

LEGISLATIVE COUNCIL

Tuesday 19 September 2006

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

The Clerk of the Parliaments offered the Prayers.

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

ADMINISTRATION OF THE GOVERNMENT

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

J. J. Spigelman
LIEUTENANT-GOVERNOR

Office of the Governor
Sydney 2000

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

18 September 2006

ASSENT TO BILLS

Assent to the following bills reported:

Pharmacy Practice Bill
Children and Young Persons (Care and Protection) Amendment Bill

NSW OMBUDSMAN

Report

The Clerk announced the receipt, pursuant to the Law Enforcement (Powers and Responsibilities) Act 2002, of the report entitled "Review of the Police Powers (Drug Detection Dogs) Act 2001", dated June 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. 11 of 2006", dated 15 September 2006.

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

NSW OMBUDSMAN REVIEW OF DRUG DETECTION DOGS LEGISLATION

Production of Documents: Return to Order

The Clerk tabled, pursuant to the resolution of 31 August 2006, documents relating to the Ombudsman's review of the Police Powers (Drug Detection Dogs) Act 2001 received on 14 September 2006 from the Director General of the Premier's Department, together with an indexed list of documents.

PRIVILEGES COMMITTEE**Membership**

The PRESIDENT: I inform the House that the Leader of the Opposition has nominated the Hon. Don Harwin as a member in place of the Hon. Patricia Forsythe.

Deputy Chair

The PRESIDENT: I inform the House further that the Leader of the Opposition has nominated the Hon. Jennifer Gardiner as Deputy Chair in place of the Hon. Patricia Forsythe.

GENERAL PURPOSE STANDING COMMITTEE NO. 2**Membership**

The PRESIDENT: I inform the House that the Leader of the Opposition has nominated the Hon. Robyn Parker as a member of General Purpose Standing Committee No. 2 in place of the Hon. Patricia Forsythe.

PETITIONS**Same-sex Marriage Legislation**

Petition opposing same-sex marriage legislation, received from **Reverend the Hon. Fred Nile**.

Freedom of Religion

Petition praying that the House reject legislative proposals that would detract from the exercise of freedom of religion, and retain the existing exemptions applying to religious bodies in the Anti-Discrimination Act, received from **Reverend the Hon. Dr Gordon Moyes**.

School Zone Flashing Lights

Petition calling on the Government to install flashing lights in 40 kilometre per hour school zones across New South Wales as a matter of urgency, received from **the Hon. Jennifer Gardiner**.

Alcohol Sale Control

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

BUSINESS OF THE HOUSE**Withdrawal of Business**

Private Member's Business items Nos 8, 82, 86, 107 and 112 outside the Order of Precedence withdrawn by Ms Lee Rhiannon.

BUSINESS OF THE HOUSE**Postponement of Business**

Government Business Orders of the Day Nos 1 to 3 postponed on motion by the Hon. Tony Kelly.

POLICE AMENDMENT (POLICE PROMOTIONS) 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) [2.45 p.m.], on behalf of the Hon. Eric Roozendaal: I move:

That this bill be now read a second time.

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

Leave granted.

I am pleased to introduce the Police Amendment (Police Promotions) Bill 2006. The promotion system has been a major cause of dissatisfaction for officers within NSW Police for some time. The Government is strongly committed to reforming the police promotions system and has worked continually to improve the promotions process. In 2002 a ministerial inquiry into the NSW Police promotions system was initiated under section 217 of the Police Act 1990 by the former Minister for Police. The objectives of this inquiry were to identify concerns held by members of NSW Police about the current promotions system and to initiate improvements to that system. The inquiry was chaired by former Assistant Commissioner Geoff Schuberg and included senior members of NSW Police and the New South Wales Police Association. The report of the ministerial inquiry into police promotions, known as the Schuberg report, was finalised in December 2003. The inquiry identified some serious concerns about the operation of the existing system including, but not limited to:

