame for these urgent actions?

The Hon. TONY KELLY: I thank the honourable member for his question. I undertake to pass on the honourable members' question to the Minister concerned and obtain a speedy reply.

DEPARTMENT OF JUVENILE JUSTICE LAND AND BUILDINGS ASSETS

The Hon. CATHERINE CUSACK: In directing my question without notice to the Minister for Justice, Minister for Juvenile Justice, I refer to the balance sheet of the Department of Juvenile Justice that was published in today's budget papers showing a decrease in land and buildings of $1.86 million. Can the Minister confirm that this decrease in the department's assets will be the result of selling Yasmar? If it is not Yasmar, what major asset has the Department of Juvenile Justice targeted for disposal in the next financial year?

[*Interruption*]

The Hon. TONY KELLY: I thank the Hon. Catherine Cusack for her question, although, as has been pointed out, that type of question should be asked at an estimates committee hearing.

The Hon. John Ryan: Point of order: the Minister is debating the question. If he wants to complain that the question is too hard, I suggest he find some other place to be.

The PRESIDENT: Order! The member has made his point. The Minister must not debate the question.

The Hon. TONY KELLY: Thank you for your guidance, Madam President, but this has given me the opportunity, which I am really pleased about, to point out to the Hon. Catherine Cusack that today the budget allocated juvenile justice $141.9 million, which represents an increase of approximately $6.5 million over last year's allocation. Projected spending includes the fourth and final stage of a $4.74 million four-year initiative to assume responsibility from the police for transporting young offenders between juvenile justice centres and courts. It also includes the operation of an additional 15-bed accommodation unit at the Reiby Juvenile Justice Centre, the introduction of a community intervention program to provide for attendance at weekend and bail courts, a brokerage service to assist and arrange for community-based accommodation for young people on conditional bail along with specialised training for community staff, co-ordination of the drug detection and management program to prevent illicit drugs entering juvenile justice centres, and continuation of the very successful youth justice conferencing scheme worth $4.7 million, which gives victims a chance to attend conferences and tell young offenders of the harm they have caused with the intention of ensuring that offenders take responsibility for their actions.

The capital works budget allows for the renewal of information technology infrastructure and tracking systems. But for rural and regional areas in particular, the budget delivers some $33 million to our rural and regional centres through juvenile justice departments. Some of the very good programs that are included are, for example, $1.8 million for 14 alcohol and other drug counsellors in the community. Eleven of those positions will be located in rural and regional areas. They are based at Broken Hill, Kempsey, Lismore, Moree, Nowra, Orange, Wagga Wagga, Albury, Tamworth and Bourke, and one position will be shared between Queanbeyan and Batemans Bay. Significantly there is also $3.9 million—

The Hon. Catherine Cusack: Point of order: My point of order relates to relevance and whether the Minister even knows which asset it is that his department is targeting for disposal. The question clearly asked him whether Yasmar had been targeted for disposal in the next financial year. I ask you to call him back on the grounds of relevance to that question.

The PRESIDENT: Order! The Minister is making general points about the question and is in order.

The Hon. TONY KELLY: Madam President, I am happy to answer that part. That is a new question, but I am happy to answer it.

[*Interruption*]

Do members opposite not want me to answer it? Yasmar is not targeted for sale next year or in any other year. I have pointed out previously in this place that when the honourable member for Drummoyne, Ms Angela D'Amore, and the Council of the Municipality of Ashfield visited me, I reassessed the situation and looked at the best possible use for that site. As the Minister for Justice, Minister for Juvenile Justice, and Minister for Lands, I was able to use all three portfolios to transfer the land from the Department of Justice to the Department of Lands and create a reserve. I was able to appoint the Ashfield council the reserve trustee. I know that it is a perfect solution—a solution that the Opposition did not want because it wanted to use this matter as an election gimmick.

DARLING ANABRANCH PIPELINE

The Hon. PENNY SHARPE: My question is addressed to the Minister for Natural Resources. Will he update the House on the status of the Darling anabranch pipeline project and the benefits it will provide for landholders in western New South Wales?

The Hon. IAN MACDONALD: Last week I had the pleasure of joining the honourable member for Murray-Darling, Mr Peter Black, to officially launch the construction of the $28 million Darling anabranch pipeline at Fort Courage near Wentworth. This major infrastructure project for the Murray-Darling Basin will provide significant water savings, improved water supply to landholders and enhanced environmental outcomes. The pipeline is a major part of the broader $54 million Darling anabranch project which will replace the river's existing water management system. The project is designed to save approximately 47 gigalitres of water per year, which is equivalent to 47,000 Olympic-size swimming pools.

The project is testimony to the ongoing partnership between the New South Wales Government and local landholders. Mitchell Australasia Pty Ltd was awarded the contract for the construction of the Darling anabranch pipeline in March. So far it has constructed 20 kilometres of pipeline for the project. Once completed, the pipeline will provide a secure stock and domestic water supply for landholders along a 300 kilometres stretch of the Great Darling Anabranch. Receival tanks and off-takes will be constructed as the pipeline is installed, allowing for more efficient operation with the two main pump sites at Fort Courage on the Murray River and at Polia Station on the Darling River. Water will be pumped from the Darling and Murray rivers to provide a secure stock and domestic water supply for landholders with the additional benefit of improved water quality.

The project will also see the removal of weirs, improved fish passages and water allocated for environmental flows to help restore the natural wet-dry flow cycle of the river. Other benefits include encouraging the breeding of native fish and yabbies, improved water quality for the environment and reduced frequency of blue-green algal blooms. During last week's visit local landholders and stakeholders recognised the importance of the Darling anabranch pipeline and welcomed the fact that work was well and truly under way. Those in attendance also recognised the importance of broad water reform.

New South Wales has been leading the water reform agenda at a national level for some time. In 1997 the New South Wales Government announced a comprehensive statewide overhaul of water management that aimed to improve the health of our rivers and ground water and deliver greater security for all water users and regional communities. A milestone in these reforms was the Water Management Act 2000, which was passed by State Parliament in December 2000. That Act provided legal status and security to water for the environment for the first time in New South Wales.

In 2004 we joined the national water initiative endorsed by the Council of Australian Governments to improve water management across Australia. Just last month we agreed to an in-principle water tagging arrangement with Victoria and South Australia, something for which we have been pushing. Make no mistake: the Darling anabranch pipeline is part of the New South Wales Government's comprehensive program of water reforms that will deliver on the triple bottom line and mark a win for the environment, a win for our local economies and a win for our communities.

The Government will continue to devote resources that support new directions in water management for this State. That includes $5.5 million in the 2006-07 budget for conserving and restoring ground water resources of the Great Artesian Basin under the Cap and Pipe and Bores Program, $1 million for the Aboriginal Water Trust to help Aboriginal communities in the development of water-based farming and aquaculture enterprises, $9 million as part of the two-year wetland recovery strategy to improve the management of rivers and efficiency of water supply systems in areas such as the Macquarie marshes and Gwydir wetlands, and $5.7 million for the water management information project.

MR SIMEON OPIT BAIL REFUSAL

Ms SYLVIA HALE: I ask the Minister for Health whether he is aware of the following remarks by Supreme Court Justice Michael Adams in his decision on 5 May 2006 to deny bail to Mr Simeon Opit:

> I feel obliged to refuse bail because there is no place for him in the mental health system of this State.
>
> I can say no more than that this is a disgrace.

Has a place now been found for Mr Opit within the mental health system, or is he still languishing in gaol? If a place has not been found, why not? What guarantees can the Minister provide to the House that such a disgraceful episode will not be repeated?

The Hon. JOHN HATZISTERGOS: I am aware of this incident and I have some details on it. I will take the question on notice and provide those details at the end of question time. I need to establish how some of those issues relate to the current situation.

CROSS CITY TUNNEL CONSORTIUM CONTRACT

The Hon. DON HARWIN: I ask the Minister for Roads whether he is aware that yesterday the Cross City Tunnel Consortium advised:

> The Cross City Tunnel project was delivered to Government by invitation, on time and on budget. We have provided to Government precisely what they asked for in the contract. This is a Government project. They designed the road changes and they agreed to the toll.

Given that yesterday the Minister described the cross city tunnel toll of $3.50 as "an act of greed", why did this Government sign a contract with the Cross City Motorway that allowed it to charge a toll of $3.67, part of which was to recover the $97 million that this Government received as an up-front payment that was used to prop up its budget black hole? When will the Minister admit that the Government has failed to deliver this public-private partnership project and that taxpayers are now being forced to wear the consequences?

The Hon. ERIC ROOZENDAAL: The cross city tunnel operators have said a lot of things. In remarks made both yesterday and today they said that while they were not very happy with the Government they thought the Opposition was worse with its crazy strategy to tear up the contract. Opposition members should be a little more cautious before quoting from statements made by the cross city tunnel operators. The cross city tunnel is of great concern to the community and to the people of New South Wales. The New South Wales Government entered into three months of serious bona fide negotiations with the cross city tunnel operators to deal with this matter of considerable concern to the community.

At the end of the three-month period the operators made it very clear to us that they were demanding a $96 million payment to agree to 13 road changes and, for a short period, to reduce the toll. That was the greedy demand of the cross city tunnel operators. I have a responsibility to act in the best interests of motorists and the people of New South Wales, and for that reason the New South Wales Government rejected that exorbitant demand.

The PRESIDENT: Order! I call the Hon. Robyn Parker to order for the first time.

The Hon. ERIC ROOZENDAAL: A demand to accept not 1¢ less than $96 million from taxpayers is clearly unacceptable. The Government was prepared to offer fair compensation to the cross city tunnel operators—in the vicinity of $20 million—because that is what we believe those road changes should be worth to the cross city tunnel operators. We would not and will not subsidise the toll. In this public-private partnership the operators must accept and meet the financial risk. It would be financially irresponsible for the taxpayers of this State to have to subsidise their business. It is important to realise that the tunnel is a modern piece of infrastructure. It is taking around 34,000 vehicles off city roads each day.

Without the cross city tunnel traffic congestion in the city would be more severe. The more cars that use the tunnel the better it will be for motorists and the people of this State. There should be no confusion about the Government's position in the negotiations. We are not prepared to pay $96 million for a $2.90 toll for 18 months. That is why negotiations have broken down, but they have broken down within the contract. It is worthwhile contrasting the Government's responsible and sensible position with the policy of the economic idiot in the Opposition, the honourable member for Vaucluse, who claimed that he would reverse all 70 road changes. The 70 road changes that he would reverse include the entrance to the cross city tunnel, the exits to the cross city tunnel and the ramps around the cross city tunnel.

Thirty of the road changes that the honourable member for Vaucluse claimed he would reverse improve road safety or traffic flows. That demonstrates yet again that the honourable member for Vaucluse will say and do anything. I inform the geniuses opposite that the cross city tunnel operators are claiming $96 million for 13 road variations. If we did what the Opposition wants us to do, that is, tear up the contract and reverse the road changes, we would have to pay hundreds of millions of dollars in compensation. We are acting within the terms

of the contract and we will continue, within the terms of that contract, to resolve the dispute. The contract envisaged disputes. We will use the dispute mechanism within the contract and, if necessary, defend the taxpayers of this State in the courts.

HOSPITAL EMERGENCY CARE

The Hon. GREG DONNELLY: My question without notice is directed to the Minister for Health. What is the latest information on emergency care in New South Wales hospitals?

The Hon. JOHN HATZISTERGOS: In the nine months to March 2006 emergency department attendances in New South Wales increased by 97,457 patients, or 8.5 per cent, compared to the same period in 2005. Over the same time there was a 7.5 per cent increase in total hospital separations—an extra 77,477 patients. Notwithstanding this pressure, public hospitals in New South Wales performed thousands more surgical procedures than were performed in the same period last year resulting in the long-wait lists now being slashed by three-quarters in the past 12 months. Part of this success can be attributed to a comprehensive package of redesigning emergency care in hospitals. The outcome of this package—a package developed and designed by emergency clinicians through the emergency care task force—is simple: people will be seen earlier and treated faster, resulting in better outcomes and greater flexibility for patients.

Lack of access to affordable general practice services after hours means that for many families emergency departments and ambulance services are the only round-the-clock health care in their area. That is why new emergency department initiatives will include fast-track zones, which will separate people with minor injuries and illnesses from sicker patients; starting care earlier so that doctors and nurses see patients in the shortest possible time; triage and treat, which will enable clinical teams to start early assessment and fast track patients to avoid them waiting to see a doctor; short-stay units using dedicated short-stay beds outside the emergency department for patients who need intensive assessment investigation and observation, and to avoid admission to the traditional long-stay bed; and streamlining patient admission into specialist wards promoting admissions directly to hospital wards for certain conditions to avoid unnecessary double handling in emergency departments.

The emergency department initiatives will be enhanced through the establishment of new co-located general practice services aimed at taking the pressure off emergency departments. The Government will work with general practitioners to establish up to 10 after-hour's general practitioner clinics co-located with hospitals in locations including Liverpool and Nepean. This new paradigm for emergency care was warmly welcomed by a doctor from Liverpool Hospital who yesterday stated on radio, "We've applied these principles in the emergency department of Liverpool and we have revolutionised the department, the experience for the patients, the experience for the staff."

However, this view is not shared by the Opposition's Health spokesperson who, yesterday, criticised the package, arguing that more beds and nurses are the answer. I welcome that statement in this sense: the honourable member for North Shore should lobby her Federal counterparts for more Higher Education Contribution Scheme funded places for nurses and doctors. In the meantime I will continue to do what I can, including looking overseas to secure a nursing work force to meet our needs. The honourable member for North Shore mentioned also that more beds were required. Today's budget will fund an additional 426 public hospital beds and bed equivalents on top of the 800 announced in last year's budget and will open more than 13 new intensive care beds and cots for people recovering from a major illness or surgery.

The additional intensive care beds and cots are at the forefront of modern medicine, staffed by highly trained intensive care specialist doctors and nurses with sophisticated life-support equipment, in particular neonatal intensive care cots to keep very sick babies alive and give premature babies the best chance of survival. New beds will come into operation as appropriate staff are secured. The Iemma Government's record, the $11.7 billion health care budget, not only provides more beds, more doctors, more nurses and ambulances for the people of New South Wales but also includes creative solutions such as a new emergency care package to meet the challenges faced by our health system.

ILLAWARRA WASTE WATER STRATEGY

Reverend the Hon. Dr GORDON MOYES: My question is directed to the Minister for Emergency Services, representing the Minister for Water Utilities. Will the Minister explain why the water recycling plant at the Wollongong sewage treatment plant is not yet functioning to produce its expected 20 million litres of

potable water a day? Is it true that the New South Wales Fire Brigade Employees Union has banned the use of the plant's recycled water, and that this has been holding up the commissioning of the plant since early this year? Given the massive cost and timetabling blow-out in the Illawarra waste water strategy, why is the Minister allowing that industrial dispute to further impede it? What is the Minister doing to get the plant operating, given that the water supply in Avon Dam is dwindling and that the people of the Illawarra are currently enduring the toughest water restrictions on record?

The Hon. TONY KELLY: I will refer the question to the Minister for Water Utilities as was requested, but it is just as appropriate for me, as Minister for Emergency Services, to answer it. The New South Wales Fire Brigade did have some concerns about the use of recycled water.

The Hon. John Ryan: It was the union.

The Hon. TONY KELLY: Yes, it was the union; I thank the honourable member for correcting me. The union wanted to ensure that the water was healthy. I am not aware whether the union has a tick-off regime in place to ensure that the water is suitable for use, but I know that negotiations are continuing and I will obtain an update for the member as soon as I can.

QUEANBEYAN HOSPITAL

The Hon. MELINDA PAVEY: My question is directed to the Minister for Health. The Government promised that the new Queanbeyan hospital would be completed in 2008, whereas the budget papers released today show that that time has blown out to 2009 with physical construction yet to commence. Why has the Government broken its commitment to Queanbeyan residents? Why should they trust the Minister not to further delay the completion of their hospital?

The Hon. JOHN HATZISTERGOS: I have made the point before, and I will repeat for the benefit of the honourable member, that the Queanbeyan hospital will be constructed. The commitment is there, much to her disgust. I have also made the point that, unfortunately, her party's record on this project is such that it has restrained the capacity of the Government to deliver this facility in the way that otherwise it may have been able to.

The Hon. Duncan Gay: Is the hospital dependent on the sale of the Snowy?

The Hon. JOHN HATZISTERGOS: The Deputy Leader of the Opposition talks about sales. Does the Hon. Melinda Pavey know that when in government the Coalition sold land surrounding the site? That is what her party did—it sold off the surrounding land, constraining the development that was to take place on the site. During community debate about the location of the proposed site the Hon. Melinda Pavey and her colleagues opposed the greenfield site; they wanted the hospital constructed on the same site that accommodates the present hospital, which is most restricted land.

The Hon. Melinda Pavey: That was Steve Whan.

The Hon. JOHN HATZISTERGOS: It was also the Hon. Melinda Pavey. I know that the Hon. Melinda Pavey and the Hon. Patricia Forsythe are a tag team that asks questions about the Queanbeyan hospital—or at least that was so before the Hon. Patricia Forsythe suffered her preselection loss. The Hon. Patricia Forsythe asked me a direct question on that point, and she remembers it. She asked me a direct question about the location of the site. I remember the interjection of the Hon. Melinda Pavey when I said that the matter was still under consideration, as it was at that time. She said, "You beauty". She actually celebrated the fact that the hospital may be constructed on the greenfield site. Construction will commence in accordance with the timetable. The hospital will be built: the commitment is there.

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

The Hon. JOHN HATZISTERGOS: The commitment was made in the budget; $44 million has been provided for the construction of the hospital. It will have 60 beds, an emergency department with six paediatric observation units, wards, state-of-the-art surgical operating facilities, community health, alcohol and drug and mental health facilities. I thank all those who have been involved in this matter. The Coalition ought to apologise for selling that land, it really should. Instead of going on about the Snowy the Coalition should apologise to the people of Queanbeyan, who could by now have had a better facility. But that opportunity was lost because the Coalition sold off land when it was in government.

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

ROADS BUDGET

The Hon. HENRY TSANG: My question is addressed to the Minister for Roads. Will the Minister update the House on the State Government's 2006-07 budget funding for New South Wales roads?

The Hon. ERIC ROOZENDAAL: I congratulate the Treasurer on delivering the Iemma Government's first budget, announcing a record infrastructure investment of $9.9 billion in 2006-07. The Hon. Michael Costa has done a terrific job as Treasurer and deserves to be congratulated. A modern State road network is critical to our economy. To keep New South Wales moving the Iemma Government is delivering a record roads budget of $3.3 billion in capital works, maintenance, road safety and local government grants. A record $1.84 billion, 65 per cent of the total roads budget, will be invested in regional and rural New South Wales.

The roads budget is a big win for Western Sydney residents, with $404.5 million to keep Western Sydney moving: $113 million for Windsor Road, including $15 million to complete the upgrade at Baulkham Hills and Kellyville; $38 million to complete the upgrade between Mile End Road and Boundary Road; and $55 million for the Windsor flood evacuation route over South Creek. The $420 million Windsor Road project is the largest urban arterial road project ever undertaken by a State government. This year's road budget shows a commitment to integrated transport, with $125 million to complete the north-west transitway between Parramatta and Rouse Hill and between Blacktown and Parklea, and $45 million for priority work on strategic bus corridors. There will be some $32 million to continue the $460 million upgrade of the Great Western Highway between Penrith and Orange.

The Government will spend $360 million to keep the Pacific Highway moving. This $360 million is the first plank of the new three-year $1.3 billion State-Federal Pacific Highway Program. This is on top of the $1.66 billion invested by the State Government over the past 10 years. This year's $360 million in Pacific Highway funds includes $100 million to continue construction works from Brunswick Heads to Yelgun, $75 million to start the Bonville bypass, $50 million for upgrade work between Karuah and Bulahdelah and $20 million for design and preconstruction earthworks on the Ballina bypass.

The Government will spend $73.1 million to keep the Central Coast moving, including $12 million to widen The Entrance Road between Ocean View Drive and Tumbi Road, and $8 million to complete the widening between Terrigal Drive and Carlton Road. In the Hunter, we will spend $247.2 million to keep the area moving. This will include $11.5 billion for the continued upgrade of Nelson Bay Road, $5 million to start the new Tourle Street Bridge, and $9 million towards the completion of construction of the Five Islands Road duplication from Booragul to Speers Point. I was in the area recently and witnessed the impressive construction that is occurring there.

In the St George area and the Sutherland shire the Government will spend $50.7 million to keep the area moving, including $9 million to commence the duplication of the Alfords Point Bridge. The Government will spend $49.7 million to keep the Princes Highway moving, including $8.2 million to start the four-lane upgrade between Oaks Flats and Dunmore as part of the $380 million Princes Highway upgrade program. The Government will spend $64.4 million to keep the Illawarra moving, including $15 million to extend the Wollongong Northern Distributor and $5 million to start construction of the Kiama ramps in the Illawarra region. Other interesting projects include the expenditure of $11 million to begin widening The Spit Bridge.

In addition to these projects, $114 million has been committed to road safety initiatives. These programs will target speeding, drink-driving, seatbelt usage, fatigue management, cyclist safety, and school and youth programs as well as specific road safety works and upgrades. Local councils across New South Wales will also be allocated $144 million under the Repair and Improvement of Regional Roads program—the REPAIR program—and block grant scheme for regional roads.

BLACKTOWN HOSPITAL STILLBORN BABY CARE PROCEDURES

Reverend the Hon. FRED NILE: My question is directed to the Minister for Health. What official procedures govern the care and removal of stillborn children in New South Wales hospitals? How do these procedures differ, if at all, from those for late-term aborted babies? Are these procedures documented, and are New South Wales hospital staff trained in these procedures? Will the Minister inform the House why stillborn baby Angelina went missing from Blacktown Hospital on 13 May? What is the Minister doing to get to the bottom of the situation and provide closure for the grieving family of baby Angelina?

The Hon. JOHN HATZISTERGOS: I express my condolences once again to the family involved in this tragic matter. I have spoken personally to the father and have apologised and expressed my deepest regrets to his family. The chief executive of the area health service, Professor Steven Boyages, has also apologised unreservedly to the family and advised that an investigation into the circumstances, which will be overseen by independent senior clinician Professor Caroline Homer, has been launched and will be completed this week. This is one of several investigations examining the matter, including a referral to the local police. I have also referred the matter to the Health Care Complaints Commission for its attention. In addition, I have directed that the Director General of NSW Health undertake an urgent review of all guidelines relating to still births and I have asked that the Stillbirth Foundation be involved in the review.

I am advised that the area health service has stayed in close contact with the family and kept it informed about actions being taken to investigate this terrible tragedy. People who suffer the loss of a loved one, including through stillbirth, should have their views respected in terms of the body of the loved one and what happens to it. I am advised that the area health service will meet the family to discuss the findings of the investigation as soon as it is completed. Everything will be done to ensure that similar circumstances do not occur again. Guidelines are in place to deal with circumstances such as this, however, I am not certain as to their public availability. Accordingly, I will take that aspect of the question on notice. But I indicate to the House, as I did to the honourable member earlier, that these matters are under review.

CROSS CITY TUNNEL TOLL

The Hon. DAVID CLARKE: My question is directed to the Minister for Roads. Page 3 of the Auditor-General's report that was released last week states:

> The RTA was wrong to change the toll escalation factor in late 2002 to compensate the tunnel operator, CCM, for additional costs … By 2018, the toll will be about 35 per cent higher than it would have been due to this increase and the change to the escalation formula.

When will the Minister stop blaming the tunnel operators for the cost of the toll and admit that his Government bungled the project and gave this private, profit-making organisation permission to overcharge New South Wales motorists?

The Hon. ERIC ROOZENDAAL: Talking about permission to overcharge, the Coalition plans to "tear up the contract, rip open the roads and pay the cross city tunnel consortium whatever they want". That is the dumbest idea I ever heard. If that is not permission to overcharge, I do not know what is. Unfortunately for the Hon. David Clarke, he failed to read the entire Auditor-General's report. He also clearly missed the Richmond report—which was released in December last year—which dealt with many of these issues. I am happy that the Auditor-General has adopted many of the recommendations of the Richmond report, which dealt with a great number of issues that were raised regarding the cross city tunnel arrangement. The Richmond report contains a blueprint of recommendations, which the Government agreed to, that will ensure that all future motorway infrastructure in this State delivers perceived good value to the people of New South Wales in an equitable manner.