- The need to reduce significant delays associated with position-specific appointment through the greater use of eligibility lists. Under the current system vacant positions were being left unfilled and officers who had demonstrated their suitability for promotion were not being promoted because an officer's eligibility was limited to particular locations.
- The isolation of the existing promotions system from professional development and training systems. Officers were being appointed to supervisory roles without having adequate training or any clear understanding of the requirements of the position.
- Importantly, the promotion of inexperienced and junior officers into critical command or supervisory positions, and those officers then sometimes acting or relieving at higher rank.
- The ongoing use of relieving arrangements to bypass the promotions system and confer an unfair advantage on officers who were given the opportunity to act in a position, often for lengthy periods, prior to the position being advertised and filled through the current promotions system.
- The difficulties associated with the review by commanders of workplace performance. Police were concerned about inaccurate assessment and possible bias within some command management teams and the impact of this on their promotional opportunities.
- The requirement for all applicants to complete all stages of the promotions process, even if they had little realistic chance of being appointed.
- The perception that inadequate weight was being placed on experience, and the need for recognition and appropriate weighting of length of service.
- A protracted and costly appeals process. The need for a review of the promotion appeals system was identified. There were significant delays in appointment, cost—both time and monetary—and "bad blood" resulting from the Government and Related Employees Appeal Tribunal [GREAT] promotional appeal system.

The Schuberg report was subsequently released at the New South Wales Police Association annual conference on 24 May 2004. In order to implement key recommendations from the Schuberg report, the former Minister for Police convened a high-level working party in July 2004, chaired by the Hon. Peter Anderson, AM, which included representatives from NSW Police and the New South Wales Police Association. The report of the working party "Review and Implementation of the Report of the Ministerial Inquiry into Police Promotions", December 2004, proposed the implementation of a new police promotion system based on the recommendations of the Schuberg report. The report was approved by Cabinet in April 2005.

In August 2005 the Minister released a consultation report on the proposed new promotion system to enable comment by officers of NSW Police. During November 2005 a delegation from the working party visited eight locations across the State. The objective of the information sessions was to identify and address any police concerns about the new system. Members of NSW Police have now provided their views on the new promotions model. The chair of the working party has also met with the commissioner's executive team and the New South Wales Police Association executive to discuss the new promotions model and made a detailed presentation to the Police Association's annual conference in May this year. The consultation process is now finished and every effort has been made to incorporate the feedback received from officers into the new promotion model, where possible.

Significant expertise and effort has gone into reviewing the police promotion system, identifying and addressing the issues of most concern to NSW Police officers, identifying shortcomings of the existing system and developing a system to remove those shortcomings. The result of these efforts is a best practice promotions model that will address many of the inadequacies of the existing promotion system. It is imperative that any police promotion system be as timely, fair and equitable as possible. The new

system gives all officers who seek promotion an equal opportunity to be promoted if they have the requisite skills, knowledge and experience. The model also removes unrealistic expectations of promotional opportunities by advising applicants for promotion of the likelihood of success at an early stage of the promotions process. The differences that exist within the current promotion system between ranks are removed and a similar system applied equally to the rank of sergeant, inspector and superintendent. The proposed system is not, however, applicable to grades within the rank of constable or to the police senior executive service.

I now take the opportunity to briefly explain how the new promotion system will work. The promotion system utilises an annual promotion list for each rank, being the rank of sergeant, inspector and superintendent. It also utilises another promotion list for the grade of senior sergeant. This list is used for all vacancies occurring within the year for which the list is current. I will explain this concept in further detail shortly. The new system is based on an annual cycle. The promotions process therefore starts one year before the promotion list is created. The new promotion system establishes a three-staged process designed to identify officers with the requisite skills for promotion and ensure that the best applicants for the job are appointed. An officer must successfully complete this process before being placed on a promotion list.

In order to match demand for officers with supply, NSW Police will now project the number of vacancies for each rank before the start of each promotion cycle. These projections are based on historical information, trends in attrition and an improved work force planning capacity which will enable NSW Police to proactively manage their work force requirements. This projection enables NSW Police to estimate the number of persons who are able to pass through each stage of the promotions process. Before commencing the promotions process an officer must now complete two years at rank. This gives an officer the opportunity to further develop the skills he or she needs to be promoted.