The cross city tunnel has always been an issue of great concern to me and to the community. That is why the Government took the bold step after the collapse of negotiations to reverse 13 road changes to give motorists a direct route through the city and onto the Sydney Harbour Bridge—which was also one of the Auditor-General's recommendations. We will take that action to ensure that motorists get a fair deal. I make no apologies that we are acting in the interests of motorists to resolve once and for all the issues around the cross city tunnel.

The Hon. John Ryan: Which clause of the contract allows you to do that?

The Hon. ERIC ROOZENDAAL: I am glad to hear that interjection from the Hon. John Ryan, who will be gone from the Oppositions benches if he does not win preselection. But that is up to David, not me. The contract envisages a disputes mechanism, which we will activate. All major contracts dealing with infrastructure in this State—and, in fact, in every other State—have disputes mechanisms. The Government is operating within the contract's disputes mechanism, unlike the genius Leader of the Opposition, who wants to rip up the contract, hand over a signed cheque to the cross city tunnel operators and say, "You just fill in the amount you'd like from the people of New South Wales".

The Hon. John Ryan: Who said that?

The Hon. ERIC ROOZENDAAL: It was your dopey leader. The Government is within the rules of the contract.

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

The Hon. ERIC ROOZENDAAL: It is clearly envisaged that there is a dispute. We are operating within the terms of the contract and we will progress the reversal of the 13 road changes. Our offer of fair compensation stands, and at any time the cross city tunnel operators are welcome to come back and negotiate the issue with the Government. But we will not accept their demand for between $144 million and $96 million. It is worth acknowledging that the first claim—the operators were no doubt emboldened by the great strategy of the Leader of the Opposition—was for $144 million, and that was generously dropped to $96 million. It is as if the operators were picking Lotto numbers! It is the principle of this Government to offer fair compensation for the road changes. That is the principle we operate under, and we shall continue to do so. The difference between Labor and the Coalition is that members opposite want to tear up the contract and we want to operate within the terms of the contract.

EMERGENCY SERVICES BUDGET

The Hon. PETER BREEN: My question is addressed to the Minister for Emergency Services. Will the Minister explain how the State's emergency services benefited from the budget handed down today by the Treasurer?

The Hon. TONY KELLY: I thank the newest member of Country Labor for his question. As honourable members know, today's budget had some particularly good results for emergency services in country New South Wales. I am pleased to inform honourable members that this is another record budget for the New South Wales emergency services. In fact, it is the twelfth consecutive record budget. In total, emergency services have been allocated $765 million in this year's budget.

The Hon. Greg Donnelly: How much?

The Hon. TONY KELLY: An amount of $765 million, vital funding that will ensure the State's families, businesses and visitors have even greater protection in times of natural disasters and other major emergencies. In recognition of the emergency services' heavy workload and increasing investment in training, infrastructure and equipment, this year's budget is an increase of $65 million—or 9.3 per cent—over last year. Over 12 years the Government has committed a total of $6.1 billion to the State's emergency services so they can carry out their work safely and effectively. That is a proud record and is clear proof that the Government has not shirked its commitment to redress the years of neglect emergency services suffered under the previous Coalition Government.

The people of New South Wales know they can always rely on their emergency services—including the New South Wales Fire Brigades, Rural Fire Service and State Emergency Service [SES]—to protect and help them during emergencies. Did I mention it was a record $765 million? I am sorry the Treasurer is not present to hear how grateful I am. This budget reinforces community confidence by ensuring the emergency services have the world-class equipment, resources and accommodation they need. One of the key commitments was to upgrade the emergency services vehicle fleet and this budget continues that work, with almost $53 million allocated this year for bush fire tankers, fire engines, SES response vehicles and other additions to the fleet.

The New South Wales Fire Brigades' budget is a record $523 million, which includes $18 million in funding for 50 new fire engines, hazmat vans and other vehicles to be deployed to stations including Kiama, Hay, Umina, Coledale, Mt Victoria, Macquarie Fields, Mt Druitt and Seven Hills; $6.2 million for new gas monitors and enhancing other firefighter safety and counter-terrorism equipment; and $1.86 million to establish and support community fire units. Twelve Fire Brigades stations around the State will be renovated as part of a $7.1 million program to improve day-to-day working conditions for our fire crews. These include Moama, Menai, Budgewoi, Matraville, St Marys, Turvey Park and Blackheath, where work will provide upgraded facilities such as washrooms, training areas, mess rooms, female change rooms and locker rooms.

The commitment of our volunteer firefighters has been recognised in this year's Rural Fire Fighting Fund, which has been set at an unprecedented $168 million—a 20 per cent increase on last year. This includes $34.1 million for more than 260 bushfire tankers and $51.7 million in brigades equipment, maintenance and

operating costs. I am sure the Rural Fire Service volunteers will welcome a major investment of $10 million for new and upgraded brigade stations around the State. I will continue my story later. [*Time expired.*]

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

Questions without notice concluded.

CIVIL LIABILITY AMENDMENT BILL

Second Reading

Debate resumed from an earlier hour.

The Hon. DAVID CLARKE [5.04 p.m.]: Prior to question time I was about to deal with how damages are to be calculated under the bill. They are to be determined in accordance with the hourly rate that applies to gratuitous attendant care services, presently calculated at an hourly rate of one-fortieth of the average weekly total earnings in New South Wales for the relevant quarter. Provision is made to ensure that damages paid under the *Sullivan v Gordon* principle are not also paid a second time pursuant to another head of damage. There could, for example, arise a situation where damages are equally payable under *Sullivan v Gordon* and *Griffiths v Kerkemeyer*. To cover this contingency, the bill clarifies that claimants will need to particularise their losses under *Griffiths v Kerkemeyer* where it is possible to do so rather than under *Sullivan v Gordon*.

The bill requires the court to take into consideration the claimant's capacity to provide gratuitous domestic services before the claimant's injury arose. Because of factors such as age or encroaching disability unconnected with the claim there may well be a diminishing capacity to provide services. Interest will not be payable on damages for the loss of a claimant's capacity to provide domestic services to the claimant's dependants. It is also made clear that the current prohibition on the payment of interest on awards of *Griffiths v Kerkemeyer* damages does not extend to damages awarded in cases involving dust-related conditions.

Currently the Civil Liability Act does not apply to certain types of claims and, therefore, without any amendment the restored *Sullivan v Gordon* head of damages would not apply to those claims. Consequently, the Act is amended to apply to motor accident claims, dust disease claims, tobacco and smoking claims, and claims involving intentional tort or sexual assault. Whilst *Sullivan v Gordon* damages are extended to dust diseases claims additional amendment is required because without it there is a discrepancy between *Sullivan v Gordon* damages, which are capped at an hourly rate, and *Griffiths v Kerkemeyer* damages, which are uncapped in dust diseases cases. Consequently the bill extends to dust diseases claims the same hourly rate that applies to *Griffiths v Kerkemeyer* claims other than dust diseases claims, and that will apply to *Sullivan v Gordon* damages. The Government states that there should be no increase in overall costs of dust diseases claims to any defendant.

As I indicated earlier, the Opposition does not oppose this bill. It is a just bill. It is an equitable bill. It is a bill that reinstates an important equitable and deserved head of damages to claimants, and that is why the courts originally gave recognition to it. It is a bill that will be substantially improved by the amendment foreshadowed by the Opposition. The head of damages provided in the *Griffiths v Kerkemeyer* situation is well established and universally regarded as appropriate and necessary if claimants are to be fairly compensated. Likewise, the Opposition believes that damages provided to claimants in the *Sullivan v Gordon* situation is of no less importance. It should be reinstated as law.

Ms SYLVIA HALE [5.07 p.m.]: On behalf of the Greens I support the Civil Liability Amendment Bill. The bill gives force to the decision of the New South Wales Court of Appeal in 1999 that permitted injured claimants to recover damages for their loss of capacity to perform gratuitous domestic services for other people who are relatives or household members. Injured people who had formerly looked after someone else—a relative or household member—will be entitled to seek compensation for the loss of their ability to provide such services. Claims under the Civil Liability Act 2002, motor accident claims and dust diseases claims will all be affected. However, damages will be available only in cases of great need. In 1999 in *Sullivan v Gordon* the New South Wales Court of Appeal permitted an injured claimant to recover damages for the loss of capacity to perform gratuitous services for other people: the claimant's children.

Those damages were held to be recoverable as a separate head of damage known as *Sullivan v Gordon* damages. That decision was in force for about three years. In September 2002 John Thompson sued CSR

Limited and Midalco Pty Limited for damages in the Dust Diseases Tribunal of New South Wales. Mr Thompson claimed he had developed malignant mesothelioma as a result of exposure to asbestos dust and fibre. Mr Thompson had sought damages for his inability to continue to provide gratuitous assistance—including vacuuming, cleaning, gardening and general maintenance—to his wife, who suffered from osteoarthritis.

The High Court, however, held that the *Sullivan v Gordon* head of damages should not apply. It found that compensating for a loss suffered by a third party departs from ordinary tort principles where only damage suffered by the claimant is compensated, not damage suffered by a third party—that is, the injured person's dependants. The High Court said in its judgment that the issues of hardship and what loss could be compensated were policy matters that were best determined by Parliament. Hence this bill's purpose—which is to reinstate, via legislation, *Sullivan v Gordon* damages in relation to losses suffered by third parties.

This is progressive legislation, and it applies only to cases where there is a demonstrated and great need for damages. The claimant's dependants must not be capable of performing the services themselves. The inability to perform services occurs, for example, where the dependant of the plaintiff is visually impaired, suffers from rheumatoid arthritis or a similar disability that prevents them from shopping, cleaning or cooking, and has obliged them to rely on the injured relative or household member to perform such domestic duties for them. The bill proposes, as a minimum, that for damages to be awarded, the dependant of the injured person requires assistance by the injured person for a minimum of nine hours a week for at least six consecutive months. The Law Society provided the following advice on this aspect of the bill:

> The Law Society is concerned that the Government has departed from the threshold determined in *Sullivan v Gordon*, where the Court of Appeal found that a person who has lost the capacity to care for a child should be compensated on the same basis as the traditional *Griffiths v Kerkemeyer* claim, that is, damages should be awarded if care is required for at least 6 hours a week.
>
> The Civil Liability Amendment Bill sets the threshold for claims at 9 hours a week, so care must be required for 9 hours, rather than 6 hours as determined by the High Court in *Griffiths v Kerkemeyer*, before a claimant is entitled to provisions.
>
> The Government has not provided any reason for departure from the *Griffiths v Kerkemeyer* threshold. Financial implications should not be a factor as insurers have, since 1999, been collecting premiums on the understanding that *Sullivan v Gordon* damages applied. There would be no further cost to the insurers or the insured should the threshold be amended to 6 hours.

I understand—and am pleased to hear—that the Government intends to support an Opposition amendment to revise the threshold for claims to six, rather than nine, hours. The Greens support that amendment, as we do the legislation in general.

Reverend the Hon. Dr GORDON MOYES [5.12 p.m.]: I speak on behalf of the Christian Democratic Party on the Civil Liability Amendment Bill. The object of this bill is to partially reinstate what are known as *Sullivan v Gordon* damages in cases of greatest need. In the 1999 case of *Sullivan v Gordon* the New South Wales Court of Appeal allowed an injured claimant to recover damages for the loss of capacity to perform gratuitous services for other people, such as the claimant's family and those living with the claimant. For example, a single and incapacitated mother may not be able to care and provide for her young children due to an obvious impairment to function. *Sullivan v Gordon* damages would provide commensurate assistance to the family in this scenario.

On 4 April 2006 the Attorney General in the other place referred to the case of a New South Wales man dying of mesothelioma. The man, whose wife is legally blind, did all the household shopping and chores, managed the family finances, drove his wife to her appointments and accompanied her whenever she went out. This man was paid *Sullivan v Gordon* damages to enable those tasks to continue being undertaken. It is of importance to note that these damages are different from another damages category, known as *Griffiths v Kerkemeyer* damages, which compensate the claimant for the claimant's need for gratuitous services to be provided to the claimant.

This bill has been because of a development in the High Court in relation to *Sullivan v Gordon* damages. In October 2005 in *CSR Limited v Eddy* the High Court considered these damages for the first time. The court held that the case of *Sullivan v Gordon* and all subsequent cases relying on it should be overruled. In the majority judgment by Chief Justice Gleeson and Justices Gummow and Heydon, the justices outlined how the basis of *Sullivan v Gordon* damages was not supported by accepted principles underlying the award of damages. Further, the justices noted:

> A possible ground for not overruling *Sullivan v Gordon* might exist if it had achieved certain types of legislative recognition. An example would arise if the legislatures had enacted legislation which assumed its existence and correctness, particularly if the legislation was only workable on the assumption of its correctness.

The justices referred to legislation in Queensland, Victoria and the Australian Capital Territory that enshrined the notion of *Sullivan v Gordon* damages. Thus, because of this High Court ruling, all *Sullivan v Gordon* damages awarded by New South Wales courts are appealable. This bill seeks to partially entrench *Sullivan v Gordon* damages. This will be accomplished by permitting the recovery of damages by a claimant for the claimant's loss of capacity to provide gratuitous domestic services to the claimant's dependants. The bill defines "dependants" in relation to a claimant as the spouse of the claimant; a de facto partner of the claimant; a child, grandchild, sibling, uncle, aunt, niece, nephew, parent or grandparent of the claimant; any other person who is a member of the claimant's household; and any unborn child of the claimant.

I note with great interest the latter dependant. The Government has been reticent to allow any legal personality to unborn children, and I welcome this definition as a highly commendable one. This bill will apply to claims under the Civil Liability Act 2002, motor accidents claims and dust diseases claims. Importantly, the bill will require that damages are available only in cases involving the greatest need. Thus, damages may be awarded only in the following instances: first, where the services will be needed for at least nine hours per week and for at least six consecutive months; second, where there is a reasonable expectation that, if the claimant had not been injured, the claimant would have provided the services for the required time; and, third, where the claimant's dependants must not be capable of performing the services themselves by reason of their age or physical or mental incapacity.

In reference to the first point, it is of importance to point out that the Law Society has concerns with the threshold being set at nine hours. The Law Society has indicated that the Government has departed from the original threshold determined in *Sullivan v Gordon*, where the Court of Appeal found that a person who had lost the capacity to care for a child should be compensated on the same basis as the traditional *Griffiths v Kerkemeyer* claim—that is, damages should be awarded if care is required for at least six hours a week. The Civil Liability Amendment Bill sets the threshold for claims at nine hours a week, so care must be required for nine hours, rather than six hours, as determined by the High Court in *Griffiths v Kerkemeyer*, before a claimant is entitled to provisions. According to the Law Society:

> The Government has not provided any reason for departure from the *Griffiths v Kerkemeyer* threshold. Financial implications should not be a factor as insurers have, since 1999, been collecting premiums on the understanding that *Sullivan v Gordon* damages applied. There would be no further cost to the insurers or the insured should the threshold be amended to 6 hours.

The Law Society has called on all crossbench members to support the amendment. I would be interested to know why there is a discrepancy between the threshold prescribed under the bill and the one given for the *Griffiths v Kerkemeyer* test. Notably, the hourly rate for damages will be capped at the existing rate for *Griffiths v Kerkemeyer* damages. Further, the bill will extend the existing hourly rate cap for *Griffiths v Kerkemeyer* damages to dust diseases claims. The Government has indicated that this change will ensure that the amount that can be recovered is capped on a consistent basis with *Sullivan v Gordon* damages and that the bill does not increase the overall cost of dust diseases claims. It is of interest to note that recommendation 12 of an inquiry headed by General Purpose Standing Committee No. 1 was that *Sullivan v Gordon* damages for gratuitous services provided by the claimant be restored. The Government is to be commended for taking particular notice of the committee's recommendation. In April this year the Attorney General released an exposure draft of this bill, with submissions being accepted until 20 April. The policy reasoning behind this bill has merit. In view of such, this bill ought to be upheld. I commend the bill to the House.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.18 p.m.]: The Australian Democrats support the Civil Liability Amendment Bill. We believe that persons who have been providing the services of carers should be compensated in the event that they sustain injuries that preclude them from providing those services, so that the person can continue to be cared for. Insufficient support is given to carers in New South Wales, and this has created quite serious problems. This amendment at least recognises their inability to provide the care and ensures that the person being cared for will not suffer loss. Six hours a week is a considerable period over which to provide care, and thus the Opposition amendment to lower the threshold from nine to six hours should be supported. I commend the bill to the House.

The Hon. HENRY TSANG (Parliamentary Secretary) [5.19 p.m.], in reply: I thank honourable members for their contributions to the debate. The Civil Liability Amendment Bill provides for *Sullivan v Gordon* damages to be available in cases of the greatest need. The bill will ensure that seriously injured persons are able to recover damages for their loss of capacity to provide ongoing care for those who were dependent on them for care prior to their injury. The High Court rejected these damages in 2005 because they are inconsistent with the ordinary principles upon which damages are awarded. However, the court recognised that it is open to Parliament to decide on policy grounds that these damages should be available. The two cases referred to in the

second reading speech highlight the need for the damages to be available in some cases. The bill partially reinstates *Sullivan v Gordon* damages, but does so subject to certain limitations that are designed to address the many uncertainties the High Court identified in relation to such damages. Nonetheless, the amendments will ensure that the damages are available in cases of the greatest need.

The Government is aware of concerns about the provisions of the bill that require a threshold of nine hours per week to be met before damages can be awarded. The Government is of the view that there is a proper basis for imposing a higher threshold for *Sullivan v Gordon* damages when compared to *Griffiths v Kerkemeyer* damages because *Sullivan v Gordon* damages do not arise directly from the injury to the claimant whereas *Griffiths v Kerkemeyer* arise directly from the injury. This is why the High Court allowed *Griffiths v Kerkemeyer* damages, but overruled *Sullivan v Gordon* damages. It is clear that if the Government were to insist on the nine-hour threshold the passage of the bill would be delayed. The Government will not delay this important legislation over the threshold. There are cases now before the courts in which claimants may be denied *Sullivan v Gordon* damages if the bill is not enacted as soon as possible, which would be unacceptable to the Government.

The Hon. David Clarke questioned whether the bill would apply to children conceived by in-vitro fertilisation [IVF], given that it applies to unborn children. The definition of "defendant" will extend to unborn children who are conceived at the time that the liability in respect of which the claim is made arises and who are born after that time. However, it will not apply in the case of IVF where the claimant, or the spouse broadly defined, is not yet pregnant at the time the claim arises. To make an exception in the case of IVF where the child is not yet conceived would create an inconsistency with parents who conceive children naturally after the time the claim arises.

The High Court noted that there were considerable difficulties with these damages and that limits needed to be drawn to define the circumstances in which they can be awarded. The bill draws these boundaries, as I have outlined. Obviously if parents have not yet conceived a child they have to decide whether to proceed. I note also that in response to concerns raised during consultation, the draft bill was amended to make it clear that the availability of damages will be determined at the date the claim actually arises rather than at the date of injury. This is intended to deal with latent injuries and may be of some assistance in the cases of concern to the honourable member. As to the question raised by Reverend the Hon. Dr Gordon Moyes, we will deal with that in Committee. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 4 agreed to.

The Hon. DAVID CLARKE [5.26 p.m.], by leave: I move Opposition amendments Nos 1 and 2 in globo:

No. 1 Page 6, schedule 1 [11], proposed section 15B (2) (c) (i), line 23. Omit "9". Insert instead "6".

No. 2 Page 6, schedule 1 [11], proposed section 15B (3) (a), line 37. Omit "9". Insert instead "6".

As I indicated earlier, the Opposition supports the thrust of the Civil Liability Amendment Bill, which reinstates a *Sullivan v Gordon* head of damages. However, the bill does not apply the *Griffiths v Kerkemeyer* threshold of six hours per week of gratuitous and domestic services to the reinstated *Sullivan v Gordon* head of damages, and raises that threshold to nine hours per week. To justify this distinction, in the other place the Government argued that *Sullivan v Gordon* damages do not arise directly from the injury, whereas *Griffiths v Kerkemeyer* damages do. However, the truth is that both heads of damages are equally foreseeable, and it is important that we keep that in mind. Moreover, since 1999 insurers have collected insurance premiums on the basis of a *Sullivan v Gordon* threshold of six hours, a threshold already factored into premiums that does not impose any new or unexpected cost increase on insurance companies. The Opposition amendments are fair and reasonable. They deserve the support of the Committee.

The Hon. HENRY TSANG (Parliamentary Secretary) [5.27 p.m.]: The Government has carefully considered its position on these amendments, particularly in light of its desire to direct damages to cases

involving the greatest need. There is no principled reason for choosing the same threshold for *Sullivan v Gordon* as applies to *Griffiths v Kerkemeyer* damages. The Government remains of the view that there is a strong basis for choosing a higher threshold for *Sullivan v Gordon* damages. The High Court stated that while both types of damage involve a need for services, it is a different kind of need in each case and the recipient of the services is different. More importantly, *Sullivan v Gordon* damages do not arise directly from the injury to the claimant, whereas *Griffiths v Kerkemeyer* arise directly from the injury, which is why the High Court allowed *Griffiths v Kerkemeyer* damages, but overruled *Sullivan v Gordon* damages. The Government would prefer to retain the nine-hour threshold. However, a six-hour limit is preferable to not having legislation proceed at all. There are cases currently before the courts for which the bill is important. The Government will not delay the passage of the legislation because of differing views on the threshold. The amendments are not opposed.

Amendments agreed to.

Schedule 1 as amended agreed to.

Title agreed to.

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

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [5.31 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 *Statute Law (Miscellaneous Provisions) Bill 2006* continues the well-established statute law revision program that is recognised by all members as a cost-effective and efficient method for dealing with amendments of the kind included in the Bill.

The form of the Bill is similar to that of previous Bills in the statute law revision program. This year the Bill includes an additional Schedule to deal specifically with statute law revision amendments consequential on the enactment of the *Legal Profession Act 2004*.

Schedule 1 contains policy changes of a minor and noncontroversial nature that the Minister responsible for the legislation to be amended considers to be too inconsequential to warrant the introduction of a separate amending Bill.

The Schedule contains amendments to 40 Acts. I will mention some of the amendments to give Honourable Members an indication of the kind of amendments that are included in the Schedule.

Schedule 1 makes amendn1ents to the *Agricultural Scientific Collections Trust Act 1983* that will allow scientific and historical collections held by the Trust to include nonagricultural collections relating to fishing, forestry and mining held by the Department of Primary Industries. This will provide further protection to these collections.

The schedule makes various amendments to the *Ports Corporatisation and Waterways Management Act 1995* to change the name of the Waterways Authority to the Maritime Authority of NSW. The new name is considered to better reflect the functions of that body.

The *Companion Animals Act 1998* will be amended to ensure that "restricted dogs" include those kinds, types or breeds whose importation into Australia is prohibited under the *Customs Act 1901* of the Commonwealth. This will ensure a more uniform approach to the restriction of dangerous dogs.

It is proposed to amend the *Conveyancing Act 1919* to allow regulations to be made to provide for the refund or waiver of fees taken by the Registrar-General under various Acts. Similar amendments are proposed in respect of the *Non-Indigenous Animals Act 1987* and the *Water Management Act 2000*.

Schedule 1 also amends the *Commercial Agents and Private Inquiry Agents Act 2004* to remove a requirement that a person be under "immediate" supervision for the first year that the person holds an operator licence under that Act. Immediate supervision is onerous and costly, and unnecessary for routine activities. New licensees will still be required to be under supervision during their first year.

The *Independent Commission Against Corruption Act 1988* is amended to clarify that the Inspector of the Commission may investigate complaints about former officers of the Commission as well as the conduct of current officers. This ensures the Inspector has appropriate oversight powers.

Amendments to the *Environmental Planning and Assessment Act 1979* are proposed to clarify that declarations of development as major infrastructure and other projects to which Part 3A of the Act applies can be made in respect of a class of development as well as in respect of a particular development. That Act is also amended to clarify that, following recent amendments, the Minister and the Director-General of the Department of Planning retained their power to give orders for the enforcement of the Act in connection with matters for which they are the consent authority under Part 4.

Amendments to the *Gene Technology (GM Crop Moratorium) Act 2003* will update the names of organisations that may nominate members to the New South Wales Advisory Council on Gene Technology to reflect name changes. They also provide that nominations are to be made by the organisation itself rather than a specified officer of the organisation.

Fifth off the Schedule 1 amends the *Game and Feral Animal Control Act 2002* to exempt an employee of a person who owns or occupies land from the need to obtain a game hunting licence to hunt on the land. The amendments also allow the Game Council to delegate to its chief executive officer the administrative function of issuing identification cards to inspectors under the Act.

Amendments to the Liquor Act 1982 and the *Registered Clubs Act 1976* also provide for the delegation of functions, in those cases the amendments permit the Director-General of the Department of the Arts, Sport and Recreation to delegate his or her functions in relation to key officials and former key officials to the Commissioner, NSW Office of Liquor, Gaming and Racing. This amendment will allow appropriate administrative arrangements to be made for the exercise of these functions in the new Department.

Offences relating to release of balloons into the air under the *Protection of the Environment Operations Act 1997* are to be amended. Currently it is an offence to release 20 or more "lighter than air" balloons at the same time, and it is an aggravated offence if 100 or more balloons are released. The amendments will increase the number of balloons to 100 or more and 300 or more respectively. This arises from a recent case where, as an unforeseen consequence of this law, the release of balloons at a funeral was prevented. It is not expected to have adverse environmental effects.

Finally, an amendment to the Terrorism (Police Powers) Act 2002 will streamline the oversight function of the Ombudsman, by permitting him to combine reports on the use of preventative detention and the use of covert search warrants into a single document to be presented to the Minister for Police and the Attorney General.

Schedule 2 deals with matters of pure statute law revision consisting of minor technical changes to legislation that the Parliamentary Counsel considers are appropriate for inclusion in the Bill. Examples of amendments in Schedule 2 are those arising out of the enactment or repeal of other legislation, those correcting duplicated numbering and those updating terminology.

Schedule 3 contains statute law revision amendments that are consequential on the enactment of the *Legal Profession Act 2004.* Examples of amendments in Schedule 3 include standardising terms used in other Acts so that they are consistent with those used in that Act, and updating references to the *Legal Profession Act 1987* which is now repealed.

Schedule 4 repeals a number of Acts and Regulations and provisions of Acts. The Acts and instruments that were amended by the Acts or provisions being repealed are up-to-date and available electronically on the legislation database maintained by the Parliamentary Counsel's Office.

Schedule 5 contains general savings, transitional and other provisions. These include provisions dealing with the effect of amendments on amending provisions, savings clauses for the repealed Acts and a power to make regulations for savings and transitional matters, if necessary.

The various amendments are explained in detail in explanatory notes set out beneath the amendments to each of the Acts and statutory instruments concerned or at the beginning of the Schedule concerned. If any amendment causes concern or requires clarification, it should be brought to my attention.

If necessary, I will arrange for Government officers to provide additional information on the matters raised. If any particular matter of concern cannot be resolved and is likely to delay the passage of the Bill, the Government is prepared to consider withdrawing the matter from the Bill.

I commend the Bill to the House.

The Hon. DON HARWIN [5.31 p.m.]: The Statute Law (Miscellaneous Provisions) Bill is a miscellaneous package of minor amendments to various Acts, including the repeal of certain Acts and provisions of Acts that do not merit the introduction of specific amendment bills. This approach to handling minor revisions is consistent with well-established practice that has been carried on by this Government and previous governments. It is the most cost-effective and efficient approach to recognising the need to implement changes. However, it is always incumbent upon Opposition and crossbench members to carefully scrutinise all bills. This bill makes changes to 40 different Acts, so we need to scrutinise the bill closely to see whether any of the changes are not minor revisions and minor amendments.

Examples of the provisions of this bill are the amendments to the University of Sydney Act 1989 and the Higher Education (Amalgamation) Act 1989 to reflect the transfer of the Orange Agricultural College from the control of the University of Sydney to the control of the Charles Sturt University. The bill also amends the State Records Act 1998 to make it clear that the Cabinet Office is responsible for the management and protection of the records of a public office that has ceased to exist but whose functions have not devolved on another public office, such as a royal commission or a special commission of inquiry. It also amends the

Independent Commission Against Corruption Act 1988 to confirm that the Inspector of the Independent Commission Against Corruption may investigate complaints about the conduct of former as well as current officers of the commission. Obviously that is a very desirable change, but I am sure the House would agree that it is a minor revision to the Act.

As those three examples demonstrate, this bill is the stuff of a Statute Law (Miscellaneous Provisions) Bill. Given the speed with which the bill has been introduced and there are 40 different Acts involved, it is necessary to make a very speedy review of those 40 different pieces of legislation to ensure that this House is content with the minor changes that are provided for in the bill. In that respect, the assistance of the Legislation Review Committee, and the very fine officers who support the work of that committee, has been very helpful. This bill has been given a clean bill of health by the Legislation Review Committee. That should give all honourable members comfort that the changes to be effected by the bill are minor revisions. That is certainly the advice I have received from shadow Ministers. On the basis of their advice since the bill was passed by the lower House, I advise this House that the Opposition will not oppose the bill.

The Hon. Dr PETER WONG [5.35 p.m.]: I support in principle the Statute Law (Miscellaneous Provisions) Bill, which effects minor and non-controversial amendments to various Acts of the New South Wales Parliament, amends certain Acts and instruments for the purpose of effecting statute law revision, repeals certain Acts and provisions of Acts, and makes other provisions of a consequential or ancillary nature. This bill continues the well-established statute law revision program that is recognised by honourable members as a cost-effective and efficient method of dealing with minor technical amendments and precludes the necessity of introducing individual bills. This position is maintained on the belief that such changes will not have any unintended consequences. Close scrutiny of the changes is needed. I trust the Government will take action to reverse any changes that it did not anticipate. I commend the bill to the House.

Mr IAN COHEN [5.36 p.m.]: The Greens do not oppose the Statute Law (Miscellaneous Provisions) Bill and do appreciate the comments that have been made relating to the role of this legislation in amending minor aspects of a large number of bills. However, the Greens are concerned about two parts of the bill. I will be moving amendments at the Committee stage to remove those parts from the bill. The first deals with the Environmental Planning and Assessment Act and the second deals with the Protection of the Environment Operations Act. The bill amends the Environmental Planning and Assessment Act by amending Section 75B by inserting the words "or a class of" after "particular" in subsection (1).

Under recent changes to the Environmental Planning and Assessment Act this year, the Minister was given broad discretionary powers over the assessment of projects that have been deemed to fall under new part 3A of the Act. The changes gave the Minister powers to declare individual developments to be under part 3A, but not whole classes of development. The Minister went beyond his powers by using a State environmental planning policy to declare a long list of classes of development as being under part 3A. The flaw in the hastily prepared Environmental Planning and Assessment Act could mean that the major projects State environmental planning policy is invalid.

The Minister is trying to fix the mistake with a clause that is hidden in this housekeeping bill that is before the House. He is attempting to expand his powers through the Statute Law (Miscellaneous Provisions) Bill, which is a bill that is intended to make minor and non-controversial changes. The amendment is controversial and should be withdrawn. I understand the Government has agreed to do that. Such an amendment requires a significant amount of public consultation. The other aspect of this bill causing the Greens concern is the Protection of the Environment Operations Act that was amended in 2000 after lobbying from a young girl, Bethany Henderson, to limit the number of balloons being released. I am sure many honourable members would remember a very high profile public campaign by that young woman. The Hon. Carmel Tebbutt had this to say in her second reading speech at the time:

> The fact is that latex balloons can pose an environmental threat. I am advised that during a study into marine debris on New South Wales beaches which was funded by the New South Wales Environmental Restoration and Rehabilitation Trust, the carcasses of two sea birds were found with balloons entwined around their chests and abdominal cavities.
>
> Latex and other rubber products have plastic qualities. Latex is a natural polymer. Whatever its properties or qualities, it takes a great deal of time to break down.

She continued:

> Many New South Wales citizens want the Government to do more to control the blight caused by litter and they also want action to protect wildlife from unnecessary harm.

I do not believe the situation has changed. Balloons still pose a threat to wildlife, especially marine life and birds, and are still the cause of litter. I see no reason for this amendment. I believe there were no mass balloon releases as part of the Sydney Olympic Games in 2000 and the Games obviously were still a success. People are able to celebrate in an environmentally sustainable manner. Increasing the number of balloons that could be released without penalty would be a step backwards for the environment and should not occur. The Greens do not oppose the Statute Law (Miscellaneous Provisions) Bill but will seek to redress those issues to which I referred earlier.

Reverend the Hon. Dr GORDON MOYES [5.41 p.m.]: I speak on behalf of the Christian Democratic Party on the Statute Law (Miscellaneous Provisions) Bill, which is intended to effect minor and non-controversial amendments to various New South Wales Acts. I agree with, and accept, the point made earlier by my colleague Mr Ian Cohen relating to some of the amendments that ought to be withdrawn and re-established. The Christian Democratic Party accepts the statute law revision program established back in 1984 as a cost-effective and efficient mechanism for making such amendments. With the exception of the amendments that were mentioned earlier, we support this bill.

The Hon. HENRY TSANG (Parliamentary Secretary) [5.42 p.m.], in reply: I thank all honourable members for their contribution to and support for the Statute Law (Miscellaneous Provisions) Bill. The Government acknowledges the Greens proposal to remove amendments to section 146E of the Protection of the Environment Operations Act 1997 in schedule 1.24 [3] and [4]. That proposal would have increased the number of balloons that could be released at ceremonial celebrations from 20 to 100 without incurring penalty. It would also have increased the number of balloons from 100 to 300, which constitutes an aggravated offence.

The Government's proposal will remove undue restrictions on ceremonies such as funerals, which have been affected in New South Wales. However, a number of honourable members have raised concerns. It is the Government's policy to withdraw from the bill any proposals that cause concern, therefore, it will not object to the Greens proposal. The Government also acknowledges the Greens proposal to remove from the bill proposed amendments to section 75B of the Environmental Protection and Assessment Act 1979 in schedule 1.10 [1]. The Government's proposal would clarify that the Minister may declare that all projects of a described class are declared to be major infrastructure projects and therefore subject to ministerial control under part 3A of the Act.

The provision as currently worded may be interpreted as requiring the Minister to specify particular projects, which was not intended. The proposed clarification of this provision is minor and intends to ensure that approvals for major infrastructure projects are not undermined by technical challenges so as to require ministerial approval. However, again some honourable members have raised concerns. In accordance with the Government's policy the Greens amendments will not be opposed. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 7 agreed to.

Mr IAN COHEN [5.46 p.m.]: I move Greens amendment No. 1:

No. 1 Page 10, schedule 1.10 [1], lines 10 and 11. Omit all words on those lines.

This amendment seeks to remove the proposed amendment in the bill which would insert the words "or class of", thereby expanding the developments from particular developments to classes of developments to be under part 3A of the Environmental Planning and Assessment Act. As I have already stated, essentially the Government is attempting to expand the Minister's powers through this bill. Statute law bills are intended for minor and non-controversial changes. As this amendment is controversial it should be omitted from the bill. I commend the amendment to the Committee.

The Hon. HENRY TSANG (Parliamentary Secretary) [5.46 p.m.]: The Government does not oppose Greens amendment No. 1.

Amendment agreed to.

Mr IAN COHEN [5.47 p.m.]: I move Greens amendment No. 2:

No. 2 Page 20, schedule 1.24 [3] and [4], lines 25–29. Omit all words on those lines.

This amendment seeks to remove the provisions for increasing the number of balloons that could be released without penalty from 20 to 100 and from 100 to 300 for an aggravated offence. Released helium balloons pose a threat to wildlife, especially marine life and birds, and are the cause of litter. I see no reason for the increase in the number of balloons to be released without penalty. People should be able to celebrate in an environmentally sustainable manner. Increasing the number of balloons that could be released without penalty would be a step backwards for the environment. I referred earlier to the well-publicised and successful lobbying of a young woman at the time of the introduction and passage of this legislation. Any increase in the number of balloons would be a significant step backwards from both an environmental and a social justice perspective. I commend the amendment to the Committee.

The Hon. HENRY TSANG (Parliamentary Secretary) [5.48 p.m.]: The Government does not oppose this amendment.

Amendment agreed to.

Schedule 1 as amended agreed to.

Schedules 2 to 5 agreed to.

Title agreed to.

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

COAL AND OIL SHALE MINE WORKERS (SUPERANNUATION) AMENDMENT BILL

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [5.50 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 incorporate the second reading speech in *Hansard*.

Leave granted.

Many coal mine workers in our State are disadvantaged in two vital areas of employment. The bill brings equity for our coal mine workers by amending the Coal and Oil Shale Mine Workers (Superannuation) Act 1941 to abolish compulsory retirement at age 60 and ensure they receive employer superannuation contributions of at least the community standard paid to other workers.

Introduction of the Coal and Oil Shale Mine Workers (Superannuation) Act 1941 implemented key recommendations of the 1940-1941 Royal Commission of Inquiry into mine safety. Accordingly, retirement was made compulsory at age 60 and a retirement pension scheme was established for coal mine workers and their widows.

Compulsory age retirement still affects most coal mine workers. The Act requires them to cease employment in the New South Wales coal industry when they reach 60 years of age. Because of the broad definition of a mine worker under the Act, this requirement affects industry employees in transport and ancillary operations, as well as those engaged directly in the extraction of coal.

So, for example, a truck driver must, on turning 60, end a longstanding employment with a coal operator and seek employment elsewhere, maybe in another town or state. He may find similar employment as a truck driver, but not in the coal industry, not in New South Wales.

Abolition of compulsory retirement at age 60 will provide coal mine workers in New South Wales with similar options to the rest of the community. They may still retire at or before reaching 60, but they will also be able to choose to continue working past the age of 60 so that their skills and experience are retained by the New South Wales coal industry.

The change is consistent with both State and Commonwealth Government policy for the elimination of age discrimination and encouragement for older employees to remain in the workforce. It is anticipated that the initial impact of the change will not necessitate increased premiums to the Coal Mines Insurance Scheme covering these workers.

I now turn to the proposed changes to employer superannuation contributions for coal mine workers.

The original statutory pension scheme for coal mine workers was closed to new members in 1978 and amalgamated with later lump sum schemes. In 1995, at the request of the industry parties, the contribution arrangements were retained in the Act while the scheme rules were largely transferred to a Trust Deed. The scheme now mainly operates under Federal superannuation regulation, with a Corporate Trustee comprising employer and employee representatives.

Over recent times, the industry parties have sought to address the scheme's funding liabilities. Various industry agreements have prescribed contribution arrangements which have in turn been incorporated into the Act.

The required contribution under the Act is a complex combination of a fixed amount plus prescribed percentages of a Reference Rate determined by the Corporate Trustee, and payments stipulated in the scheme's Trust Deed.

Unlike most current superannuation payments made on behalf of employees, the resulting contributions do not reflect or fluctuate with the coal mine worker's individual salary. They produce a standard flat weekly contribution amount of about $126 per week which, for many coal mine workers, is below the community standard of nine percent of their weekly ordinary time earnings.

Honourable members, for many years the provision of superannuation for Australian workers was piecemeal and largely voluntary on the part of employers. In 1992, the Hawke-Keating Labor Government established a universal superannuation system through the Federal superannuation guarantee. Since its inception, the rate of contributions has increased and most employers now make contributions at the rate of nine percent of the employee's salary, generally the employee's ordinary time earnings. This is the community standard.

Superannuation for coal mine workers has not kept pace with that of other workers. Many coal mine workers in New South Wales receive employer superannuation contributions below the community standard. They receive less than nine percent of their ordinary time earnings. Often, we are advised, they are missing out on superannuation contributions of $30 or more each week, a significant loss to their retirement savings.

To bring equity to New South Wales coal mine workers, a statutory 'safety net' is to be placed in the contribution arrangements of the Act equal to the community standard.

From 1 July 2006, no coal mine worker in New South Wales is to receive contributions that are less than the "safety net" of nine percent of their ordinary time earnings.

Payments required under the Act to finance defined benefit liabilities and pension indexation are not to be included in, or affected by, the "safety net".

The "safety net" is a practical solution to coal mine workers' concerns about their retirement savings and follows extensive consultation with mine owners and the Construction, Forestry, Mining and Energy Union. I thank these bodies for their input and support.

The last amendment moves the timing of contribution payments to the Fund to a monthly basis. At the request of the Corporate Trustee, employers will be required to make remittances to the Fund no later than twenty-one days after the end of the month for which the mine worker was employed.

I commend the Bill to the House.

The Hon. RICK COLLESS [5.51 p.m.]: The Opposition will not oppose the Coal and Oil Shale Mine Workers (Superannuation) Amendment Bill. The purpose of the bill is to abolish the current compulsory retirement age for coal mine workers at age 60 years. The bill ensures that coal mine workers receive superannuation contributions at the community standard of at least 9 per cent of their ordinary time earnings. In the coal industry it is compulsory for mine workers to retire at 60, including not only those involved in extracting the coal but also the ancillary workers such as truck drivers. The bill allows those ancillary workers to choose to continue to work in the New South Wales coal industry beyond the age of 60, in line with retirement options that are available to employee groups throughout the State.

Under the current arrangements, negotiated as part of industry agreements in 1999, mineworkers receive a standard flat amount as superannuation of about $126 per week; that does not fluctuate or change with the mineworker's individual salary. The Construction, Forestry, Mining and Energy Union estimates that many mineworkers are missing approximately $30 per week as superannuation contributions—and ultimately that will significantly affect their retirement packages. The change places a safety net in the contribution arrangements to ensure that as from 1 July 2006 no mineworker will receive superannuation contributions less than 9 per cent of their ordinary time earnings.

The community standard of 9 per cent ordinary time earnings is the minimum rate currently required for most workers, and for all workers from 1 July 2008 under Federal superannuation guarantee legislation. The safety net will not include or affect payments currently made to finance the scheme's defined benefits and pension indexation. This bill will not affect mineworkers who currently receive contributions of 9 per cent ordinary time earnings or more. The industry has some concerns about the bill. One concern is that the abolition of compulsory age retirements is expected to increase the cost of annual workers compensation claims and outstanding claims liability. It is anticipated that owing to unusually high investment returns, the Coal Mines Insurance Scheme can provision the initial impact of the change without increasing premiums.

That issue will need to be managed. Although many mineworkers can physically continue to work after age 60, the occupational health and safety issues arising from dangerous jobs being occupied by older workers needs to be kept in perspective, and will need to be managed by the industry. Although implementation of the contributions safety net of 9 per cent ordinary time earnings is estimated to cost the industry about $6 million per annum, it is expected to be significantly less, because many mineworkers already receive at least that amount through various enterprise agreements. I am unaware of the exact number of those mineworkers but in any case the change will be required by Federal legislation from 1 July 2006. The Opposition will not oppose the bill. It is simply a matter of bringing coalmine industry workers into line with other employee groups throughout the land.

The Hon. Dr PETER WONG [5.56 p.m.]: I support the Coal and Oil Shale Mine Workers (Superannuation) Amendment Bill, which amends the Coal and Oil Shale Mine Workers (Superannuation) Act 1941 and abolishes the compulsory retirement age of 60 for people in the coal mine industry, and ensures that no coal mine workers in our State receive superannuation contributions less than the safety net of 9 per cent of their ordinary time earnings. I note that the changes proposed in the Minister's second reading speech in the other place are consistent with both State and Commonwealth government policy for the elimination of age discrimination and for the encouragement of older employees to remain in the workplace without necessitating an increase in insurance premiums to cover those workers.

At a time when the costs of living and life expectancy have increased dramatically, the ability to work within the industry for a couple of more years may have a significant impact on a family and its retirement plan. In relation to superannuation contributions, the safety net of 9 per cent of an employee's ordinary time earnings is the most practical solution, as is the case in most employment places throughout Australia. I commend the bill to the House.

Ms LEE RHIANNON [5.58 p.m.]: The Greens are happy to support the Coal and Oil Shale Mine Workers (Superannuation) Amendment Bill and we congratulate the Government on introducing it and on positively responding to the campaign of the Construction, Forestry, Mining and Energy Union [CFMEU] for superannuation parity. The bill will ensure that coal mine workers receive superannuation contributions at the community standard of at least 9 per cent of their ordinary full-time earnings. This is necessary because, under the current negotiated arrangements, mineworkers receive a standard flat weekly amount of superannuation, which may in some cases be less than 9 per cent. Under the present scheme some mineworkers are down about $30 a week.

The logic for this reform seems overwhelming. It is disturbing to think that any worker in New South Wales would be receiving less than the mandatory 9 per cent of earnings. We know that miners in particular often work in dangerous conditions and they deserve generous entitlements. That is a serious anomaly in the industrial relations system and the Government is to be commended for fixing it. As to the other element of the bill, the abolition of compulsory retirement for coal mine workers at age 60, this is also to be welcomed. If workers in other areas of employment, including other blue-collar physical work, are allowed to work for as long as they choose, why should coal mine workers be treated differently?

It is an individual right to be able to choose when one retires—a right that ought not be denied to any one particular group. Of course, workers may still choose to retire at 60, and I can obviously understand why they would; but it should not be compulsory. I congratulate the CFMEU and the Government on this constructive legislation. Thankfully, the Government co-operated with the relevant union in this case. That does not happen often these days.

The co-operative approach embodied in this bill stands in stark contrast to what I witnessed yesterday in the Upper Hunter, where I met miners at United Colliery, who are engaged in what these days is called a "process stoppage" but what some would call a "strike". The miners have made history in that they are the first workers to take industrial action under the new WorkChoices regime. They have made some extraordinary achievements and I hope that the company, Xstrata, will come to the party and do the right thing. Last financial year Xstrata made a profit of $100 million. The mineworkers are trying to negotiate an enterprise agreement that would involve expenditure of not more than 1 per cent of the company's profit for last year. It is pretty tragic that the company has not come to the party. But I congratulate the workers involved and urge Xstrata to do the right thing. It should settle the enterprise agreement negotiations quickly and not seek simply to boost its profit to an even more ridiculous level.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [6.00 p.m.]: I support the Coal and Oil Shale Mine Workers (Superannuation) Amendment Bill. I believe workers should be able to choose when they will

retire. I worked at Sydney Water when legislation preventing discrimination in the workplace on the grounds of age was enacted. Mining is hard, physical work. I believe if we abolish compulsory retirement we must introduce fitness criteria in the workplace to ensure that those employees who wish to work beyond the age of 60 years are capable of doing so. For many years 60 years was the traditional age of retirement. Interestingly, in the olden days, as it were, the retirement age for blue-collar workers was 65 and for white-collar workers it was 60. Obviously in arriving at those ages no account was taken of the physical exertion that the work required. Blue-collar workers generally work harder than their white-collar colleagues. They often knock their bodies around a lot more and suffer tobacco- and alcohol-related lifestyle diseases. Certainly in the past they had a harder row to hoe physically and were subjected to increased medical risk factors.

When compulsory retirement was abolished at Sydney Water I developed—in co-operation with Professor John Brotherhood from the University of Sydney, who was involved in physical performance testing—a simple screening test to gauge worker fitness. When I started at Sydney Water cardiologists performed $400 tests, including blood work, on the executives but the workers had absolutely no health screening. I abolished the $400 tests and introduced $40 tests for everybody in the place, including the managing director. Nurses conducted the tests in the tearoom, and the whole shebang was over for each worker in 20 minutes. That process proved to be much more cost effective. The testing also involved a discussion of lifestyle factors, nutrition, weight, blood pressure and so on and many people changed their behaviour as a consequence. The depot arranged to hold physical activities for workers during their lunch hour, which it was agreed would not impact adversely on worker productivity.