The first stage of the promotions process modifies the existing rank-based pre-qualifying assessment process. This stage involves a multiple choice computer-based assessment that tests an officer's technical and professional knowledge. Any officer seeking promotion must undertake this assessment. However, only three times the number of officers needed for the promotion list, being the number of projected vacancies, are able to undertake the rank-based promotions examination. An officer who does not progress to stage two is entitled to a review of his or her mark. An officer who progresses to stage two is able to undertake the rank-based promotions examination. The examination will be designed to test an officer's job-related knowledge, analysis, decision-making and judgment.

Following completion of the examination, an applicant's management performance rating then becomes relevant to the process. This involves an assessment of an officer's workplace performance over a period of time. During this stage an integrity check is also conducted. The pre-qualifying assessment and promotion examination marks are then combined with the management performance review to give the officer a mark. This mark will determine whether an individual will go through to stage three. An officer who does not progress to stage three is entitled to a review of his or her promotion examination mark or his or her management performance review score. The officer is also entitled to be debriefed on why he or she has been unsuccessful.

An officer who progresses to stage three is able to undertake the rank-based eligibility program. This program is aimed at not only testing an applicant but ensuring officers are qualified for the rank to which they seek to be promoted. The eligibility program is a residential program that is made up of a number of components, including an interview and an assessment centre process. The focus of this program is on assessing an applicant's suitability for promotion. This provides the opportunity to assess their attitudes, behaviours and values, which are not able to be assessed in a formal examination environment. If an applicant successfully completes the program he or she is eligible to be placed on the promotion list. An officer who does not successfully complete the eligibility program is entitled to a review of a component of that program where that component is able to be reviewed. The officer is also entitled to be debriefed on why he or she has been unsuccessful.

The eligibility mark determines an officer's merit and is the mechanism by which officers are ranked on the promotion list. The eligibility mark is made up of the marks achieved in the pre-qualifying assessment, the promotion examination, the management performance review and the eligibility program. The eligibility mark also includes a weighting for years of service. All of these results are then given a weighting. Weightings to be given to the various components of the proposed promotion system are to be determined in accordance with relevant academic research and industry norms. It is expected that the eligibility program will receive the heaviest weighting within the eligibility mark. A person will be placed on the promotion list for each rank in accordance with his or her eligibility mark—from highest to lowest.

The promotion list for a rank applies to all positions within that rank. A promotion list is current for one year unless all persons are promoted before the 12-month period. If officers remain on a promotion list, they will be integrated into the next promotion list and re-ranked according to their eligibility mark. An applicant can remain on promotion lists for three years before having to requalify. A person who is ranked the highest on the promotion list will have the option to accept any available vacant position or wait until another vacancy arises that better suits his or her situation. Following this decision, the person next on the list will then have the option to accept any available vacancy or wait until another vacancy arises.

A person will have 72 hours within which to accept the promotion that is offered. This process enables appointments to vacant positions to be made very quickly. The use of promotion lists in this way will significantly reduce delays in filling vacant positions. Officers will be trained and have completed the promotions process prior to a vacancy arising. The use of promotions lists for all positions within a rank will also remove barriers to appointments being made in remote and hard to fill locations as they are not qualified by geographic location. The exceptions to this process are positions that are designated as specialist. A person will not be able to accept a specialist vacant position unless he or she has relevant specialist qualifications.

I now turn to the amendments made to the Police Act 1990 and the Police Regulation 2000 to establish this new promotion system for police officers. Schedule 1 provides for amendments to the Act to establish the new police promotion system for non-executive positions of the rank of sergeant, inspector and superintendent and the grade of senior sergeant. The bill amends the Act to provide for the following:

- appointment by way of promotion is from promotions lists, and not by individual application and selection for individual positions;

- appointment to any position by way of promotion is to be made by appointment of the highest ranked available officer from a promotion list for the rank concerned;
- individuals seeking placement on a promotion list must have spent the requisite time at the rank below (being at least two years) and must successfully complete a pre-qualifying assessment, a promotion examination, an applicant evaluation and an eligibility program;
- officers who qualify for a promotion list will be given an eligibility mark and will be ranked according to order of merit (from the highest mark to the lowest);
- a new promotion list for each rank or grade will be prepared each year and an applicant who does not accept promotion can remain on a list only for three years before having to requalify for the list;
- individual vacancies will no longer be advertised given that position-specific appointment is no longer relevant;
- the number of places on the promotion list for each rank will be estimated at the beginning of each promotion cycle and the numbers of candidates accordingly restricted on the basis of quotas determined by those estimates; and
- the removal of the right of appeal to the Government and Related Employees Appeal Tribunal [GREAT] against an appointment of another applicant to a particular position. In the place of this, there will be a review mechanism for each stage of the promotions process.