The new regime resulted in marked changes in worker health and behaviour. The quit rates soared. I remember having long discussions about what constituted reasonable alcohol consumption. I found it quite enlightening to hear workers say, "Look, mate, if you go to the pub at 3.30 and stay there till 8.00 you're going to drink one beer every 20 minutes, aren't you? You have a couple to start off and then one every 20 minutes. How can you possibly have a social life and drink fewer than 12 schooners a day?" People nodded sagely and agreed that that was a reasonable proposition. They rejected the idea of a safe alcohol consumption rate of three or four standard beers and one day alcohol free a week. It was a clash of culture.

Only one worker, a fitter tradesman with chronic emphysema, decided to retire following testing. He worked in a pit and had to come up for air after tightening or loosening one nut. Several other workers were redeployed. During screening it was discovered that one fellow had butter claudication, and his aorta was later replaced. There was only one complication: a worker who was haemophiliac claimed that the squat test caused his ankle to bleed internally. We did not have a protocol for haemophiliacs—perhaps we should have had one. The fellow had suffered many bleeds but he blamed that particular one on the squat test. We tested some 4,500 people and brought about a culture change at Sydney Water regarding fitness. Those who might think this story is irrelevant should consider that State Rail did not conduct similar testing—I introduced the regime in Sydney Water in 1991 or 1992—and a train driver suffered a heart attack, which led to the Waterfall train crash. If we allow people to work beyond the age of 60, we must assess their health according to objective criteria. Those criteria must be negotiated and set fairly, with humanity, in order to avoid industrial disputation. The Australian Democrats support the legislation, which contains just superannuation provisions.

The Hon. HENRY TSANG (Parliamentary Secretary) [6.07 p.m.], in reply: I thank honourable members who contributed to the debate on the Coal and Oil Shale Mine Workers (Superannuation) Amendment Bill. The proposed amendments to the Coal and Oil Shale Mine Workers (Superannuation) Act 1941 address two vital areas of employment affecting New South Wales coal mine workers. The abolition of compulsory age retirement will mean that New South Wales coal mine workers no longer have to cease employment in the coal industry when they turn 60. Like the rest of the community, they will have the option to choose to continue working in their industry beyond the age of 60. The bill will also ensure that coal mine workers in our State receive superannuation contributions at the community standard rate paid to most other Australian workers. A safety net will be placed in the contributions provisions of the Act. From 1 July 2006 no coal mine workers in New South Wales will receive superannuation contributions that are less than the safety net of 9 per cent of their ordinary time earnings. The bill also changes contribution remittances from the employer's pay cycle to a monthly basis at the scheme trustee's request. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

INTERPRETATION AMENDMENT 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.

The Interpretation Act contains a number of provisions that are designed to guide the interpretation of legislation. An Act relating to the interpretation of legislation was first enacted in 1897 and was comprehensively updated in 1987. This bill contains a number of miscellaneous amendments to that important legislation. Significantly, the bill contains amendments to modernise the publication process for making statutory rules and improve public access to legislation in New South Wales. Currently, under the Interpretation Act, when statutory rules are made, the full text of the rule is required to be published in the *Government Gazette*. I seek leave to incorporate the remainder of the second reading speech in *Hansard.*

Leave granted.

While the Gazette contains an historical record of all statutory rules made, there are limitations as to the manner in which instruments can be published. Searching in the Gazette for rules in force, and any amendments made, is also a complex task.

Parliamentary Counsel has proposed amendments to the *Interpretation Act* to provide for the online gazettal of new statutory rules on the New South Wales Government legislation website maintained by the Parliamentary Counsel.

The amendments will apply to regulations, proclamations commencing or amending Acts, environmental planning instruments, court rules and by-laws approved by the Governor.

Official publication will now occur online instead of in the printed Gazette.

However, a copy of the full statutory rule will continue to appear in the Gazette to maintain public access to the information for those who do not have electronic access. This will be reviewed over time.

Official publication online of statutory rules already occurs in the Commonwealth, Tasmania and the Australian Capital Territory. New South Wales and Western Australia are the only jurisdictions in Australia that still publish the full text of statutory rules in a printed Gazette.

There are a number of benefits of the proposal. Online publication will provide for enhanced publication capabilities. For example, it will now be possible to provide for the colour publication of instruments and non-standard size publication.

Colour publication will be particularly useful for maps which are attached to environmental planning instruments which are not, in many cases, able to form part of the planning instrument itself because of current limitations.

As a result of these amendments the planning instruments and associated maps will be able to be accessed on a single site.

The New South Wales Government legislation web site also has advanced search and indexing capabilities.

Changes will be made to the New South Wales Government legislation website so the date of official publication of a statutory rule will appear on the instrument when it is accessed or downloaded.

Official publication on the New South Wales Government legislation web site will occur on Fridays which is the same day that the Gazette is currently published. It will also be possible to publish on days other than Friday if earlier publication is required, as is the case with special supplements of the Gazette.

The proposal is another step in improving online access to statutory instruments.

While the amendments in this bill are limited to statutory rules and do not include statutory instruments such as orders and guidelines, item [9] provides for regulations to be made so that other statutory instruments can be made in the future by way of online publication.

In addition, as future legislation is drafted, the Parliamentary Counsel will be able to advise agencies as to whether a proposed power to make a particular statutory instrument should provide for official publication on the New South Wales Government legislation web site.

Over time access to these other types of statutory instruments will be improved and it will possible to determine from a single web site which instruments are in force, those that have been repealed and those which have been amended.

The bill also includes provisions to provide a statutory basis for the New South Wales Government legislation web site.

Item [11] will enable the Parliamentary Counsel to certify that the form of legislation downloaded from the web site is correct thereby providing the same official status for electronic versions of legislation as paper reprints certified in accordance with the *Reprints Act*.

This certification will be able to be provided in respect of legislation in force at the date of download and also in respect of historical versions available online.

This will reduce in the future the need for courts, government agencies and others to rely on paper reprints as the authoritative versions of the law.

Certification of online versions will not commence immediately as software development is currently being undertaken to provide the New South Wales Government legislation web site with the required functionality to ensure that "authentic" versions are downloaded.

Such a system is already operating successfully in the Australian Capital Territory.

The bill also updates the provisions of the *Reprint Act* and transfers them to the *Interpretation Act*. Those provisions currently authorise the official paper reprint program for the publication of legislation.

The amendments make Parliamentary Counsel, rather than the Attorney General, responsible for authorising reprints. In practice, the Parliamentary Counsel currently exercises this function under delegation pursuant to the existing *Reprints Act*.

It should also be noted that the provisions of the *Reprints Act* that authorise direct statute law amendments to be made to legislation in the course of reprinting an Act are not being re-enacted.

Minor statute law amendments are now made by way of the Statute Law Revision Bill that is enacted in each Session.

Item [1] deals with references in Acts to "statutory bodies representing the Crown".

Prior to a recent decision of the High Court, the view was taken that wherever New South Wales legislation states that a statutory body is "for the purpose of any Act, a statutory body representing the Crown", such a body enjoys the status, immunities and privileges that are conferred on the Crown.

This view was based on the High Court's decision in W*ynyard Investments v Commissioner of Railways*. Parliamentary Counsel advises that the statute book has been drafted in reliance on this earlier decision.

In the case of *McNamara v CTTT*, the High Court effectively reversed its previous decision in *Wynyard Investments* and held that the Crown's immunities do not automatically extend to such bodies.

As a result of the High Court's decision, a number of adverse consequences could arise because statutory corporations will no longer have the benefit of the immunities and privileges ordinarily afforded to the Crown.

Accordingly, the amendment confirms that the interpretation adopted in the *Wynyard Investments* case continues to apply so that a statutory body which is expressed to represent the Crown has the status, immunities and privileges of the Crown.

The amendment will have retrospective effect to restore the position prior to the High Court's more recent decision. It is important to point out that item [12] will ensure the successful appellant in the High Court's case retains the benefit of her victory.

Item [5] amends the *Interpretation Act* to make it clear that a power to appoint different days for the commencement of an Act includes a power to appoint different days for the repeal of different provisions of a previous Act which is to be repealed on the commencement of the Act.

Currently such a provision is generally included in major bills on a case by case basis. This provision will be of particular assistance where large, complex Acts are to be repealed in a staged manner and are replaced by new comprehensive legislative schemes.

These changes will improve the accessibility of the laws of New South Wales. Instruments published on the database will be fully indexed, and it will be easier to tell what laws are in force and which ones have been repealed.

We will also be able to do things we have not been able to do before including officially publishing maps and other documents in full colour.

I commend the bill to the House.

The Hon. DON HARWIN [6.11 p.m.]: I lead for the Opposition on the Interpretation Amendment Bill, which we will not oppose. The bill amends the Interpretation Act 1987 to give more formal authority and status to online legislation, thereby improving public access to legislation and increasing efficiency and accuracy. The current Act requires that when statutory rules are made, the full text of the rule be published in the *Government Gazette*. This arrangement ensures that the *Government Gazette* remains comprehensive, but can make it difficult for people to find the current wording of a statute, regulation or rule, especially those that are subject to frequent amendment. Most other jurisdictions in Australia have moved to provide for the official online publication of new statutory rules as this allows for the community to access up-to-date rules in the most readable manner.

The search functions of online listings are in themselves of tremendous assistance to users, and are an accurate and efficient way to access current legislation. This is a very worthwhile change. The bill seeks to bring New South Wales into line with other jurisdictions by providing for new statutory rules to be published on the New South Wales Government legislation web site, which is maintained by Parliamentary Counsel. The amendments will apply to regulations, proclamations commencing and amending Acts, environmental planning instruments, court rules and by-laws approved by the Governor. The amendments will not, however, cover statutory instruments such as orders and guidelines. Perhaps the Minister in his reply will indicate why that is not the case. I was somewhat surprised by that omission. I should have thought that would have been a most useful inclusion.

The bill seeks also to provide a statutory basis for the New South Wales Government web site and allows for the provisions of the Reprint Act to be updated and transferred to the Interpretation Act. Currently the Attorney General is responsible for authorising reprints, but this function is actually exercised by Parliamentary Counsel under delegation. The changes proposed in this bill will enable Parliamentary Counsel to certify that the form of legislation downloaded from the site is correct. This will prevent the need for courts and government agencies to rely on paper reprints as authoritative versions of the law, and will dispense with the need for Parliamentary Counsel to be acting under delegation. The publication of authoritative, up-to-date statutes, regulations and rules on an official web site, with comprehensive search capabilities, will significantly improve public access to legislation as well as enhance efficiency and accuracy.

I note also that the Act opens up section 23 of the Interpretation Act to a fairly straightforward and minor amendment. The Opposition does not oppose the amendment, however, the amendment brings into sharp relief the proclamation of legislation, a matter about which I have a number of personal views, which I would very much like to outline to the House. I note the Hon. Dr Arthur Chesterfield-Evans has circulated an amendment that he will seek to move in Committee that goes directly to commencement of legislation. When I was a member of the Legislation Review Committee I spent a great deal of time being vigilant on that issue. Many honourable members believe that the position of Parliament is being undermined by the fluidity of delegating to the Executive Government the authority to commence legislation. As parliamentarians we must be very cautious about that.

The proposed amendment of the Hon. Dr Arthur Chesterfield-Evans provides an automatic commencement after one year of the date of royal assent to an Act. I have to say I regard 12 months as immensely generous. At the Federal level an Act is automatically proclaimed after six months, and I contend that that is a far more appropriate model for us to adopt. There will probably be some speculation about whether this amendment is outside the leave of the bill, although it could be argued that because section 23 is being opened up to a minor amendment the proposed amendment of the Hon. Dr Arthur Chesterfield-Evans could be in order. The Opposition does not believe, however, despite my personal arguments in favour of clarification of the issue, that this backdoor approach in the context of a fairly minor revision of the Interpretation Act, albeit a very welcome one, is the right way to implement such a significant change. The Opposition will not support the amendment, but it is certainly an issue to which it will be worthwhile returning.

When I read the *Legislation Review Digest* listing on this bill, I was shocked by the absence of any reference to commencement, and that there is not one word of comment, which is a poor reflection on the committee. It certainly would not have happened in my day, as they say. The Hon. Peter Primrose and I, as members of that committee, had many battles about commencement. In fact, the only vote that the Legislation Review Committee ever held during my three-year tenure as a member of that committee related to whether bill digests should comment about the fact that legislation does not specify its commencement. I used to insist that the digest always made such a comment, but regrettably, along party lines, with the Hon. Peter Primrose as the committee chair, he adopted the administrative policy of not commenting on the commencement of legislation.

That leads to a matter that is important to the sovereignty of Parliament, that of commencement of legislation no longer warranting a mention in the *Legislation Review Digest*. I always say nice things about committee officers. I do not know what happened with the committee on this occasion, because I am no longer a member of it, but I hope committee officers did not put up such a paper. I hope this proposition was an amendment of what was put up by committee officers. It would reflect poorly on those officers if they did not put something before the committee about commencement. There should have been some comment in the digest about the change, albeit minor, in the commencement issue. In fact, the bill proposes only a minor change. The digest speaks only about the very welcome changes on the electronic publication of legislation. It does not in any way highlight the change regarding commencement of legislation, which I think it had a duty and obligation to outline. With those few personal observations, I reiterate that the Opposition will not oppose the bill.

Ms LEE RHIANNON [6.21 p.m.]: The Greens are happy that many of the current functions of the *Government Gazette* will be transferred online to the *www.legislation.gov.au* web site. We welcome this development and congratulate the Government on bringing it forward. That aspect of the bill is most welcome. The more information we can get online, the better. It is better for the functioning of this Parliament and better for the public, who more and more are interacting with and following debate in this place. That is so because it is easier to follow events when the debate is on the web site.

The online delivery of key information such as legislation and regulations really improves the quality of democracy in New South Wales, because it enables the public to access information easily that previously was available only to members of Parliament and select others. I acknowledge that much of that information was otherwise available to the public: for instance, *Hansard*. However, in the seven years that I have been in Parliament I have noted an enormous increase in the number of people who engage with this place. Availability of information to the public takes on a whole new meaning when it is published on the web site. Rather than having to obtain a copy of the *Government Gazette* and flick through its many pages, any person across New South Wales with access to the Internet will be able to see the latest announcements when this web site is set up.

This really is opening up the legislative process to the people. It builds on previous similar improvements, such as putting *Hansard* on line, as occurred a few years ago. As I am sure other members have experienced, it is now quite common for members of the public to follow parliamentary debates quite closely, and to call or email members' officers the following day about something that members have said. The cumulative impact of these changes is that now the community can follow the parliamentary process very carefully and be extremely well informed, and that is something we should all welcome. We are all held to a higher standard, and our democracy is enhanced as a result.

With regard to the other aspect of the bill, however, the attempt to overturn the High Court's decision in *McNamara v Consumer Trader and Tenancy Tribunal & the Roads and Traffic Authority*, is most concerning to the Greens. We are opposed to this aspect. The arguments we have received from the Law Society on this issue are convincing. Generally speaking, the Greens will not support retrospective legislation, and in this case the Government has not made out arguments to support this extreme step. More generally, we do not see anything wrong with the High Court's majority decision in McNamara's case. There are public policy advantages in allowing the courts the flexibility to determine whether or not Crown immunity can be invoked on a case-by-case basis.

The Government has developed a bad habit of legislating whenever it loses in court, as we saw with the Collex Waste case and the Government's arrogant and presumptuous actions. In this case the High Court was right, and the Government should live with that decision. The Greens see great merit in opening up the processes that occur in this place and with government being more accessible on the web. We should also consider that much of the information provided to members has a real place on the web. The pecuniary interests booklet is one such piece of information that should be put on the web as soon as possible. I know that many members of the public are very interested in that publication.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [6.25 p.m.]: I have asked questions and spoken in this House on two occasions about the amount of legislation that this Government has not proclaimed either in full or in part. The listing of unproclaimed legislation in this State was an initiative of my predecessor Ms Lis Kirkby and was introduced in 1999. The most recent list of unproclaimed legislation, dated May 2006, shows that 88 Acts or parts of Acts have not been put into effect. My concern is that in many instances the parts of Acts not proclaimed were amendments passed in this House that the Government opposed. That is anathema to the concept of responsible democracy, whereby the will of the Parliament can be so easily frustrated by Executive Government.

The most celebrated example of this frustration of the will of Parliament was an amendment to the Motor Accidents Compensation Act of 2001. The Carr Government did not proclaim section 61 (6) of the Motor Accidents Compensation Act 1999 after a former member of the Legislative Council, Mrs Helen Sham-Ho, introduced the amendment with the unanimous support of members from both sides of the Parliament. In a speech to the House on 20 May 2003 I stated that I would propose an amendment to ensure that legislation passed by this House was enacted in a timely fashion. I will move that amendment in Committee so that if a bill is not commenced within 12 months of assent, the Act will automatically commence. I feel this will serve well responsible democracy in New South Wales.

It has been alleged that some aspects of a bill have not been proclaimed because administrative structures have to be put in place, or that they are dependent on changes in procedures or protocols that

departments have to implement, such as the filling of positions. That sounds fine, but the fact is that the Government is not proclaiming amendments that it loses on the floor of this Chamber. In effect it is saying, "The Parliament is a complete farce, and we will do exactly as we please in not proclaiming as law parts of bills that we do not like." It is difficult enough to get proposals accepted in this House, with the Government bullying or otherwise dealing with members on the crossbenches, or all too frequently the Government and the Opposition voting together. I believe the Government seeks to downgrade the value of the contribution of this House.

As I have said before, the lower House is something of a rubber stamp. The Government gets about 43 per cent of the vote, but has more than 50 per cent of seats because in practice single-member electorates and the optional preferential voting system turn much of the voting in New South Wales into a first past the post system. Effectively the Government, with 43 per cent of the vote, gets 100 per cent of power in the lower House, then spends its time trying to downgrade the power of the upper House. While this may be a very clever manoeuvre on the part of the Government, which can claim to be part of a democracy because it can be replaced at the end of four years, the people feel alienated from their governments.

I think the Australian people are very sceptical of politics and politicians because they know the Premier and his coterie operate almost as an elected despot for four years and can do almost as they like. If amendments that occasionally are made in this House are not to the Government's liking, or are against its will, they are not proclaimed, and that is an absolute travesty of democracy. My amendment would require that such amendments are proclaimed within 12 months, or the Government would have to return to the House if it wished to delay the implementation of amendments that it dislikes. Thus it would require the approval of the House for such delay. This is a very significant amendment, and I commend it to the House.

The Hon. HENRY TSANG (Parliamentary Secretary) [6.29 p.m.], in reply: I thank honourable members for their contributions to the debate. The bill contains a number of miscellaneous amendments to the Interpretation Act. Significantly, the bill contains amendments that will modernise the publication process for making statutory rules, make it easier to search for rules and improve public access to legislation in New South Wales. The bill provides for the online gazettal of new statutory rules on the New South Wales Government legislation web site instead of the printed *Government Gazette*. However, a copy of the full statutory rule will continue to appear in the Gazette to maintain public access to the information for those who do not have electronic access. The bill also deals with reference to Acts in statutory bodies representing the Crown. The bill confirms that a statutory body that is expressed to represent the Crown has the status, immunities and privileges of the Crown.

In response to the question posed by the Hon. Don Harwin, the bill does not apply to orders and guidelines because not all of these are of a legislative nature, not all of these are suitable for online publication. Although the amendments in the bill are limited to statutory rules and do not include statutory instruments such as orders and guidelines, item [9] inserts new section 44, which provides for regulations to be made so that other statutory instruments can be made in the future by way of online publication. In addition, as future legislation is drafted the Parliamentary Counsel will be able to advise agencies as to whether a proposed power to make a particular statutory instrument should provide for official publication on the New South Wales Government legislation web site. Over time access to these other types of statutory instruments will be improved, and it will be possible to determine from a single web site which instruments are in force, which have been repealed and which have been amended. As to the timing of commencement, I will address that issue in Committee. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clause 1 agreed to.

Progress reported from Committee and leave granted to sit again.

[*The Deputy-President (The Hon. Christine Robertson) left the chair at 6.34 p.m. The House resumed at 8.00 p.m.*]

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

Membership

Motion by the Hon. Henry Tsang agreed to:

That the following message be forwarded to the Legislative Assembly:

Mr SPEAKER

The Legislative Council desires to inform the Legislative Assembly that Ms Sharpe has been appointed as a member on the Joint Standing Committee on Electoral Matters in place of Ms Fazio.

Legislative Council
6 June 2006-06

MEREDITH BURGMANN
President

INTERPRETATION AMENDMENT BILL

In Committee

Consideration resumed from an earlier hour.

Clauses 2 to 6 agreed to.

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

No. 1 Page 4, schedule 1 [5]. Insert after line 19:

(4B) If an Act enacted after 1 July 2006 has not commenced within the period of 1 year beginning on the date of assent to the Act, it automatically commences on the first day after the end of that period.

I have moved this amendment because the Government is in the habit of simply not proclaiming legislation that it does not like. After Parliament—an institution that is representative of the people—passes legislation that the Government does not like, through the Executive, the Government simply does not proclaim it and whatever the Parliament has said becomes irrelevant. The Premier advises the Governor-in-Council. The Premier effectively tells the Governor-in-Council that the legislation will not be proclaimed, and that is what happens. The most celebrated example is the amendment moved by a former member of this House, Helen Sham-Ho, to the Motor Accidents Act, which attracted a great deal of attention.

Subsequent to my predecessor insisting upon unproclaimed legislation being tabled monthly, since 1987, 88 bills have been unproclaimed. When it suits the Government it simply does not proclaim legislation. The amendment provides that if the provisions have not commenced within one year of the date of assent they automatically become law on the first day after the expiration of that period. In other words, if the Government has not proclaimed legislation after one year it is automatically proclaimed. The consequence of the amendment will be that if the Government does not wish to proclaim legislation it will have to return to Parliament after the expiration of one year and win the right not to proclaim the legislation by a vote of each House. In those circumstances, the Government will have to ask Parliament to reverse its resolution of automatic proclamation and the Government will have to resubmit the legislation. That is a very important step.

If the Parliament is to be in charge rather than the Executive the process embodied by my amendment will be necessary. I am disappointed that my amendment does not have the support of the Opposition, as has been indicated by the Hon. Don Harwin. I gather that is the result of a procedural problem because the elephant cannot turn quickly enough, so to speak. It might as well be stated on the record that one of the problems of this House is that the Opposition decides on its attitude to legislation when bills are introduced in the lower House. As amendments are made when the bill is received in the upper House, there may be a gap of several weeks between the introduction of the legislation in the lower House and the Opposition making its decision, as though no upper House exists.

The upper House reviews the legislation, amends it and promulgates any amendment. If there is a long time lag, the Opposition shadow Cabinet may re-examine the issue. However, if there is not—which is the case with this legislation—the Opposition is not able to make a decision. At least that is how it appears to be. If I am wrong, I invite the Opposition to correct my surmise. That is a worrying issue if we expect people to take the upper House seriously. If the major parties do not take the upper House seriously it begs the question: Why are

they here? I suppose they are here because they have to be—otherwise they would lose by default in absence. If the Opposition wants this House to make a difference, and one would hope that that is the case—

The Hon. Catherine Cusack: You mean on things like estimates committees?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I acknowledge the interjection. I hope that the Opposition would want to make a difference through this Chamber rather than simply through various committees. One could not sit here all year waiting for a budget estimates hearing; that would be a suboptimal use of resources, shall we say. The bottom line is that my amendment will force the Government either to assent to legislation, as it should, or to resubmit the legislation to Parliament and explain why it has not proclaimed it within 12 months of automatic assent. I commend the amendment to the Committee.

The Hon. HENRY TSANG (Parliamentary Secretary) [8.08 p.m.]: The Government does not support this amendment. Many Acts currently provide for commencement on a day or days appointed by proclamation. This allows detailed implementation issues to be considered and resolved by the Government before the legislation commences. The proposed amendment is inflexible and will create practical difficulties. If this amendment is passed, legislation will commence automatically after 12 months in circumstances in which the Government, business and the community may not be ready.

In some cases the Government might not have the time to complete necessary education campaigns to advise stakeholders of important legislative changes. A process is in place that already enables the Legislative Council to scrutinise the actions of the Government when it fails to commence amendments by proclamation. A list of uncommenced provisions is tabled on the second sitting day each month. Any honourable member can draw to the attention of the Parliament the failure of the Government to commence amendments. Further, if any honourable member does not consider it appropriate to have a bill commence by proclamation, he or she always has the option of seeking to amend the bill to provide for a fixed commencement date. The Government opposes this amendment.

The Hon. DON HARWIN [8.10 p.m.]: I take issue with the emphasis placed on one issue by the Parliamentary Secretary—that after Parliament had concluded its deliberations it was necessary for the Government to decide whether or not to proclaim what Parliament had decided. That extraordinary proposition flies in the face of hundreds of years of Westminster tradition and constitutional principles. As the Parliamentary Secretary placed an emphasis on that issue I thought I would state that it is quite extraordinary. Some of the other things the Parliamentary Secretary said were valid. We certainly have a schedule of unproclaimed legislation. Frankly, I think honourable members should scrutinise that schedule more than they do.

The Hon. Catherine Cusack: I do.

The Hon. DON HARWIN: My colleague the Hon. Catherine Cusack said that she looks at it carefully, but I suspect that she is one of the few who does. The Hon. Dr Arthur Chesterfield-Evans got it wrong when he referred to what he thought were the Opposition's objections to the amendment. That is not terribly surprising as he was not present in the Chamber when I made those comments. However, it is worth bearing in mind one thing he said about the legislative process. As this bill was declared an urgent bill in the other place it can be rammed through that Chamber in one day and arrive in this Chamber on the same day, which is what happened. I might be wrong, but that is my recollection in relation to five or six bills recently introduced by the Government.

As the Hon. Dr Arthur Chesterfield-Evans referred earlier to a general issue—the importance of a House of review—I will respond briefly to it. Perhaps it is an issue we need to look at. We might need to look at changing a sessional or standing order in the next Parliament to prevent the sort of nonsense we are seeing from this Government. Upper House Ministers are now introducing their bills in the lower House and hardly any bills are introduced in the upper House. As the Government has the numbers in the other place it constantly rams bills through with no five-day adjournment period, which is unacceptable. That is the issue honourable members should be looking at, rather than the processes of the Opposition.

The Hon. HENRY TSANG (Parliamentary Secretary) [8.13 p.m.]: I want the Hon. Don Harwin to understand that when I was responding to the amendment I did not say the Government was taking a path that was contrary to the Westminster system. That was his interpretation of what I said.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [8.14 p.m.]: I note the comment by the Hon. Don Harwin that the Parliamentary Secretary said the Government had to work out its response to what the

Parliament wants, as though the Government were separate from the Parliament and regarded it as an optional extra. I have said on many occasions that that is the impression one gains from the way the Government behaves most of the time. I said earlier that the lower House is really just a rubber stamp. In this case the bill has come through quickly, but that is not the problem. Often the problem is that a bill comes through slowly.

When a bill is introduced in the lower House, the Opposition makes a decision whether or not to oppose it. When a bill comes to the upper House, whatever any Independent or minor party might think up is effectively treated as post facto because they have given their word to the Government. The Hon. Don Harwin said that I took no note of what he said earlier. I must admit that I was working out the budget estimates process. The Hon. Don Harwin has a cold and spoke softly, so, despite my best efforts to hear what he had to say, I was not able to do so. I made a general statement about the way in which the Opposition deals with bills. I was flabbergasted when Opposition members said they would not support this amendment, which I believe to be a major issue.

The Hon. Catherine Cusack: Let's just talk about the amendment.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I am responding to the Opposition's comments, which is what I am supposed to do in Committee. I would like the Opposition and the Government to respond to what I have had to say. If we were simply committed to opposing amendments because we did not have the time to think about them or it was not possible to get them to Cabinet, we would be dismissing amendments that might be helpful and we would be making democracy a farce. Because of various bureaucratic machinations—existing but not stated—proposed amendments have no chance of success. I think this amendment still has a lot to offer.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 7

Mr Brown
Ms Hale
Reverend Dr Moyes
Ms Rhiannon
Dr Wong
Tellers,
Dr Chesterfield-Evans
Mr Cohen

Noes, 21

Mr Breen	Mrs Forsythe	Ms Sharpe
Ms Burnswoods	Mr Gallacher	Mr Tsang
Mr Catanzariti	Mr Kelly	Mr West
Mr Clarke	Mr Lynn	
Mr Colless	Ms Parker	
Ms Cusack	Mr Pearce	*Tellers,*
Mr Donnelly	Ms Robertson	Mr Harwin
Ms Fazio	Mr Ryan	Mr Primrose

Question resolved in the negative.

Amendment negatived.

Schedule 1 agreed to.

Schedule 2 agreed to.

Title agreed to.

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

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Orders of the Day Nos 7 and 8 postponed on motion by the Hon. Tony Kelly.

CHILDREN (DETENTION CENTRES) AMENDMENT BILL

Second Reading

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [8.29 p.m.], on behalf of the Hon. John Della Bosca: I move:

That this bill be now read a second time.

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

Leave granted.

The Government is pleased to introduce the *Children (Detention Centres) Amendment Bill 2006*. The Bill amends the *Children (Detention Centres) Act 1987*, the *Children (Criminal Proceedings) Act 1987* and the *Crimes (Administration of Sentences) Act 1999* to improve administration of detention centres and the management of detainees and for other purposes.

The proposals in the Bill reflect recognition by the Government of the need to assist with quelling actual serious disturbances, or imminent serious disturbances at juvenile detention centres. The Bill allows the Director-General of the Department of Juvenile Justice, pursuant to section 26 of the Act, to enter into a memorandum of understanding with the Commissioner of Corrective Services with respect to the handling of riots and disturbances at detention centres.

The amendments (proposed section 26(2)) will enable the Commissioner of Corrective Services to provide officers from the Department of Corrective Services to assist with quelling actual serious disturbances, or imminent serious disturbances, at juvenile detention centres upon request by the Director-General of the Department of Juvenile Justice. This new strategy of utilising the resources and expertise of Department of Corrective Services will free up Police resources for their main law enforcement functions.

The Department of Juvenile Justice is well equipped and has trained staff who are able to properly manage and control most incidents that may arise in juvenile detention centres. It is only on rare occasions that the Department of Juvenile Justice may require the assistance of Department of Corrective Services to quell a disturbance. If Department of Corrective Services officers were called to a juvenile detention centre in the event of a disturbance, these officers would be able to use their skills to quickly and effectively restore good order and discipline and ensure the safety of Department of Juvenile Justice staff, juvenile detainees and the local community, in the same way that this service is provided to adult Correctional Centres.

The amendments (proposed section 26(3)) allow the Commissioner, and any correctional officer authorised by the Commissioner, to deal with a riot or disturbance in respect of which such a request has been made as if it were a riot or disturbance in a correctional centre, for which purpose the Commissioner is to have the control and management of the detention centre. If deployed to a juvenile detention centre subject to a disturbance, Department of Corrective Services officers would intervene and control the operation of that centre only to the extent necessary to quell the disturbance and to facilitate proper control and management at the centre. Once good order has been restored to the juvenile detention centre, the Commissioner or delegated officer would return complete control of the detention centre to Department of Juvenile Justice as soon as practicable (proposed section 26(5)).

If deployed to a juvenile detention centre, Department of Corrective Services officers would at all times remain responsible to, and take directions from, the Commissioner of Corrective Services or the Commissioner's delegated officer. In areas of the centre not subject to Department of Corrective Services control, Department of Juvenile Justice procedures and directions must be followed. Pursuant to these amendments, any correctional officer authorised by the Commissioner of Corrective Services has and may exercise the functions of a juvenile justice officer in relation to the detention centre, and has the same functions and immunities in relation to the control of detainees at the detention centre as he or she has in relation to the control on inmates in a correctional centre.

A Department of Corrective Services officer may use force in accordance with clause 50 of the Children (Detention Centre) Regulation for the purposes of preventing or quelling a serious disturbance or imminent serious disturbance in a detention centre. Department of Corrective Services officers deployed to a juvenile detention centre will be able to use dogs (proposed section 26(4)) to assist in the maintenance of good order and security in a detention centre.

The Bill further reflects recognition by the Government that there were a number of shortcomings in the current legislation, in particular with respect to dealing with contraband in centres and measures to deal with the behaviour of detainees in centres.

The Bill provides an undisputable legislative base for urinalysis testing of detainees. This will allow for the detection of illicit drug or alcohol use, which could also indicate trafficking by staff in such contraband. It will also identify staff who may represent an occupational health and safety risk to themselves and other staff members.

Urinalysis testing of detainees who appear to be drug affected at the centre or upon returning from leave, assists in targeting detainees who should have their telephone calls monitored by the telephone monitoring system, as well as assisting in the casework management function of detainees generally. Contraband includes not just illicit drugs and alcohol, but also other dangerous and prohibited articles such as cigarettes, weapons and mobile phones. The presence of contraband in juvenile justice centres undermines the Department's efforts to maximise the rehabilitation of juvenile offenders and presents an occupational health and safety risk to staff and detainees.

The Bill enables a juvenile justice officer who is on duty or on site in a detention centre to be required to submit to a breath analysis or to provide a sample for the purpose of testing for drugs and alcohol (proposed section 37J). The amendments also enables a juvenile justice officer who has been taken to hospital following an incident in which a person has been injured or died to provide a sample for the purpose of testing for drugs and alcohol. The proposed section 37L of the Bill protects doctor and nurses from liability for taking samples for the purposes of the Act.

All visitors to centres will be subject to non-intrusive searching similar to that carried out at airports: that is, "walk through" metal detector screening; "wands"; and a request to search the bag of visitors. The searching proposed does not involve physically touching a visitor (proposed section 32A Regulation power).

The Bill makes changes concerning confinement. Currently detainees can be isolated (with respect to serious offences) for a maximum of 3 hours (in the case of detainees under 16) or 12 hours (in the case of detainees 16 or over). Amendments to section 21 increase the maximum period of isolation to 12 hours and 24 hours, respectively. These changes will enable frontline staff to deal with more severe misbehaviour in an appropriate way. Strict procedures will be put in place to govern the use of these extended provisions.

In order to keep confinement periods to an appropriate length, the amendments draw a distinction between young people under, and above the age of 16 years. New South Wales remains the only jurisdiction in Australia to make this distinction with regards to segregation and confinement of juvenile detainees.

Behaviour that is so serious that it falls within the criminal law will be referred to NSW Police, as is currently the case. All detainees in such confinement will be under constant supervision from staff. The Bill also provides for the segregation of detainees (proposed section 19), as distinct from confinement. Segregation is not a punishment for misbehaviour. Segregation of detainees occurs in situations where a detainee exhibits extremely challenging behaviour, to the extent that he or she is a danger to himself, herself or to others. It is proposed that the amendments will remove the present strict upper limit on segregation periods if the Director-General so approves.

Furthermore, any detainee subject to isolation through confinement or segregation is at all times visible to, and able to communicate readily with, an officer. All detainees in isolation are under constant video monitoring. Should a detainee subject to isolation become distressed or attempt to self-harm, then appropriate intervention will take place by trained DJJ and Justice Health staff and/or the specialist crisis management team. It is current departmental practice to make regular (i.e., five or ten minute) checks of detainees considered "at risk" regardless of whether they are isolated or not, and this proposal will have no effect on the continuation of that procedure.

The Director-General may authorise the placement of detainees in their rooms during riots, disturbances or other emergencies in centres. Such a measure is required to enable centre staff to secure centres, and to maximise the safety and protection of detainees in difficult and dangerous situations.

Justice Health operates as a separate organisation providing a state wide medical and nursing service to all detention centres in New South Wales. The Bill provides (in proposed section 37E) for Justice Health to have the power to require detainees to be provided with appropriate medical treatment, and allows them to be given medical treatment without their consent if it is necessary for the purpose of saving life or preventing serious damage to health.

The Bill also provides (in proposed section 14) that the Director-General of Juvenile Justice is required to consult with, and have regard to the recommendations of, the Director-General of the Department of Health in relation to matters concerning a detainee who is a forensic patient within the meaning of the Mental Health Act 1990.

This Bill reflects recognition by the Government of the need to introduce new provisions to the *Children (Detention Centres) Act 1987* to facilitate the administrative transfer of detainees aged 18 and over, to adult custody. In 2001 an amendment to Section 19 of the *Children (Criminal Proceedings) Act* 1987 was made to provide for the automatic transfer to adult custody of young people convicted of a serious children's indictable offence when they turned 18 years of age. However, the amendment also provided the Court with the discretion to make an order for the young person to remain in juvenile detention up to the age of 21 years if "special circumstances" existed. Currently, not all young people aged 18 and over in the juvenile system are the subject of the findings of "special circumstances", and some having been assessed as fitting the category of "special circumstances" prove to settle well over time and mature at a faster rate than expected by the courts.

Older detainees may benefit from the special programs provided by the Department of Corrective Services such as the Young Adult Offender Programs, and the opportunity for paid employment offered by the Department of Corrective Services.

To cater for these older detainees, it is proposed to introduce an administrative provision that will allow the transfer of detainees aged 18 and over, who are deemed suitable, to adult custody. Such a provision would also allow the Department to focus on its core target group of juvenile offenders.

The current transfer provisions available under section 28 the Act only provide mechanisms for transferring a detainee only if he or she has previously transferred to the detention centre from a correctional centre, is on remand for a serious offence, exhibited misbehaviour or has presented as a high risk of danger.

The Bill amends section 28(2) so as to provide that the transfer of a detainee who is under 18 can be effected only in the circumstances referred to currently in section 28. The amendment (proposed section 28(2A)) provides that the transfer of a detainee who is between 18 and 21 can be effected not only in these circumstances but also if the Children's Court authorises the transfer or the detainee requests the transfer.

The Bill (proposed section 28(1A)) also makes it clear that a transfer order may be made in relation to a detainee who is absent from, or has not yet been received at, a detention centre. The effect of this amendment is that detainees who are over the age of 21 (such as those who have been arrested following revocation of their parole) can be taken directly to a correctional centre rather than to a detention centre.

It is also intended to apply the same processes currently employed for the automatic transfer of those older detainees from juvenile custody to adult custody under section 19 of the Children (Criminal Proceedings) Act 1987. Currently, all detainees transferring to the Department of Corrective Services on a section 19 order are interviewed at least once by the Department of Corrective Services State Coordinator, Young Adult Offender Programs, while still placed at a juvenile detention centre. Family and significant others are invited to participate in these meetings, along with juvenile justice program staff. The detainee's case plan, security classification and placement are discussed and confirmed, and an opportunity is provided for the detainee to ask any questions. Details about the adult correctional system and details about the particular correctional centre in which the detainee will be accommodated are also explained.

This Bill also amends the Freedom of Information Act 1989 (proposed Schedule 1, clause 3C) so as to provide that documents created by the Drug Intelligence Unit of the Department of Juvenile Justice are exempt documents for the purposes of the Act.

On a related note, I am pleased to advise that an historic "Class or Kind Agreement" under section 33(1) of the Commission for Children and Young People Act 1998 is currently being finalised between the Commissioner for Children and Young People and the Director-General of the Department of Juvenile Justice. This agreement recognises for the first time the particular challenges faced by Department of Juvenile Justice staff in exercising legitimate use of force. The agreement specifically recognises that legitimate use of force is not "reportable conduct" for the purposes of the Commission for Children and Young People Act 1998.

The agreement also means that complaints concerning the use of force where the outcome of an investigation is that the allegation is "not sustained due to insufficient evidence" and the allegation is not of a serious nature will not be reportable. Also, allegations of low level neglect where no harm occurred to the detainee will no longer be reportable.

I commend the Bill to the House.

The Hon. CATHERINE CUSACK [8.29 p.m.]: The Children (Detention Centres) Amendment Bill goes to prove that you can lead a Labor Minister to water but you cannot make him think. The bill is the Iemma Government's knee-jerk reaction to Opposition criticisms of mismanagement of the juvenile detention centre system. It is a grab bag of changes. There is no coherence or logic to the measures. The Government's media officers are clearly in full control of its policy agenda, and this is the result. To the extent that the bill belatedly addresses several concerns we have been raising since 2004, the Coalition supports it. I will deal with some of those issues first.

The powers to test staff for drugs and alcohol were recommended by the Newberry report in 2004. It should be noted that the Opposition has been calling for these recommendations to be implemented for more than a year. The select committee inquiry that concluded last year made a similar recommendation. It makes sense to bring juvenile justice staff into line with other public sector employees, such as prison officers. The tests serve the purpose of protecting the integrity of these officers. Other recommendations in the Newberry report are yet to be implemented, and in this sense the Government's policies still do not go far enough.

The bill will clarify powers regarding the drug and alcohol testing of detainees as per existing practice. I am not aware of the need for such clarification but the Coalition does not oppose it. However, the current regime of testing does not go far enough. I raised this issue many times with the former Minister for Juvenile Justice, Diane Beamer, who, during estimates committee hearings two years ago, expressed her full confidence in the testing regime. Therefore, it is quite ironic that these measures are now before the House. It has taken a great deal of pressure to shift the Government from its position of blindness about drug abuse inside detention centres, and some new measures have been instituted as a result of criticism. The Opposition believes more searching and testing inside detention centres is required and that detainees found to be in possession of drugs or found to have used drugs should be charged by police. We support the provisions in the bill but state in the strongest possible terms that they do not go far enough.

The bill clarifies the definition of a "visitor" to include family members. We support this change. Again, it is difficult to understand why it is needed but we do not oppose it. The bill improves procedures under section 19 of the Children (Criminal Proceedings) Act and section 28 of the Children (Detention Centres) Act for transferring over-18-year-olds to prison. This is the Government's third ham-fisted attempt to get these sections right. Its first attempt, in 2001, aimed to sort out the problems and ensure that adults were relocated speedily to prison after their eighteenth birthday. The outcome of that attempt, however, was that the proportion of adults in juvenile facilities increased.

Sections 19 and 28 were again amended in the December 2004 legislation, which enabled the transfer of Kariong to Corrective Services. At that point the then Minister was stripped of all responsibility in relation to transfers to and from the prison system and these tasks now reside fully in the hands of bureaucrats. However, the Minister told us these changes would ensure that there were fewer adults in the juvenile system. I remind honourable members of the Minister's remarks in her second reading speech to the 2004 legislation. She said:

> The amendments outlined in the current bill further amend section 19. In particular, the section will be amended to provide for new sentencing arrangements that will provide that young people subject to section 19 orders will be required to serve their order as a "juvenile offender", in contrast to the current situation of serving a section 19 order in "a detention centre".
>
> This allows for such a sentence to be served in either a juvenile justice centre or a juvenile correctional centre.

For the edification of honourable members, the bill was re-establishing Kariong as a juvenile correctional centre. The Minister continued:

> To reflect the primary role of the Department of Juvenile Justice in managing young offenders, all young offenders sentenced by Courts to orders pursuant to section 19 orders will be sent in the first instance to the Department of Juvenile Justice.
>
> A revised section 28 Children (Detention Centres) Act 1987 will allow the Director General of the Department of Juvenile Justice, in consultation with the Commissioner of the Department of Corrective Services, to administratively transfer appropriate young offenders to a "juvenile correctional centre".

The present bill changes many of the provisions in relation to transfers. I would argue that it corrects some of the errors made in 2001 and 2004. That is why I describe the bill as the Government's third ham-fisted attempt to get right the transfer of adults from the juvenile system to the adult system. In 2004, instead of young offenders under section 19 orders serving a term "in a detention centre", they served a term as "a juvenile offender". In other words, the legislation did not prescribe where a person would spend time in custody but defined the person so he could be placed in a Corrective Services facility, a juvenile correctional facility or a detention centre. It offered that flexibility by defining offenders as "juvenile offenders".

A further change that the Government has proposed in the present legislation is the deletion of the word "juvenile" so that juvenile offenders will now be described simply as "offenders". This will mean that offenders can be moved easily between the three spheres: juvenile, juvenile correctional and corrections. That was not possible previously. In other words, an adult inmate in Kariong will be able to be moved administratively into the prison system. That will remove the handicap that the Government gave itself in 2003 by describing offenders as "juvenile offenders" even though they were aged 21, 22 or older. Indeed, some offenders will be in gaol for a very long time and will be well into their thirties and forties when they are released. It is ridiculous to describe a 40-year-old man as a "juvenile offender". This is a logical change.

The bill also addresses an issue I raised during the 2004 debate. I suggested that it would be simpler if detainees destined for Kariong were admitted directly to that centre rather than going through the juvenile system. I was thinking in particular of adults who were arrested for serious indictable offences and who, according to all the criteria described by the Minister at the time, would go to Kariong correctional centre. Why did the legislation require that they be admitted to the system first as a juvenile? The idea was rejected at the time but I see now that it has been taken up in this bill. It means that such offenders can now be taken directly to Kariong. They will not have to be admitted first to the juvenile system and then transferred administratively to Kariong. In other words, Kariong will be able to have intakes from areas other than the juvenile system. This will reduce red tape and is a sensible change—albeit 18 months late.

During the 2004 Kariong debate I said that it was stupid to force adult detainees to stay in detention centres when they wanted to go to prison. Detainees whose requests for transfers to the prison system were refused by the Government felt obliged to organise their own transfers out of a juvenile facility by committing further offences while in custody. This resulted in numerous staff assaults at Kariong. In other words, an offender aged 19 or 20 who wanted to go to prison for a variety of reasons—he no longer wanted to be in a facility for children—and whose application was refused or not supported by detention centre staff and the department, thought his only option was to commit a crime of sufficient severity that he would be arrested by police. Because he was an adult when he committed the crime he would then be remanded in custody to prison. In this way offenders were organising their own transfers.

The Ombudsman documented this trend in his discussion paper about the issue of transfers between the systems. He described a notorious case involving a group of gang rapists who were being held at Kariong and who committed two very serious assaults against staff in October 2002. They stated that they had committed the assaults simply in order to obtain transfers to prison. In one incident a staff member was taken as hostage and

seriously injured. WorkCover investigated and prosecuted the department, which I understand was recently found at fault and fined in excess of $700,000 for its neglect. It is a great shame that it has taken until June 2006 to amend this legislation so that adults in juvenile facilities who are begging to be transferred to prison can actually be facilitated.

It has always been the view of the Opposition that the Director General of Juvenile Justice has had wide powers to transfer adults to the prison system. In other words, I am not completely confident that this provision is even necessary, but the philosophy of the department has been against using those powers, and it has made excuses to hang onto the adults in the juvenile justice system. If there were real legislative hurdles a sincere department would have proposed these amendments a long time ago. As I say, this is the Government's third crack at section 28 since 2001. So it has been either insincere or incompetent, or both. In any event the Opposition does not oppose this latest attempt and can only trust that the Government has got it right this time.

The bill makes several provisions relating to consent required by Justice Health in order to provide life-saving medical treatment to detainees. The Opposition has been contacted by the Law Society, which opposes the provision, and its president stated in correspondence that "no child with capacity to make decisions about medical treatment should be treated without their consent, regardless of whether they are in a detention centre or not". The issue of consent for medical procedures in detention centres is a vexing one, and one that I have bumped up against in various situations, particularly for younger detainees.

I understand that the Department of Health does not require medical consent from a young person if they are over the age of 16 years, but obviously the juvenile justice system has a great number of people who are under the age of 16 years in which case parental consent becomes an issue. Often, in the case of such young offenders, a parent cannot be found, and when one can be found they are not necessarily co-operative. The issue of consent is very difficult in detention centres. The Opposition is in favour of the health of the young person and does not oppose the Government's provisions in that regard but acknowledges the concerns of the Law Society.