I would now like to take the opportunity to address some of the reforms in more detail. The promotion system for police officers is now substantially different from the system for administrative officers. This has necessitated the creation of two separate parts within the Act. Specifically, the bill amends the Act to repeal part 6, which previously dealt with all non-executive officers of NSW Police—being both administrative and police officers—and inserts a new part 6 dealing with appointment of non-executive police officers and a new part 6A dealing with the appointment of non-executive administrative officers.

Part 6—non-executive police officers—substantially re-enacts the existing provisions in relation to the general appointment of non-executive police officers. Appointment under the Act can be by way of promotion, transfer or otherwise. However, the bill has replaced previously existing provisions dealing with police promotions with provisions that give effect to the new promotion scheme for police officers—other than the commissioner, members of NSW Police Senior Executive Service and temporary employees and non-executive police officers. There are a number of key changes to part 6. First, I refer to appointment on merit, as outlined in proposed section 66. The provision relating to merit has been amended to reflect that promotional appointments are now to be made from a promotion list for the rank concerned, to the officer with the greatest merit being:

- the highest-ranked available officer on the list concerned; or
- in the case of vacancies identified by the Commissioner as requiring additional, specialist qualifications, the highest ranked officer who has the requisite specialist qualifications for such a vacancy.

The second change relates to the promotions lists, as set out in proposed section 70. Previously the use of eligibility lists was limited to specific positions within specific locations. The new promotion list has a much broader application and will apply to all positions within the rank to which the list applies. The bill replaces the provision that previously dealt with eligibility lists—section 67A—with a new provision requiring the commissioner to establish promotion lists for the ranks of sergeant, inspector and superintendent, and the grade of senior sergeant. The provision also provides for regulations to be made with respect to promotions lists, for applicants to be appointed to the applicable promotion list if qualified, and for a review process of decisions relating to such lists and the promotion process. Specifically, the section prescribes that the regulations may make provision for:

- the requirements for placement on a promotion list;
- the ranking of police officers on a promotion list; the period for which a police officer may remain on a promotion list or replacement promotion lists;
- the appointment of persons from a promotion list; reviews of requirements for placement on a promotion list and of ranking on a promotion list;
- reviews or appeals against a decision to remove a person from the promotion process or suspend or remove a person from a promotion list, on integrity grounds;
- the procedures for conduct of reviews;
- the circumstances in which a person may be removed or suspended from or restored to a promotion list;
- the period for which, or the circumstances in which, a promotion list remains current;
- notification of a decision to suspend or remove a person from a promotion list.

The third change relates to integrity matters, as outlined in proposed section 71. This provision substantially re-enacts the existing provisions requiring the commissioner to make certain inquiries into a person's integrity before the person can be appointed to a non-executive police officer position. This means that prior to appointment whether by way of promotion or otherwise, an integrity clearance must be received. However, the new system introduces an additional integrity check, which requires the commissioner to make inquiries about a person before he or she undertakes the eligibility program. This new integrity check has been adopted in response to concerns identified with the existing promotions process. Under the current

system a person can progress through the entire promotions process without being aware that there may be an integrity issue preventing his or her promotion. This wastes the time and resources of both the individual and NSW Police.

The additional check means that an individual who would be prevented from being promoted due to an integrity issue does not undertake the whole promotions process before becoming aware that he or she is unable to be promoted. Where integrity clearance procedures delay an officer's entry into the eligibility program, the officer's PQA and examination results remain valid for a three-year period from the day an applicant's formal written notification of clearance through integrity procedures is dated. The requirements that the commissioner make inquiries with the Police Integrity Commission and the Commander, Professional Standards Command as to an officer's integrity before promoting that officer still applies. The commissioner retains the discretion to refuse to promote the person on integrity grounds. Section 71 also allows the commissioner to suspend or remove a person from a promotion list or any part of the promotion process if the commissioner receives any information about a person's integrity that causes him to form the opinion that the person is not suitable. This provision ensures that integrity of individual officers who seek promotion remains paramount.