The bill also requires that one of the functions of the director general is to liaise with the Minister for Health regarding forensic patients, to which the Opposition does not object. I would have to say I do not know a great deal about forensic patients in the juvenile justice system and I would imagine there are not very many of them. Certainly I understand that in the adult system they are under the supervision of the Minister for Health and are required to be kept separately, something that I presume is not practical in the juvenile justice system. I would be interested to learn more about that interesting matter, but certainly it seems logical that with regard to forensic patients who are not serving sentences in the ordinary sense but, rather, are being detained at the pleasure of the Governor, the Minister for Health should be consulted about their care and how they are being managed. Obviously the Opposition does not object to that.

The Opposition also does not object to the amendments to the Freedom of Information Act to provide that Drug Intelligence Unit documents are exempt documents for the purposes of the Act. I wish to flag the Opposition's concerns about increasing confinement periods from 3 to 12 hours for detainees under the age of 16 years and from 12 to 24 hours for detainees aged 16 years and over. The Opposition generally supports that proposition; however, I place on record our concern about children in that younger age group of 10 to 12 years. The Opposition notes that the Law Society outright opposes this provision on the ground that it is contrary to the recommendations of the Royal Commission into Aboriginal Deaths in Custody.

It is sad that these days much of what goes on in prisons and in the juvenile justice system is contrary to those recommendations. Back in the mid-1990s the Government wound up the special monitoring committee that had been established to oversight the recommendations. The implementation of the recommendations committee, which was based in the Attorney General's Department, was suddenly wound up. So there really is not an organisation to consult with in relation to the appropriateness of practice, which is at variance with the recommendations. Certainly I agree with the Law Society that a 10-year-old Aboriginal offender being put in confinement for a period of 12 hours would be a matter of concern. Nevertheless, the Opposition has decided not to move amendments in that regard, for the reasons I will outline later.

Schedule 1 [7] gives power to the director general to segregate a detainee, which is the continuation of an existing power that over three hours the director general needs to be consulted. I flag the Opposition's position that we need to give more authority to centre managers to properly manage the centres, and that this is an insufficient power to manage a centre properly. The Opposition's policies are very much to get away from the highly centralised model in juvenile justice, where even the menus as to what detainees eat is now being

determined by head office. There are logistical reasons why transfers need to be co-ordinated but every decision is being made by head office, which is demeaning to centres, centre managers and their staff. By failing to give those people responsibility that they are often trained and equipped to have, the Government is undermining its own detention centres. The Opposition does not support that, and believes that three hours is not sufficient in that case.

The Opposition agrees that adults over the age of 21 years and 6 months who are arrested on juvenile parole warrants should be detained in an adult facility as provided for under the bill. However, I place on record the Opposition's belief that an adult should be consistently defined as any person over the age of 18 years, and in that sense the bill does not go far enough. The Opposition believes that people should not be detained according to their age when they committed the crime but, rather, according to their age at the time of sentence, so their needs at that age can be addressed. It is inappropriate for adults to be detained in school; they are much better off in a correctional system that provides courses and rehabilitation programs appropriate to their age.

The most controversial part of the bill—which the Minister heckled me about earlier in the debate—is known as the "send in the prison riot squad" provisions. Those provisions allow the director general to hand control of a detention centre to the Commissioner of Corrective Services if there is a riot under way or if—under item [10] of schedule 1, which inserts new section 26—a riot or disturbance has arisen or appears to be imminent at a detention centre. They are the fairly broad circumstances in which the so-called prison riot squad can be called in. I suppose like many people I did not quite understand that the Minister was envisaging handing over control of the entire detention centre to the Department of Corrective Services. The Opposition has considered this matter further and understands that from the perspective of prison staff that would be the only circumstance under which they feel they have the necessary protections to go in and do the job. I place on record that the proposal is opposed by the Law Society, which has argued that Juvenile Justice staff are given specific training and should be equipped to deal with those situations.

The Opposition believes that the incident that triggered the legislation does not warrant this fairly draconian power of bringing in the prison riot squad. The incident occurred on a Sunday night, 29 January 2006, at Acmena Detention Centre in Grafton. Initially five detainees locked themselves in a residential unit and began trashing the unit, although ultimately only four detainees—one 14-year-old, one 15-year-old and two 17-year-olds—were charged in relation to the matter. From what we can gather, staff who were trained and equipped with riot gear to deal with such behaviour—there was riot gear at the centre—could not get approval from management to enter the unit and stop the riot. After a number of hours the Grafton police were called. They arrived at the centre, walked into the unit and arrested the offenders. It took only a matter of minutes to subdue them. The police were annoyed because the Acmena staff could easily have subdued the detainees and, had they been allowed to do so, would have saved what police estimated to be $80,000 worth of damage to the unit. In addition, Grafton was left without any police that night.

The detainees at Acmena, in particular, lacked boundaries. This incident must have been an embarrassment for the Government. It was fairly widely publicised at the time. I think it was on 1 February that I heard the Minister announce on radio that he was going to bring in prison riot squads, and that he was meeting with the Commissioner of Corrective Services and the Director General of Juvenile Justice to work out how that might be done. He talked about the need for urgent legislation, and that we just had to wait until the House returned. Of course, this bill is the end product of that process.

Given that the offenders involved in the incident included a 14-year-old, I have publicly questioned the need for prison riot squads in such situations, when the staff at the centre are fully trained and equipped to deal with riots. As the Minister told Parliament, special training was undertaken in conjunction with Corrective Services precisely to deal with such circumstances. All that staff at detention centres lack is the power to go in and do their job. I think that is why they are so frustrated. The community certainly is frustrated when these sorts of incidents occur. The concern with this legislation is that the Government yet again has found another excuse to deny staff the power they need to do their job properly. The Opposition wants a stronger regime of discipline and zero tolerance on bad behaviour inside detention centres. That is the way to stop riots. It should not get to the point of having a riot, much less calling in prison riot squads.

We believe the report of the inquiry into the Acmena riot vindicates the Opposition's position. That is why we have moved to call for papers, so that we can see that report. Two weeks ago, when the papers arrived, some information about the report confirmed—as we had understood, and indeed the Minister had said on radio—that the inquiry was being conducted departmentally. The information the Parliament received suggested it was an inquiry by a regional officer into what was an operational incident. However, the report that the House

had requested did not arrive. Instead, we were given a note from the Director-General of Juvenile Justice, Jennifer Mason, telling us that the report had in fact been prepared for Cabinet, and thus was Cabinet-in-confidence.

Notice of Motion No. 114 on today's *Notice Paper* spells out the circumstances in which the Government is seeking to suppress that report. We do not believe that the claim of Cabinet-in-confidence has any credibility whatsoever. The significance of the report to this bill, however, is immense, because the report explains the incidents that trigged the need for this legislation. It is vital that we receive that report and that explanation, because those matters go to the heart of the Government's credibility. In every sense, the perception of the bill is that it is not considered legislation; it was announced 48 hours after an embarrassing incident had occurred. It does not result from any considered review. And, as I have said, it is a hotchpotch of different initiatives. No experts or third parties were referred to in the second reading speech. There are no statistics, and no references to history or to experience. Indeed, the entire second reading speech is a fact-free desert in terms of information. No holistic theme glues the bill together.

The Minister's media releases argue that this is a package designed to crack down on security. But it looks to me more like a group of press secretaries, having spent a night over a few bottles of wine, brainstorming ideas that professional staff have had to turn into legislation and implement. The process itself is wrong. This is not the behaviour of a Minister for Juvenile Justice; these are the actions of a Minister who is desperate for re-election. This legislation illustrates the difference. It demoralises human resources in the Government's agency. It is ugly and unsustainable.

The Opposition has considered amending the bill. I have highlighted some of the many problems and inadequacies that we see in it. But, at the end of the day, this is the Government's legislation. We cannot amend to remedy a hopeless lack of coherence and direction. We cannot by way of amendment insert a strategy and vision for juvenile justice and young offenders. It is in that sense a hopeless situation. Nor will the Opposition oppose the bill. As I have said, the Government has trawled many of the Coalition's proposals, but the fact the Government is implementing some of them badly does not necessarily require the Opposition to block this Government legislation. However, we will move, on principle, an amendment to the motion, "That this bill be now read a second time." The amendment will have the effect of delaying the second reading until such time as the Government tables the report on the Acmena riot. I move:

> That the question be amended by omitting all words after "That" and inserting instead:
>
> > this House declines to give a second reading to this bill until the Minister for Juvenile Justice has caused to be laid upon the table of the House the review of security at Acmena Juvenile Justice Centre, referred to in the letter from the Director-General of the Depart of Juvenile Justice dated 11 May 2006, which letter was tabled in this House on 23 May 2006, because:
> >
> > (a) the Government is using the review as a justification for the bill, and
> >
> > (b) in withholding the review document, the Minister is denying members of this House the opportunity to consider the appropriateness of the provisions of the bill with respect to the handling of riots and disturbances at detention centres.

The Hon. PATRICIA FORSYTHE [8.56 p.m.]: One of the advantages of having served as a shadow Minister across a range of portfolios is that one not only develops an understanding of and experience in a particular portfolio but also is able to consider legislation in a broad context. I come to the Children (Detention Centres) Amendment Bill as one who has for a number of years served as shadow Minister for Juvenile Justice. I have also had the benefit of being shadow Minister in areas including Community Services and Education and Training. Therefore, over a number of years, I have gained a better understanding of the nature of some of the young people in juvenile justice, as well as the system of juvenile justice, enabling me to consider the issues in the context of the society of New South Wales.

I have no difficulty with some aspects of the bill. For example, I particularly welcome the amendments to section 37J regarding alcohol and prohibited drugs testing of Juvenile Justice officers. One of the first questions I asked when I travelled through virtually all the juvenile detention centres with the then Director-General of Juvenile Justice in about 1996 related to such testing. He assured me that there was then a policy of zero tolerance, not just for young people but also for staff because they had to set an example. If this bill advances that policy, I certainly welcome it. But the bill lacks a real understanding of a philosophy that is driving the Government on juvenile justice. Is this for the Government merely an issue of punishing young people? Is it regarded by the Government as part of a restorative approach?

I had good and interesting discussions with the former Minister for Juvenile Justice, the Hon. Ron Dyer, as we both worked through similar issues, particularly the concept of restorative justice. It was in that context that we looked at, for example, family conferencing, which had been piloted by the Coalition when it was in government. The Hon. Ron Dyer introduced the legislation, and I had the pleasure of supporting it. Indeed, I took the opportunity to go to New Zealand, where the concept had been developed, to meet with the judge who had originally introduced it, so that I could understand where we might be taking, in a philosophical sense, juvenile justice in New South Wales. That is because by and large juvenile justice has been one of those issues dealt with in a bipartisan manner, at least from the point of view of the major parties.

I speak in this debate with a troubled heart. I do not understand much of the philosophy that underpins. It is obvious that the Government has lost its way and lost control. My colleague the Hon. Catherine Cusack referred to an incident at the Acmena Juvenile Justice Centre that got out of hand—I could almost use the word "riot"—when juveniles in one area gained control and caused costly damage to the facility. Such things do not happen in isolation; problems had been building up. It was not as though a group of people woke up one day and decided to misbehave. The Government must concede that its policies have failed. I have enormous concern and absolute disquiet about the amendments to section 21 (1) (d), which relates to segregating juveniles who misbehave. At the beginning of my contribution I said that as a shadow Minister across a range of portfolios one sees things as part of the bigger picture rather than in isolation. Many young people in juvenile justice facilities are well outside what is considered to be the norm. Many have a low intellect; indeed, many have an intellectual disability, mild or otherwise. Most will have grown up in abusive families. They understand abuse because some have been abused, and most have experienced abuse in the family context.

The vast majority of 10 to 14-year-olds in juvenile justice facilities have grown up in dysfunctional families. Some are labelled as having attention deficit disorders—a label I do not like to use too often because in my view it is largely an abused term. However, as a consequence of diet and a whole range of other factors these young people are difficult to handle. Almost all of them will have low self-esteem. Many come from families in the low socioeconomic bracket and most have a history of truanting from school. But it all stems from having grown up in an abusive family, where one learns to respond to anger by lashing out—a common reaction among young people in juvenile justice facilities. I do not put that up as an excuse. Many fine citizens have lived through similar experiences and have overcome them. Some young people in juvenile detention centres have had extraordinarily difficult lives, beyond the comprehension of people with a middle-class background.

The bill increases, from 3 hours and 12 hours to 12 hours and 24 hours respectively, the segregation time for offenders who misbehave. I understand the requirement for punishment, but I do not understand how this increase fits with the concept of restorative justice and understanding the minds of troubled young people. The bill seeks to solve a problem for the Government and the department by locking up and segregating young offenders who misbehave. But that does not deal with the problem; it deals with the symptom—a matter I spoke about in another debate recently. The Government has got it wrong. I note that groups such as the Public Interest Advocacy Centre contacted members today, when it became aware that the bill was to be debated in this House, to express real concerns about the rights of children and the effect of the recommendations of the Royal Commission into Aboriginal Deaths in Custody.

If the Government wants to be remembered for facing its problems and dealing with them in a forward-thinking and reformist way, this is not the way to go about it. The Opposition does not oppose the bill, but, as I have said, I have real concerns about the proposed amendments to section 21 (1) (d). The Government is absolutely on the wrong track. The bill may fix the Government's problem but it will not fix the problem of young people with poor behaviour. Segregating young people is not the answer, particularly the very young and others with the inherent problems I have identified.

Reverend the Hon. Dr GORDON MOYES [9.06 p.m.]: On behalf of the Christian Democratic Party I speak to the Children (Detention Centres) Amendment Bill. As the two previous members who spoke in this debate said, the bill deals with a very complex and emotive issue. The object of the bill is to amend the Children (Detention Centres) Act 1987, the Children (Criminal Proceedings) Act 1987 and the Crimes (Administration of Sentences) Act 1999 to improve the administration of detention centres and the management of detainees within the juvenile justice system. All juvenile justice systems in New South Wales were established by the Children (Detention Centres) Act 1987. The Act governs under what circumstances juvenile offenders may be confined to a detention centre, the treatment of detainees, the granting to a detainee of leave from a juvenile justice centre and discharge from a centre. Currently there are eight juvenile justice centres in New South Wales and one emergency short-term accommodation unit at Broken Hill. Three centres are located within the Sydney metropolitan area and one is located on the Central Coast. The other centres are located at Unanderra near Wollongong, Wagga Wagga, Dubbo and Grafton.

The principles that guide and influence the work of the Department of Juvenile Justice are aimed at prevention first, then rehabilitation, then reintegration of juvenile offenders into our communities. It is quite clear that there will be times when upholding each of these philosophies concurrently will be commensurably difficult and, in fact, in some cases impossible, because at times the nature of these principles or philosophies will be mutually exclusive. Producing an outcome that strikes an appropriate balance between prevention of further criminal acts and rehabilitation of offenders and release back into the community is an extremely hard task. It is similar to upholding justice with one hand and the values of mercy and compassion with the other. The reforms contained in the bill seek to improve the safety and security of the juvenile justice system. However, whether they strike the right balance between the aforementioned goals is yet to be seen. The two previous speakers hold the same grave misgivings that I do.

We are yet to know whether the legislation that was introduced in 2004 dealing with juvenile justice has been effective. However, what may be said is that larger scope exists for improvement. Honourable members will be aware that last year I chaired the Select Committee on Juvenile Offenders, which comprised Government, Opposition and crossbench members. The committee made a total of 26 recommendations on issues relating to juvenile justice. In releasing the report on the inquiry into juvenile offenders—set up by the Parliament after disturbances at the Kariong Juvenile Justice Centre that led the Government to transfer management of the centre from the Department of Juvenile Justice to the Department of Corrective Services—I highlighted a number of inadequacies in the Department of Juvenile Justice.

I trust that the Government lent its ear to the concerns that we expressed at the time, although I have grave doubts about the effectiveness of the changes. In relation to the instant bill, the Legislation Review Committee indicated its view in *Legislation Review Digest No. 8* that there are a number of concerns that the Parliament ought to heed. Some of the concerns are warranted in my view; however, some provisions of the bill warrant our support.

This bill introduces new powers concerning drug and alcohol testing not only of Department of Juvenile Justice staff, but also of detainees within the juvenile justice system. This is a very sensible move. The objective of this testing will be to not only allow for the detection of illicit drug or alcohol abuse, but also to indicate whether there is any trafficking by staff in such contraband. This has been a problem at various places at various times. Obviously there are privacy implications in relation to this new head of power. However, given the circumstances, it is clear that such measures are warranted. The Legislation Review Committee noted:

> … mandatory drug and alcohol testing are an invasion of a person's privacy. The Committee also notes that the Bill provides for the collection and testing of urine, which involves a significant breach of a person's privacy … The Committee also notes the public interest in ensuring that juvenile justice officers are not under the influence of alcohol and prohibited drugs while working.

I have proposed similar testing for the security industry. It is my firm opinion that is in the public interest that those who are commonly referred to as bouncers should be drug and alcohol tested. In my second reading speech on a private member's bill I introduced on 11 May 2006 and I referred to what must be given up in terms of the privilege of privacy for the sake of the public good. Though it is true that with regard to such testing a person's privacy is compromised to a degree, it is also true that it is in the public interest to ensure that juvenile justice officers are not aiding or abetting the smuggling of contraband into our correctional centres. Their position of responsibility demands that they be held accountable and that, in delivering a service, they remain transparent. Likewise it is trite to mention that there is much merit in ensuring that juvenile offenders in detention are not abusing drugs and alcohol.

I find quite interesting that it is not known who will administer the drug and alcohol testing. The proposed legislation merely states that an "authorised person" will be allowed to administer such tests. The provisions should be much tighter than that, and the authorised persons should be identified. It will be interesting to hear which department is given the responsibility of administering these tests and whether further impositions will be placed on the police force. Regulations will provide for other things such as the conduct of testing and the taking of samples of blood or non-invasive samples. Further, the principal Act provides that medical practitioners will not incur any civil or criminal liability in respect of these tests, so it is assumed that medical practitioners will somehow or other be involved in taking the tests.

Urinalysis testing of detainees who appear to be drug affected at a juvenile justice centre or upon returning from leave will assist in targeting detainees who should have their telephone calls monitored by telephone monitoring systems. It will also assist in the casework management function of detainees generally. The bill will allow specially trained officers of the Department of Corrective Services to enter juvenile justice centres at the request of the Department of Juvenile Justice to quell serious disturbances. This rings alarm bells

with many people, as outlined by a previous speaker. A memorandum of understanding between both departments will be entered into to provide a framework of how serious disturbances will be handled by both departments. I personally do not believe we go beyond the pale involving two departments when serious disturbances will be dealt with. In the second reading speech in the other place it was pointed out:

> This new strategy of utilising the resources and expertise of the Department of Corrective Services will free up police resources for their main law enforcement functions.

There are a couple of issues to note with respect to these provisions. First it can be said that some detainees within the juvenile justice system are better suited, because of their behaviour or the seriousness of their offence, to the environment of the Department of Corrective Services than they are to a juvenile justice centre. This very fact was the main reason for the decision to transfer the administration of the Kariong Juvenile Justice Centre to the Department of Corrective Services. The Government recognised that older, more serious offenders are best managed in the secure disciplined environment of Corrective Services. However, not all detainees may be suited to the techniques used by the Department of Corrective Services to bring order to an environment of chaos. In particular, proposed section 26 (4) states:

> … dogs may be used to assist in the maintenance of good order and security in a detention centre in the same way as dogs may be used to assist in the maintenance of good order and security in a correctional centre.

The use of dogs to quell serious disturbances is a very serious development. It is one that most would naturally turn from, but I am quite confident that dogs and the use of horses by mounted police may at different times help a situation. I am concerned whether such use will be justified on every occasion in which the use of dogs is regarded as being fit for them to be engaged. Reference must be made to the assurances given in the Minister's second reading speech that, if deployed to a juvenile detention centre subject to a disturbance, Department of Corrective Services officers will free up police resources for their main law enforcement functions. However, although the intent of the legislation might be admirable, it is not entirely certain whether the outcome of the legislation will be appropriate or suitable in a juvenile justice centre. I foreshadow that at some time in the future we will have to revisit this legislation in the light of some most unfortunate responses at a time of considerable chaos or great distress in one of these centres.

It may be said that a Department of Corrective Services officer may use force in accordance with clause 50 of the Children (Detention Centre) Regulation for the purposes of preventing or quelling a serious disturbance or imminent serious disturbance in a detention centre. It is worthy of note that there are always issues with defining how much force is reasonable force in the circumstances, especially in the context of the provision of corrective services. I really feel that the time will come when we will have to review this legislation in the light of the excessive use of force. It is relevant to point out in this context that an agreement will exist under section 33 (1) of the Commission for Young People Act 1998 to recognise the particular challenges faced by Department of Juvenile Justice staff in exercising the legitimate use of force.

The agreement recognises that the legitimate use of force is not reportable conduct for the purposes of the Commission for Children and Young People Act 1998. Allegations of low-level neglect when no harm occurs to the detainee will no longer be reportable. The bill does not define what is meant by a riot or a disturbance at a detention centre. It may save us a great deal of future trouble if legislation provided better definitions for "riot" and "disturbance". Obviously when detainees are on the roof of a centre, when they have set fire to facilities and when they have broken down walls and thrown bricks at guards, a riot or disturbance has taken place and things are out of control. The terms should be defined. Although it is clear that recourse may be had to common law notions of the terms, there is no specific notion prescribed in the legislation about what these terms are meant to convey.

Although it might be presumed that there have not been many occasions when a disturbance has occurred, from memory I would say that perhaps every three or four years there is a serious outbreak of violence that might be described as either a serious disturbance or a riot within a detention centre. It would be helpful to us if we knew how many times in the past such serious disturbances have eventuated. In the second reading speech in the other place the Minister said:

> The Department of Juvenile Justice is well equipped, and has trained staff who are able to properly manage and control most incidents that may arise in juvenile detention centres.

I do not have that confidence. Most of the people who work as staff within the Department of Juvenile Justice are not trained to control riots or quell serious public disturbances. They are trained toward other aspects of keeping people in rehabilitation mode. The proposed legislation will provide for juvenile justice centre staff to

search visitors and staff to detect contraband. Contraband generally includes items that they should not have in their possession, such as drugs, alcohol, cigarettes, weapons, mobile phones and the like.

As has been pointed out, the presence of contraband in juvenile justice centres obviously undermines the department's efforts to maximise the rehabilitation of juvenile offenders and presents an occupational health and safety risk to all staff and some detainees. Visitors will be searched in a non-intrusive way. I have been through these searches as I have gone in and out of various detention centres for more than 40 years. The searches usually involve a non-physical touch similar to the searches that are conducted at airports. For example, visitors walk through metal detector screenings, pass, if necessary, under wands and are subjected to a request to search their bags. The term "visitors" includes everyone who visits these centres, including families and representatives of government and non-government agencies. It is not entirely clear from the legislation what consequences will ensue if contraband is detected.

Earlier another honourable member said that the bill provided for an increase in the use of confinement as a punishment for misbehaviour, which is a controversial area. Currently section 19 of the Act enables detainees to be segregated for their own protection for up to six hours in any one period of 24 hours. The bill provides that such segregation may be for an indefinite period if the director-general is in approval. Further, section 21 (d) provides that detainees may be excluded from, or confined to, a place for up to three hours in the case of detainees under 16 years or 12 hours in the case of detainees 16 years and over by way of punishment for misbehaviour. "Misbehaviour" is defined as breach of the regulations, for instance, breaching conditions of leave such as a failure to return when requested. As rightly pointed out by the Legislation Review Committee, articles 66 and 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty provide:

> 66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.
>
> 67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned.

Enough evidence was given at the royal commission that inquired into Aboriginal deaths in custody to indicate how serious such breaches could be in the welfare and life of juveniles in detention. The review committee referred also to a 2006 report by Lord Carlile, QC, which looked into the use of physical restraints, strip-searching and the segregation of children in detention in the United Kingdom. The report recommended, inter alia:

> Prison segregation units should not be used for children and solitary confinement should never be used as a punishment.

The Legislation Review Committee referred as an issue to Parliament whether the increase of the time to which young offenders might be subject to isolation trespasses unduly on the rights of young offenders in detention. In my opinion we need thoroughly to consider the ramifications of such a measure and to analyse any evidence for behavioural studies that indicate this is the best form of punishment for misbehaviour. This bill will allow the Department of Juvenile Justice to apply to the Children's Court to transfer a detainee aged 18 years or over to an adult correctional centre.

Honourable members might remember this was an important part of the evidence given to the Select Committee on Juvenile Offenders, which I chaired. This issue was included in various recommendations made by the committee. Even if the court had originally sentenced persons to serve their term in a juvenile detention centre and also to allow an administrative transfer of detainees aged 18 years and over to an adult correctional centre, it is important to realise that there is a distinction between when young persons are originally sentenced and when they might still be carrying out their sentence. They might be well into their middle twenties and an adult in every sense of the word.

In many situations the reality is that juvenile correctional centres were created to address the current lack of effectiveness for juvenile justice centres in managing hard young offenders, as seen in the case of Kariong. In my experience over the years as a parole and probation officer, I have seen that many juvenile offenders are too old and too violent to serve their sentences in a juvenile justice centre. Unfortunately, the adult prison model is the best option for those juvenile offenders who are too old or too violent for the juvenile justice system. Therefore, I support these provisions. The bill allows for the Chief Executive Officer, Justice Health, to order life-preserving medical treatment to detainees in certain situations. In particular, proposed section 27 states:

> A medical practitioner... may carry out medical treatment on a detainee without the detainee's consent if the Chief Executive Officer, Justice Health is of the opinion, having taken into account the cultural background—

an important comment—

> and religious views of the detainee, that it is necessary to do so in order to save the detainee's life and to prevent serious damage to the detainee's health.

I agree with that entirely and believe it is quite ethical and proper to do that. Serious implications arise from this provision, given that the treatment violates a person's consent. However, it is noted that the medical treatment in question may be given only when it is necessary for the purpose of saving life or preventing serious damage to health. It is incumbent on the Chief Executive Officer, Justice Health, to make the decision and that person is to take into account the cultural background and religious views of the detainees. If that is done properly it should avoid many of the serious issues such as occurred during the time of the inquiry into Aboriginal deaths in custody.

Nevertheless, one might envisage circumstances when a detainee's will to undertake medical treatment is violated. For example, the term "health" includes not only physical but mental health. A person who is suffering from a mental problem might be placed in psychiatric care without reasonable grounds existing for such a placement. Arrangements will be set up to ensure that the Department of Juvenile Justice liaises with the Minister for Health about the care and management of detainees who are also forensic patients. I ask the Government to consider the issues that I have highlighted. The Christian Democratic Party supports this bill.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [9.27 p.m.]: The Children (Detention Centres) Amendment Bill makes a number of changes to the organisation of juvenile detention centres and the treatment of detainees. It will enable the director-general of the Department of Juvenile Justice to make use of the services of the Commissioner of Corrective Services with respect to the handling of riots and disturbances at detention centres. It makes provision with respect to the transfer of detainees from detention centres to correctional centres and increases the time for which detainees may be segregated or isolated for misbehaviour from 12 hours to 24 hours for offenders over the age of 16 and quadruples it from 3 hours to 12 hours for offenders under the age of 16.

New section 27 makes provision with respect to the provision of medical treatment to persons who are detained in detention centres. Under this bill juvenile justice officers can be randomly tested for alcohol and prohibited drugs, and the chief executive officer can give detainees medical treatment without their consent if it is necessary for the purpose of saving lives or preventing serious damage to health, and pursuant to a decision. The Legislation Review Committee pointed out that articles 66 and 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty provide:

> 66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.
>
> 67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned.

In addition, Article 47 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty provides that:

> Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities.

On 17 February 2006 Lord Carlile, QC, published a report following his independent inquiry into the use of physical restraints, strip-searching and the segregation of children in detention in the United Kingdom. The inquiry considered the various ways in which children are treated in detention which could, as stated in the report, "in any other circumstances, trigger a child protection investigation and could even result in criminal charges". That report, which was commissioned by the Howard League for Penal Reform, further stated:

> Prison segregation units should not be used for children; and solitary confinement should never be used as a punishment.
>
> Given the vulnerabilities and backgrounds of abuse that many of the young people had experienced prior to custody, the Inquiry was particularly concerned at the impact on them of methods such as segregation.

The Legislation Review Committee commented on the Department of Juvenile Justice Disability Action Plan 2004-2006. It stated:

> It is relevant to note the high level of intellectual disabilities and mental illness among young people in custody in New South Wales. According to a 2003 Department of Juvenile Justice survey:
>
> - 88% reported symptoms consistent with a mild, moderate or severe psychiatric disorder;
> - 30% reported symptoms consistent with Attention Deficit Hyperactivity Disorder:
> - 21% reported symptoms consistent with schizophrenia;
> - 10-13% were assessed as having an intellectual disability;
> - 8% of young men and 12% of young women reported having attempted suicide in the previous 12 months.

The Government's response, sadly, is to throw away the key and allow young juvenile justice detainees to become serious repeat offenders graduating into the Corrective Services prison population. The recidivism rate of adult prisoners in New South Wales is the worst in Australia and it has deteriorated considerably under the term of this Government. The Public Interest Advocacy Centre [PIAC] reiterated those concerns about the bill in its letter dated 6 June 2006. The PIAC believes that in its current form the bill is contrary to the State Government's commitment to maintain a separate Department of Juvenile Justice and administer the range of non-custodial services appropriate to the needs of young people in New South Wales. The letter, referring to new section 21, stated:

> It is likely to impact adversely on Indigenous young people, who currently make up approximately one third of young people in juvenile detention. The proposed provisions are inconsistent with Recommendations 144, 167 and 182 of the *Report of the Royal Commission into Aboriginal Deaths in Custody*, which require that an Aboriginal detainee should not be placed alone in a cell, unless there are substantial grounds for believing that the well-being of the detainee or other persons detained would be prejudiced.
>
> It will impact adversely on the significant number of young people in juvenile detention who suffer from mental illness. According to the Department of Juvenile Justice, 88% of juveniles in detention in 2003 reported symptoms consistent with a mild, moderate or severe psychiatric disorder.
>
> It is difficult to reconcile with the recent findings of the United Nations Human Rights Committee in relation to Mr Corey Brough. Mr Brough (who is Indigenous and has a mild intellectual disability) was held in isolation for 72 hours at a time, at Parklea Prison while aged only 16. The United Nations Human Rights Committee found that the NSW Government (and Australia as a signatory to the ICCPR) had contravened the right of Mr Brough to be treated with humanity and with respect for his dignity.

The Law Society of New South Wales Criminal Law Committee in its letter commented:

> Both of these amendments—

that is amendments to sections 19 and 21—

> have serious implications for the well being of juvenile detainees, especially for Indigenous detainees. The proposed amendments contravene recommendations 144, 167 and 182 of the *Royal Commission into Aboriginal Deaths in Custody* which require that in all cases, unless there are substantial grounds for believing that the well being of the detainee or other persons detained would be prejudiced, an Aboriginal detainee should not be placed alone in a cell.
>
> The proposed amendments are also contrary to many of the recommendations made by the Ombudsman in the comprehensive 1996 report *Inquiry into Juvenile Detention Centres.*
>
> **Use of corrective Services staff**
>
> Proposed s 26 significantly extends the circumstances under which the control of a juvenile facility may be passed to Corrective Services. These arrangements subject children and young people to an adult corrections environment in direct contravention of Article 10 (2)(b) of the *International Covenant on Civil and Political Rights*.
>
> Under proposed s 26 Corrective Services staff can assume control of a detention centre or part of a detention centre, and deal with a disturbance as if it was occurring in an adult corrections centre, including the use of dogs. Juvenile justice staff are given specific training to deal with children, and should be equipped to control any incidents that occur in a juvenile detention centre. Assistance should not be required from Corrective Services staff …
>
> The Committee is concerned with proposed s 27 which enables Justice Health to carry out medical treatment on a detainee without the detainee's consent if it is considered necessary to save the detainee's life, or to prevent serious damage to the detainee's health.

> The common law already provides for emergency treatment to be administered if the patient is not in a position to consent (eg if the patient is unconscious). The *Mental Health Act 1990* and the *Guardianship Act 1987* allow certain types of treatment to proceed if a person lacks capacity to consent. The existing law is adequate and should not be changed. No child with capacity to make their own decisions about medical treatment should be treated without their consent, regardless of whether they are in a detention centre or not.

I am sure most honourable members would recall that Kariong Juvenile Justice Centre was handed over to Corrective Services after detainees rioted in 2004. General Purpose Standing Committee No. 3 attempted to interview staff from Kariong to find out what happened, but was stymied so successfully by the Government. The committee reported:

> The Carinya Behaviour Management Unit, comprising of up to 12 of the most difficult to manage detainees from within Kariong and from other juvenile justice centres, was considered by witnesses to have major problems. Problems included assaults on staff, the setting of small fires and verbal abuse. Witnesses stated that they considered that the lack of consistent punishment in the undermine a punishment by management that Kariong exacerbated the situation.

Witnesses agreed that there were problems with middle and upper management and some staff at Kariong that had led to the current situation. Confinements of detainees were a common punishment. Detainees were confined by staff for periods of up to 12 hours. Witnesses who had worked in the Carinya unit stated that their punishments were often overridden by management. One stated:

> One time I put them in confinement because I ended up dragging a boy who had been abusive to staff, not following instructions and all of that. I put him in confinement for eight hours. I think I put him in about lunchtime, and would have locked him down for the whole day and night and he came out in the morning. I left at 2 o'clock and the unit manager came up and overrode my confinement.

The dissenting report by the two Coalition members of General Purpose Standing Committee No. 3 stated:

> The first hearings of the Committee were scheduled to begin at 10.00 a.m. on 3 November 2004. Minister Beamer was consulted about the convenience of this time and date. After considering the matter for a week, she declined to respond to the Committee and instead referred the matter to her Department.
>
> At 10.00 a.m. on 3 November 2004, the precise moment our hearings were due to commence, Mrs Beamer held a co-ordinated series of meetings in Sydney and Kariong to announce the Centre would transfer to Corrective Services. The effect of this announcement was that all the witnesses who were Kariong employees lost their jobs. The timing of the announcement, coinciding to the minute with our hearings, was intimidating to the witnesses.

That inquiry would have provided an excellent opportunity to look at the operation of Juvenile Justice, but that did not happen. This is a knee-jerk reaction; it will not work. I oppose the bill, which is very much against the interests of children.

The Hon. Dr PETER WONG [9.38 p.m.]: I do not oppose the Children (Detention Centres) Amendment Bill. I support some provisions within the bill, although I am quite concerned about others. I will support the bill only to support the improved health care and drugs component, but I will argue strongly against other aspects. The provision allowing Justice Health access to young prisoners and convicts in Juvenile Justice is one I am most pleased with. Although the Select Committee on Juvenile Offenders, of which I was a member, explored to a limited extent the general health needs of inmates, it inquired in some depth into the mental health of juvenile prisoners and convicts. What we discovered as most alarming during the inquiry was the general incompetence and malaise in the administration of Juvenile Justice.

As a medical practitioner I still retain considerable concern about mental health and the quality of general health care in our juvenile prisons. I believe that new part 4A, division 1, new sections 37E to 37H, which provide for Justice Health to have the same functions in relation to juvenile prisoners and convicts as it has in relation to the inmates of a correctional centre, represent a great step forward in the care and treatment of our young convicts. I applaud this move as sensible, although long overdue.

The new section on the drug and alcohol testing of custodial and other staff in juvenile prisons is also long overdue. The provisions in the bill seeking amendment to the Children (Detention Centres) Act in relation to the use of segregation for punishment and administrative control and the use of the adult prison system's emergency response units to contain riots and emergencies reveal again the failures inherent in juvenile prison administration. I believe these provisions carry with them certain dangers. The use of such punishment and systems for administrative ease in juvenile prisons has long been abused. Public records left by the most hardened criminals in New South Wales attest to this fact. Their use in a juvenile setting is always harsher than similar use and abuse in adult prisons.

Individuals such as Bernie Matthews and William John Munday have described periods of incarceration in places such as Tamworth Boys as being much harsher than incarceration in the now infamous Grafton and Goulburn "tracs" for intractable inmates. They have described how these regimes, based upon the child welfare system, set them up for careers as the most hardened and notorious of all criminals in our society. The "tracs" and the regimes at Goulburn, Grafton and Darlinghurst have long been subject to proper and appropriate scrutiny. When such scrutiny failed, they were eventually subjected to the oversight of royal commissions, such as the Nagle royal commission. Little can be said about similar oversight of the juvenile prison regimes.

A history of administrative incompetence is available for those who search closely enough. I refer, for example, to the seventh class prisoners and, later, prisoners in children's institutions such as Yanco, Tamworth Boys Home, Parramatta Girls Training School and the now infamous and notorious Institution for Girls at Hay. From the inception of Point Puer and the barracks at Circular Quay, children in Australia have long suffered under the harshest and most incompetent regimes of care and punishment. Long after floggings at the triangle were outlawed for adult convicts and prisoners, they were still routine for children in corrections.

I applaud the possibility of the bill's improving health care and stopping drugs entering juvenile prisons. The bill also introduces indefinite segregation and the extension of time for punitive segregation and allows for the use of the highly professional adult prison riot squads. This, for me, is another admission of failure of the juvenile justice system in this State. On 9 December 2004 I am recorded in *Hansard* as stating that I held grave fears that the changes to the juvenile justice system were designed to create terror and fear in children simply in order to keep the failures of the juvenile justice system hidden behind that curtain of fear. I quoted the then Minister as confirming this fact by outlining that the changes sought to achieve the same outcomes that Grafton and Goulburn sought for adult prisoners and that Hay girls' and Tamworth boys' facilities sought for children. The then Minister stated:

> … these changes send a palpable message to other detainees in our system. The centre that deals with the highest risk end juvenile offenders now provides a compelling focus throughout the system.

I have great difficulty supporting this bill given that the majority of changes in it give light to that appalling belief and intention. The bill shows that very little has changed since the time of Dickens. At a time when this Government is seeking to introduce eugenics legislation in the House it is worth noting how very little has changed over the past century. I support the bill in the areas that I believe it can achieve some good, such as stopping drugs entering the juvenile justice system and improving the health care of prisoners. All other areas that the bill covers do nothing to improve the life chances of children in custody and simply hide the failure of the system. When the Government fails to show economic management skills similar to that of the Federal Liberal Government and at the same time lacks the moral and reformist fervour of previous Labor governments and their sense of social justice, we have to ask: What good is it to have a Labor government in New South Wales? The Legislation Review Committee noted:

> Article 67 of the United Nations **Rules for the Protection of Juveniles Deprived of their Liberty** expressly forbids the use of solitary confinement for young offenders as a form of cruel, inhuman or degrading punishment.

I have mentioned already how provisions at law are used mercilessly against younger criminals and then older ones, and this bill does not depart from that culture. Prison inmates aged under 16 years will have their time in solitary confinement quadrupled while the time permissible for those aged over 16 will be only doubled. Furthermore, given that the majority of child prisoners are either State wards or Aboriginal children, many more aspects of international treaties and laws are being broken. I point especially to Article 39 of the United Nations Convention on the Rights of the Child, which states:

> States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Again, I ask, and I will continue to ask: What is the New South Wales Government doing for the children in the care of child welfare services who make up 38 per cent of female child prisoners and 28 per cent of male child prisoners? Given that the Opposition supports the bill, I shall go no further. However, I ask all thinking citizens to consider the outcomes of this type of legislation. Will it make our community any safer? I fear not.

Ms LEE RHIANNON [9.47 p.m.]: The Greens strongly oppose the Children (Detention Centres) Amendment Bill. The bill violates the recommendations of the Royal Commission into Aboriginal Deaths in

Custody, the International Covenant on Civil and Political Rights, and the Ombudsman's 1996 report entitled "Inquiry into Juvenile Detention Centres". It is a brutal piece of legislation that will result in juvenile detainees being punished as if they were adults. It amounts to a shameful admission of failure from the Government: After 11 years in office, the Government is admitting that it is clueless about juvenile justice.

The bill seeks to extend significantly the circumstances under which the control of a juvenile justice facility may be passed to Corrective Services. The director general of Juvenile Justice will be able to enter into a memorandum of understanding with the Corrective Services commissioner regarding the handling of riots and disturbances and then, pursuant to that memorandum, seek the assistance of the commissioner in dealing with a specific riot or disturbance. In that event, the commissioner will be able to respond to the riot or disturbance as if it were occurring in a correctional centre. In other words, the detainees will be treated as though they were adults, not juveniles. This proposal subjects juveniles to an adult corrections environment in direct contravention of Article 10 (2) (b) of the International Covenant on Civil and Political Rights. It also contravenes basic human decency.

Juveniles are inherently more vulnerable that adults, both physically and mentally, and it beggars belief to think a Labor Government wants to treat juveniles—children—with the same brutality as adults receive in New South Wales prisons. Juvenile Justice staff are trained specifically to deal with juveniles; Corrective Services staff are not. The use of Corrective Services staff is completely inappropriate and could lead to all sorts of abuse, with long-term consequences.

The Greens are also appalled by the segregation and isolation provisions of the bill. Recommendations 144, 167 and 182 of the Royal Commission into Aboriginal Deaths in Custody require that in all cases, unless there are substantial grounds for believing that the well-being of the detainee would be prejudiced, an Aboriginal detainee should not be placed alone in a cell. I had assumed that the Australian Labor Party supported the royal commission and its groundbreaking recommendations. It appears that I was wrong. When it comes to Aboriginal deaths, talk is cheap. It is actions that count, and this bill is far short on that.

The bill proposes to increase from 6 hours to an indefinite period the length of time that a Juvenile Justice detainee can be held in segregation, and also to increase from 3 hours to 12 hours in a 24-hour period the length of time that a detainee can be held in isolation as punishment if under 16 years old, and to 24 hours if over 16 years old. So we will see quite young detainees, under 16 years of age, being isolated for up to 12 hours in every 24—half the day. Juveniles are not fully psychologically developed. Such isolation, often in circumstances that are known to be questionable, might be considered appropriate for adults but it is a brutal way to treat juveniles. There has to be a high risk of long-term problems from psychological damage, leading to higher rates of recidivism and higher crime rates.

The Greens also object to the section of the bill that seeks to exempt documents created by the Juvenile Justice Drug Intelligence Unit from freedom of information laws. This is a Government that is seeking to hide from public scrutiny. We know the tenure of this Government is based on secrecy and here it is in black and white in the laws of the land. If a document is highly sensitive for whatever reason then the Government can appeal in the usual way and let the Administrative Decisions Tribunal sort it out. That is fair enough: it is a system and one that should be abided by. But providing a blanket exemption is just lazy administration and is symptomatic of a Government fearful of scrutiny.

The fact that the Labor Government is seeking to make these major reforms after 11 years in office is remarkable and disturbing. It is effectively an admission that Juvenile Justice has been mismanaged and that the Government has lost control. There can be no other explanation for these extreme measures. The answer is not to brutalise juveniles—the answer surely is to provide the resources to resolve any problems within the normal parameters of Juvenile Justice. To fix problems by treating juveniles like adults is effectively child abuse. I believe that sooner or later in this Parliament legislation will come forward to repeal the law that we appear to be about to pass. It is absolutely obscene, and hopefully one day the people who come after us in this place will have the sense to repeal this terrible law.

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [9.52 p.m.], in reply: I thank honourable members for their contributions to this debate. This bill delivers a significantly tighter and stronger legislative framework for managing young people held in custody. The bill provides a long-term commitment to the maintenance of a separate Juvenile Justice system in New South Wales, contrary to some beliefs espoused by honourable members opposite. The bill provides for firm discipline and a greater control by staff over detainees.

Significantly, the legislation provides for increased search powers of visitors to detention centres, and drug and alcohol testing for Juvenile Justice staff.

Other changes include the strengthening of the existing practise of drug and alcohol testing of detainees and the use of telephone monitoring. The bill has received some criticism for being too tough from both welfare organisations and the Opposition spokesperson. It is my firm view that the Government has got the balance right—a balance between firm discipline, adequate control and fair treatment of detainees. The bill is not a knee-jerk reaction but follows a long process of a review of the Act by the department and by external researchers and stakeholder consultation. In regards to the issue of placement of detainees 18 years and over within the Juvenile Justice system, I note the Hon. Catherine Cusack actually made representations to me to have a detainee who was treated as a special case by the courts and sent to Juvenile custody, despite being 18 years old, remain in Juvenile Justice custody. So despite what the Hon. Catherine Cusack says publicly, privately she has supported an adult detainee being held in Juvenile Justice custody because of welfare considerations.

I am a bit confused about what is the real position on segregation confinement of the Opposition. On the one hand the Hon. Catherine Cusack is concerned that confining detainees under 16 years of age is in contravention of the recommendations of the Royal Commission into Aboriginal Deaths in Custody, but on the other hand she wants to delegate unlimited segregation to the discretion of a centre manager. The Hon. Catherine Cusack does not understand the issues and has contradicted herself within one speech.

I am not surprised at her standard of behaviour and her not knowing where she stands on most issues. Why does the Hon. Catherine Cusack, when speaking on the use of Department of Corrective Services response teams, seek to deny the same specialist back-up to Juvenile Justice staff that Corrections officers and the police have? Surely it is better to allow Correctional Services staff to come in than the police. Again, despite being the shadow spokesperson for more than three years, the Hon. Catherine Cusack does not understand the basic facts of how Justice agencies work. Clearly the Hon. Catherine Cusack has not consulted with her shadow spokesman for Justice who welcomed the Government's moves in this area. The Hon. Catherine Cusack has agreed in her speech with everything the Government is doing. In fact, her biggest complaint was that the Government has been too slow.

Whilst the Hon. Catherine Cusack supports the bill and suggests that it is long overdue, effectively on behalf of the Opposition she has moved what is known as a reasoned amendment. To ensure that her amendment is in order, I would reflect that Erskine May says that reasoned amendments, selected by the speaker for discussion, commonly include the words "this House declines to give a second reading" for various reasons. Thus the drafting of reasoned amendments reflects the fact that supporting such an amendment is tantamount to opposing the bill. Effectively, the Hon. Catherine Cusack has moved an amendment that opposes the bill, despite having said that the bill is long overdue. The amendment of the Hon. Catherine Cusack deals with a separate issue that is being dealt with in a different motion that is currently before the House. I ask the House to reject the amendment and support the bill as it stands.

Question—That the amendment be agreed to—put.

The House divided.

Ayes, 16

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

Noes, 19

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

Pair

Mr Ryan Mr Costa

Question resolved in the negative.

Amendment negatived.

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

The House divided.

Ayes, 30

Mr Breen	Miss Gardiner	Mr Pearce
Mr Brown	Mr Gay	Ms Robertson
Ms Burnswoods	Ms Griffin	Mr Roozendaal
Mr Catanzariti	Mr Hatzistergos	Ms Sharpe
Mr Clarke	Mr Kelly	Mr Tsang
Mr Colless	Mr Lynn	Mr West
Ms Cusack	Mr Macdonald	
Mr Della Bosca	Reverend Dr Moyes	
Mr Donnelly	Mr Obeid	*Tellers,*
Ms Fazio	Ms Parker	Mr Harwin
Mrs Forsythe	Mrs Pavey	Mr Primrose

Noes, 4

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

Question resolved in the affirmative.

Motion agreed to.

Bill read a second time and passed through remaining stages.

DRUG MISUSE AND TRAFFICKING AMENDMENT (HYDROPONIC CULTIVATION) BILL

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

Motion by the Hon. Tony Kelly agreed to:

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

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

JOINT SELECT COMMITTEE ON THE CROSS CITY TUNNEL

Establishment and Membership

Consideration of Legislative Assembly's message of 25 May 2006.

Motion by the Hon. Tony Kelly agreed to:

That this House agrees to the time and place for the first meeting of the Joint Select Committee on the Cross City Tunnel contained in the Legislative Assembly's message of 25 May 2006.

Message forwarded to the Legislative Assembly advising it of the resolution, together with details of the members of the Legislative Council appointed to serve on the committee.

JOINT SELECT COMMITTEE ON TOBACCO SMOKING

Establishment and Membership

Consideration of Legislative Assembly's message of 25 May 2006.

Motion by the Hon. Tony Kelly agreed to:

That this House agrees to the time and place for the first meeting of the Joint Select Committee on Tobacco Smoking contained in the Legislative Assembly's message of 25 May 2006.

Message forwarded to the Legislative Assembly advising it of the resolution, together with details of the members of the Legislative Council appointed to serve on the committee.

ADJOURNMENT

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [10.12 p.m.]: I move:

That this House do now adjourn.

NEW SOUTH WALES-ASIA BUSINESS ADVISORY COUNCIL AND BUSINESS SKILLS VISA PROGRAM

The Hon. HENRY TSANG (Parliamentary Secretary) [10.12 p.m.]: I report on some of the activities of the New South Wales-Asia Business Advisory Council, which I chair. As honourable members would know, the advisory council meets quarterly and between meetings it has various sub-committees and events through which its members are active. The advisory council held its most recent meeting yesterday, and I am pleased to report on some of its decisions and recommendations. One of the issues that it has deliberated on in the past few months is the Business Skills Visa Program, which is run by the Commonwealth in co-operation with the States and Territories. The New South Wales Government participates in this program, with the Department of State and Regional Development acting as the sponsoring agency. The Business Skills Visa Program allows successful business owners to settle provisionally in Australia for four years, through the sponsorship of the State or Territory Government, to develop a new or existing business with the possibility of permanent residency if certain criteria are met.

Changes to the program in 2003 in managing inquiries and initial screening effectively resulted in a shift from the Commonwealth to the State and Territory governments. For New South Wales and other States to exclude any attempts to misuse the program, they are required to duplicate the vetting process before the final determination is made by the Federal Department of Immigration and Multicultural Affairs. This strict vetting process by the States is needed because these types of applications have the potential to affect the reputation of State governments. With the duplication of the bureaucratic process at the provisional and permanent residence stages, the advisory council felt that the current arrangements were cumbersome and placed an unnecessary burden on the applicant and the States, which is why it made a submission to the Department of State and Regional Development in its review of the Business Skills Visa Program for the Commonwealth.

The advisory council agrees that the Commonwealth is better placed to make the initial checking of applicants, given the State and Territory governments lack the necessary information particularly in regard to the applicant's visa history. Another recommendation of the advisory council was for a reversal in the final stages of the visa process whereby the States were required to conduct an investigation into the implementation of the applicants' business plan, for the Commonwealth then to repeat the exercise as it retained the decision-making powers. The advisory council argues that a streamlined process would help both the applicants and the States, given that the State needs to review the sponsorship. The States and Territories would then be in a position to review the final application for compliance with the confidence that Commonwealth regulations had been met and accepted by the Commonwealth.

The advisory council has made an important contribution to policy. I commend members for their dedication to the task in achieving a better outcome for the State in its bid to attract investment through the

Business Skills Visa Program. I hope that these suggestions will be taken up by the Commonwealth and the State and Territories in their reviews to be conducted shortly. Another important earlier achievement of the advisory council was its initiative in the inbound tourism sector. Following complaints from tourists and tourism organisations from China and Korea in particular, the advisory council established a subcommittee to explore the issue. The main complaint was that tourists were being forced to visit certain shops, with little freedom or choice once in Australia. The matter had been gaining attention in Asia and affecting our reputation as a tourist destination.

The New South Wales Government endorsed the concerns of the advisory council and worked with the Commonwealth to establish a licensing system requiring travel agents and operators to adhere to prescribed standards. The advisory council has also been active in urging the Government to target its promotion at students in Australia. Not only were theses students creating local employment through their studies and visits to their home countries, but also visits from their parents, relatives and friends formed an important component of the inbound tourism sector. Accordingly, the advisory council urged the Government to target this market, which it is doing. I thank the members of the advisory council for their dedication and great work, and I look forward to other such initiatives as New South Wales launches into its campaign to remind our region that we are open for business.

WEST PAPUA

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [10.17 p.m.]: As a person who has visited Indonesia and who would like to be a friend of the Indonesian people, it gives me no joy to draw this to the attention of the House. Some 43 West Papuans who were granted visas in March this year caused a major diplomatic row between Canberra and Jakarta. The Indonesian Government even went as far as using five warships to patrol the waters of West Papua to prevent further refugees from escaping. The history of West Papua is that in 1962 the Dutch withdrew from their colony and the Indonesians moved in. The Javanese empire had no historic claim to Papua. The military occupied Papua, which was ratified by a rigged vote in 1969 and euphemistically called the Act of Free Choice. It was anything but. The Indonesians continued their policy of moving more than one million Indonesians to populate Papua. An organisation is campaigning for independence for West Papua, the OPM or the Free West Papua movement.

I am a member of the Parliamentary West Papua Group. At the last meeting in May this year the Reverend Socrates Yeoman spoke to us. He said that the Indonesian military had hugely increased its strength and it was intimidating the Papuans deliberately and ruthlessly. He said that at first a police station was built along the road, then a mosque, then more and more new settlers from Java, who were protected by police. The police never protect Papuans. The idea of a special region of West Irian Jaya is a nonsense. He referred to an event on 16 March this year when there was a demonstration. The police attacked and students were wounded, five of whom fled into the jungle too fearful to go to hospital.

A man aged 28 was eviscerated. He was taken to hospital where he died that night. The family was too afraid to visit the hospital, where the military remained with him. Three intelligence officers in plain clothes went with his body back to the village for the funeral. The family was too frightened even to be at the burial of their son, and Reverend Yeoman buried him himself. He said that church leaders are intimidated and that one of them has had his own son arrested and held since 16 March this year. Reverend Yeoman asked for a delegation from the United Nations High Commissioner for Refugees [UNHCR] and other journalists and observers to come to see what is happening in Papua.

Herman Awon of the Evangelical Church was also to talk to the group, but was denied a visa by the Australian Government. Reverend Yeoman obtained his visa in London some time before the Australian Government's policy was promulgated. On Radio New Zealand's web site, Benny Wenda, who is the leader of the Koteka Tribal Assembly of West Papua, called for self-determination. Benny Wenda reiterated calls for the United Nations to recognise Papuans rights to self-determination. He also said that the United Nations should send a peacekeeping mission to the Indonesian province of Papua.

Mr Wenda's statements were presented during the current session of the United Nations Permanent Forum on Indigenous Issues. He said that the forum should also ask the United Nations to carry out a review of the so-called 1969 Act of Free Choice, hold a genuine referendum on the right to self-determination, and place Papua on the United Nations decolonisation list. He said that he asked on behalf of all Papuans that they not be forgotten and pointed out that they should have the right to determine their future. Interestingly, in 2005 I spoke to a missionary who is working in West Papua. He informed me of the terrible problem with AIDS-HIV there.

The Freeport Grasberg mine has the world's biggest goldmine and it has the world's third-largest copper deposits. The stakeholders include Freeport McMoRan, Rio Tinto and the Indonesian Government. The missionary to whom I spoke alleged that the Indonesian military had brought HIV-infected prostitutes from Java with the specific intention of infecting West Papuans who are working at the mine. Another allegation that was communicated to me was that an illegal sandalwood operation that is being run by the Indonesian military is paying Papuans with sex from HIV-infected Javanese prostitutes. It is suggested that this is now having its effect in the West Province of Papua New Guinea and is likely to spread to the Torres Straits and into the Aboriginal population of northern Australia.

I wrote to the Federal Minister for Health and Ageing, Tony Abbott, about this matter. I received a reply dated 15 June 2005 from the Federal Minister for Foreign Affairs, Alexander Downer. Obviously the matter of West Papua was, and is, politically sensitive—so much so that the Minister for Foreign Affairs felt that he should reply. The reply did not address any of the specific allegations about HIV-AIDS but the Minister was at pains to point out how the Australian Government "fully supports Indonesia's territorial integrity, including sovereignty over Papua". I seek leave to table that letter.

Leave granted.

Document tabled.

The human rights abuses in West Papua and the subjugation of the indigenous Melanesians is largely being ignored by the Australian Government as a matter of political expediency. Australia is afraid to criticise Indonesia, but is happy to follow the blundering folly of George Bush and invade Iraq. This makes no logical sense and Australia deserves better. I hope this is not just a rerun of East Timor, but it looks that way.

SELWYN SNOWFIELDS KOSCIUSZKO NATIONAL PARK ENTRANCE FEE SURCHARGE

The Hon. MELINDA PAVEY [10.22 p.m.]: I address an issue of great concern to businesses in the Monaro electorate. It affects the Mount Selwyn ski fields and the community around Adaminaby. I refer to the increasing park fees to visit Mount Selwyn, an issue that the local Labor member has failed to fight for on behalf of his constituents and other battlers across New South Wales who use the Selwyn snowfields as their winter wonderland. The local Labor member recently told a Cooma Chamber of Commerce meeting that the Mount Selwyn snowfields had always been a marginal operation and defended the decision by his Government to increase fees to the Selwyn ski fields as necessary because it would be against the law to do otherwise. I have some information for the local Labor member.

Recently I attended a meeting at Mount Selwyn with The Nationals candidate for Monaro, David Madew. The Selwyn snowfields operators told us that they had sent out 600 customer surveys to gauge customer response to the Kosciuszko National Park entrance fee surcharge that has been proposed by the Independent Pricing and Regulatory Tribunal [IPART]. I note that IPART did not bother to send a representative to the Mount Selwyn part of Kosciuszko and did not interview operators there. Customers were asked two questions and 59 surveys were returned. While the chamber of commerce realises that that is a small sample, the feedback is not encouraging for the battlers who go to Mount Selwyn.

The Hon. Jan Burnswoods: A whole 59!

The Hon. MELINDA PAVEY: I acknowledge the sarcastic remarks from the member opposite who should understand that it is the battlers who go to Mount Selwyn. The effect on Selwyn snowfields is far more dramatic than in other parts of the park. In 2004 gross revenue of the Selwyn snowfields was $4.1 million. The chamber of commerce is concerned that, based on the response from the survey, a 26 per cent reduction in visitation will equate to a loss of revenue of $1,078,000. In 2005 gross revenue was $3.5 million, which equates to a loss of $920,000 based on a reduction in the visitation rate of 26.3 per cent. The Department of Environment and Conservation needs to urgently review the surcharge for Selwyn snowfields. For its potential gain of $60,000 over two years for the National Parks and Wildlife Service, the Selwyn snowfield stands to lose $2,000,000.

The Department of Environment and Conservation needs to decide whether or not it wants a low-cost, award-winning family resort and seriously should consider the consequences of the surcharge on the Kiandra vehicle entrance station. If the National Parks and Wildlife Service has research indicating the effect will be not as dramatic as documented by the Selwyn snowfields, that research should be tabled. Otherwise, we have little

choice but to raise the issue in Parliament. If people rely on the local Labor member to do any work on this issue, they will keep waiting. Selwyn snowfields was not invited to take part in the IPART research and one can only assume that IPART's impact studies were based on data provided solely by the National Parks and Wildlife Service research, which was based on southern resorts.

The price of entry to Victorian resorts was another factor used by IPART, but IPART made the assumption that since people were prepared to pay $28 to enter Victorian resorts, they would be prepared to pay the same in New South Wales resorts. Unfortunately, the New South Wales surcharge does not cover many charges covered by the Victorian snowfields fee. It is most concerning that the Department of Environment and Conservation has claimed that a significant proportion of the surcharge revenue will be spent on upgrading some facilities in the northern region of the park, such as the Kiandra historical trail. That type of expenditure will have absolutely no beneficial effect on winter visitation rates to Selwyn snowfields and will certainly not counteract the huge negative impact that the surcharge will have on businesses and the surrounding communities, such as Adaminaby.

Selwyn snowfields management is gravely concerned and frustrated that a decision has been made which will have an extreme impact on business and has even made an offer to the National Parks and Wildlife Service to pay the net increase based on visitation rates. The group realises that the surcharge will have a significant impact on their businesses and has suggested that they will pay the net increase that is expected as a result of the introduction of the surcharge directly to the National Parks and Wildlife Service. That is a far more favourable option than suffering the loss of 25 per cent of the area's customer base. This is an extremely serious issue. Unfortunately the local Labor member, when asked about it, said, "Oh, we cannot have different fees applying to different areas of the park. That would be against the law."

Research has suggested that the local Labor member again has failed completely to understand the issue. The New South Wales National Parks And Wildlife Service currently is using a differential pricing regime according to the point at which visitors enter a park in the Bundanoon area. For example, Morton National Park charges $7 a day if entered via Bundanoon, yet only $3 if the park is entered from the Fitzroy Falls. The claim that different charges applying to different parts of the park is against the law is nonsensical—which actually pretty well sums up the Labor member for Monaro, Steve Whan. Obviously the Labor Party has hung him out to dry because today's budget has sent us into a budget black hole. [*Time expired.*]

FEDERAL GOVERNMENT INDUSTRIAL RELATIONS WORKCHOICES LEGISLATION

The Hon. IAN WEST [10.27 p.m.]: I wish to address the issue of trusting John Howard and the Federal Coalition Government in the context of the Prime Minister's phoney, deceitful and mischievous nuclear debate, which he has used as a Trojan horse for the WorkChoices, or no choices, legislation. John Howard and the Conservatives in New South Wales as well as federally are treating the Australian people with contempt and are insulting their intelligence. John Howard is not fair dinkum about having a full-blooded nuclear debate. He has never said anything serious about it previously. He does not really care about it. He is not the type of person who would start something new so far into his life. The Prime Minister is on the record as saying that nuclear power is inevitable. John Howard needs to be upfront with the Australian people. He cannot honestly say that he wants a full-blooded debate when he has already made up his mind. He has since said:

> The first thing is to work out whether it's economically feasible, then people will come forward with investments, then you start talking about sites.

The sites that have been mentioned previously in a leaked Cabinet document from 1997 include 14 potential sites for a nuclear reactor in places including Lucas Heights, Goulburn, Holsworthy and Broken Hill in New South Wales, as well as Adelaide, Darwin and Perth, and Mount Isa, which is in north-west Queensland. We have not started talking about how the material will be transported safely yet, either.

John Howard is asking Australians to trust him and his Coalition team to manage nuclear power in Australia—well, sort of. He actually wants the private sector to manage it. The inspiration behind John Howard's idea is George W. Bush, and that is truly a frightening thought. I hope the Prime Minister is not fair dinkum about it. I believe he has done it because he needs a mushroom cloud to obscure his many current political problems, be they interest rates, the Australian Wheat Board debacle, leadership problems, the proposal to merge the Liberals and The Nationals, and WorkChoices "no choices for workers" legislation. While John Howard was visiting his big brother, George W. Bush, earlier in May to get his marching orders, The Nationals imploded. Repercussions are continuing in New South Wales even today. If John Howard cannot control fallout from his own party how can he be expected to control fallout from a nuclear reactor?

How could John Howard rationalise the contribution to nuclear proliferation that Australia going fully nuclear would entail? How could we police any undertakings given to us by any country with which we might trade uranium or enriched uranium? How could we enforce any undertakings that they gave about what they would do with it? It would be 10 times harder than trying to make James Hardie pay its Australian asbestos victims. Assurances do not amount to a row of beans. Governments need to be able to control outcomes, and nuclear power is no different.

What about another country's undertakings on waste? How would we police that? Would we take back the waste? Are these things being considered by John Howard's phoney nuclear inquiry? Will all the costs of going nuclear be considered? John Howard has already gone nuclear on Australian workers and their families with his WorkChoices legislation. The recent Senate estimates committee hearing that looked at WorkChoices shows many individual contracts entered into since 27 March traded away all protected award conditions. In the lead-up to the introduction of WorkChoices the Federal workplace relations Minister assured us that award conditions would be protected by law. That guarantee is worthless.

A survey conducted by the Office of Employment Advocate also showed that 22 per cent of agreements did not provide for a wage increase during the life of those agreements, some of which can last up to five years. Other Australian workplace agreement survey results reveal the following: 64 per cent did not retain leave loadings; 63 per cent did not retain penalty rates; 52 per cent did not retain shift loadings; 44 per cent did not retain substitute public holidays; 41 per cent did not retain gazetted public holidays; and 27 per cent removed public holiday pay—and this is in good times.

Under WorkChoices what would happen to people's workplace conditions in the event of a downturn? The Howard Government spent over $50 million telling Australians that award conditions would be safe and protected by law. If Australians cannot trust members of the Coalition with their jobs, how can they trust them with their lives? Earlier I said I thought that John Howard's new found love of nuclear energy might just be a smokescreen. It could also allow him to pretend— [*Time expired*]

HIGH SCHOOL CANTEENS SOFT DRINK BANS

The Hon. PATRICIA FORSYTHE [10.32 p.m.]: In recent weeks the Iemma Government announced its intention to ban the sale of most types of soft drinks from high school canteens. The Opposition has long had a healthy canteen policy and, as such, the shadow Minister gave support to the policy. Healthy eating is an important message. Taking a broad policy approach to the issue of obesity is good public policy. Dealing with the issue of obesity has to be one of the highest health priorities for governments and the community in general. Dealing with obesity requires good public policy that is grounded in thorough research.

Banning soft drinks from high school canteens is a simplistic solution to a much greater problem. It is merely window dressing—the type of policy that allows the Government to say it is taking action when in reality it is not. I predict that the impact of the policy will be negligible in relation to health outcomes or even counterproductive, as it will allow parents to believe it is sufficient to ensure that their children have a healthy diet. People, whether they are young people at school or adults, will be overweight when the level of energy they expend is less than the energy they consume. That is the fundamental science of the problem.

Singling out one food type is simplistic. It might provide the Government with a feel good and inexpensive proposal and give it the capacity to say that it is addressing the issue of obesity, but it is the wrong message. What is needed is not the singling out of one food type as if its consumption gives rise to obesity; what is needed is a strong, well-funded campaign that promotes the message the whole community needs to hear about diet. What is needed is a campaign about balance, variety and moderation in our diet and the importance of a regular regime of exercise. That is the message that is missing with this simplistic policy response to a serious public health issue.

It is nonsense to single out soft drinks. For a decade, while the community has been getting fatter, the energy consumption from non-alcoholic, water-based beverages has been in decline. The marketing of low energy drinks, or no energy drinks, has been a strong feature of the marketing of soft drinks for a long time. Based on production figures the consumption levels of these drinks are up, yet soft drinks have remained the target for those who wish to see their consumption as a cause—even the primary cause—of people getting fatter.

Industry figures show that the average consumption at schools where soft drinks have been sold is less than one-third of a can per student per week.

The issue is not new to this House. As long ago as 1992, members of the Australian Labor Party were on this bandwagon. I refer to questions at estimates that year and in this House from the Hon. Jan Burnswoods who singled out soft drink banning in a question to the then Minister for School Education, the Hon. Virginia Chadwick. It is clear that there has been an anti-business and anti-multinational business campaign by some in the Australian Labor Party for a long time. Banning soft drinks from high school canteens is just another manifestation of its approach. Sadly, the current Minister and the Premier have been sucked in. It is time to get serious about diet and exercise.

A better approach from the Government would be to ensure that all students at school participate in a daily regime of sport or exercise and that all students understand the fundamentals of a balanced, nutritious diet, which includes the capacity to enjoy food and drink from a variety of food groups in moderation and within a balanced diet. It is nonsense to promote the concept that people must feel guilty for enjoying a soft drink or a hamburger within a normal balanced diet. It is downright dangerous not to include fluid intake as part of a daily diet. If schools choose to include or not include some foods on their canteen lists, that should be a matter for them and their parent body without the need for government edict.

It is time to get serious about obesity, but not with simplistic knee-jerk responses. Singling out one food group or even using the label "junk food" is a negative approach. A better and more positive approach is to promote the message about balance and moderation and to help parents and students understand what is a balanced diet. In a balanced diet there is a place for a soft drink, a hamburger, hot chips, or a chocolate bar, but not with every meal and not even every day. Rather than negative food police directing what young people can eat or drink, a better approach would be a positive campaign that was well funded and widely promoted. That is what is missing with this latest announcement.

UNITED COLLIERY MINEWORKERS INDUSTRIAL ACTION

Ms LEE RHIANNON [10.37 p.m.]: Yesterday I met with mineworkers who were protesting at the gates of the United Colliery in the Upper Hunter. These men are making history. The miners, members of the Construction, Forestry, Mining and Energy Union, are on the twenty-first version of a picket line in the first legal strike for a new collective enterprise agreement. The United mineworkers walked off the job for six days last Thursday in a campaign of protected industrial action that includes multiple 24-hour stoppages, bans on non-rostered overtime, mid-shift stop-work meetings and rolling shift-by-shift stoppages.

This industrial action follows the first successful secret ballot under WorkChoices in which union members voted overwhelmingly for industrial action in pursuit of a new collective enterprise agreement. One hundred and six workers at the United Colliery are taking it in shifts to staff the protest at the two entrances to the colliery on the Golden Highway in the Upper Hunter. Two big banners greet people arriving at one of the entrances. One reads, "The best thing to come out of a mine is a mineworker." The other reads, "The Swiss get richer, Australia gets the picture." "The Swiss" refers to the country where Xstrata, the main owner of United Collieries, is based.

While I stood around the fire listening to miners describe their battle with Xstrata, many motorists in trucks and cars whizzing by honked their support. Bob Peel, Vice-President of the United Lodge, and his colleagues told me why they had taken industrial action. Their enterprise agreement is up after years of helping out the mine owners when their operations were not so productive. Workers had agreed to alter shifts that resulted in lower pay. That clearly helped the company's bottom line.

With the price of coal now soaring and profits flowing in, it is quite reasonable that United Colliery workers are putting forward an enterprise agreement that sets out approved wages and conditions. The main owner, Xstrata, could easily afford this enterprise agreement. Last year Xstrata made a 60 per cent increase in earnings to take its profits to $2.3 billion. This giant multinational company earned more than half its revenue from its Australian operations. At United Colliery alone it earned $300 million over the past three years.

I understand that Xstrata regularly refuses to meet with its work force. General Secretary Peter Murray reported that he has not been able to get a meeting with top management. The company has also refused an invitation from the union to address a national meeting of rank and file delegates from the company's operations throughout Australia. This is extremely arrogant. I know Xstrata will readily participate in the mickey mouse

consultations to get approval for a new mine, but when it comes to speaking to its own workers its arrogance seems to know no bounds.

Although top management will not talk, the Operations Manager at United Colliery, Jerry Wallace, has been talking to union representatives. What he has to say does not always make sense. Apart from the fact that he will not agree to the very reasonable enterprise agreement put forward by mineworkers, he has claimed that the average wage of workers is $122,000. I read about that in the *Singleton Argus* of 2 June 2006. I asked the mineworkers about this. They found it laughable; they are on $24 an hour. Wallace, on behalf of Xstrata, offered the workers a $1 an hour increase for the first year, 40¢ in the second year and 40¢ in the third year. The reference to the $122,000 that Wallace arrived at and tossed around in the Hunter media deserves immediate correction. Wallace should come clean and tell the people of the Hunter that the workers have helped boost the mine's profits to $100 million in the past year. If the workers enterprise agreement was agreed to, that would amount to only 1 per cent of the mine's profits.

Probably even more worrying is the impact that the enterprise agreement that Xstrata is pushing would have on workers severance and retrenchment payments. The current enterprise agreement underpins those important conditions. If Xstrata gets its way, those conditions could be lost, as the mine comes to the end of its life, possibly as soon as 2009. A number of workers spoke to me of their concerns that if the new enterprise agreement is allowed to expire, rather than carry over until the next one is negotiated, workers could be pushed onto an award with the "five allowable matters"—one of the horrors of the Federal industrial relations regime. Under the five allowable matters workers would qualify for only a $10,000 payout, and so miss out on severance and retrenchment payments up to $60,000.

I congratulate the United Colliery work force; they have made history by taking the first industrial action in the Australian Government's brave new industrial relations world. Their campaign deserves the support of members of this House. I wish the workers good luck in negotiating their new enterprise agreement and I thank them for their hospitality when I visited.

Motion agreed to.

The House adjourned at 10.42 p.m. until Wednesday 7 June 2006 at 11.00 a.m.