In relation to advertising vacancies the new promotion system no longer requires an applicant to apply for individual positions. The introduction of the promotion list concept for all vacancies within a rank and the elimination of the process of selection and appointment to a particular position remove the necessity to advertise a particular vacant position. However, the commissioner will advise as to the number of vacancies that will be available for the upcoming year. This requirement will be covered in the policy dealing with promotions and the policy dealing with transfers.

I turn now to schedule 2 "Amendment of Police Regulation 2000—requirements for appointment". The regulation has also been amended in accordance with the decision of Cabinet to set out the requirements for appointment to the rank of sergeant, inspector, superintendent, and to the grade of senior sergeant. An officer is eligible for appointment to the rank of sergeant, inspector and superintendent, or the grade of senior sergeant, only by way of promotion, if he or she achieves placement on the promotion list for the relevant rank or grade covered under proposed new clauses 18A to 18G of the regulation. This ensures that a person cannot be promoted unless he or she is on a promotion list. The eligibility requirements for placement on a promotion list for each rank are set out in proposed new clause 18H. These requirements are:

- the completion of two years at the rank below before being eligible to commence the promotions process, that is undertake the pre-qualifying assessment for the rank of sergeant, inspector and superintendent;
- the undertaking of a pre-qualifying assessment with a mark sufficient for inclusion in the quota to complete the promotion examination and management performance review;
- the completion of the pre-qualifying assessment, promotion examination and management review to meet the quota requirements to proceed to undertake the eligibility program; and
- the successful completion of the eligibility program.

The requirements for placement on the senior sergeant's promotion list differ slightly:

- Existing sergeants are not required to fulfil time at rank requirements or undertake the pre-qualifying assessment as they are deemed to have already fulfilled those requirements.
- An existing sergeant may be required to undertake the sergeant's promotion examination if there are a large number of applicants for placement on the senior sergeant's promotion list. How that officer performs in the examination will determine if he or she meet the quota requirements to proceed to undertake the sergeant's eligibility program.
- If an existing sergeant is successful in completing the sergeant's eligibility program he or she will be placed and ranked on the senior sergeant's promotion list in accordance with his or her eligibility program mark only.
- Senior constables who seek promotion to the grade of senior sergeant must have achieved placement on the sergeant's promotion list and have applied for placement on the senior sergeant's promotion list.
- A senior constable's performance in the eligibility program alone will determine if he or she meet the quota requirements for placement on the senior sergeant promotion list.
- A person who is qualified for more than one promotion list may be placed on more than one promotion list at any one time.

Proposed new clause 18I enables the commissioner to determine quotas for persons who may attempt to complete eligibility requirements for placement on a promotion list and the period within which successive attempts to meet eligibility requirements may be made. Proposed new clause 18J provides that persons on promotion lists are to be ranked according to their eligibility marks. Proposed new clause 18K provides that a promotion offer will remain open for 72 hours, unless the period is extended by the commissioner in a particular case. Proposed new clause 18L removes a person from a promotion list if the person is appointed to the rank or grade within a rank to which the list applies. The clause also provides that the commissioner must notify a person in writing if the person is suspended or removed from the list on integrity grounds. Proposed new clause 18M provides that a promotion list remains current for 12 months or until all persons on the list are appointed, whichever occurs first.

Proposed new clause 18N provides that an eligible person may be included on a replacement promotion list. However, a person can remain on a promotion list or replacement promotion list for only three years before he or she must re-qualify. Any person placed on a replacement promotion list will be re-ranked according to his or her eligibility mark. This may mean that they are ranked higher on the replacement promotion list than on the previous list or alternatively that they are lower placed, depending on

the eligibility marks obtained by other officers coming through the promotion process. Part 6A deals with non-executive administrative officers and re-enacts the appointment scheme for administrative officers in New South Wales

In relation to police, other than members of the NSW Police senior executive service and temporary employees, there are no changes from the existing provisions dealing with administrative officers. Part 6B re-enacts provisions relating to industrial matters common to both non-executive police officers and non-executive administrative officers. The new system provides for a right of review of a decision that an applicant has failed to successfully complete a promotion qualification as to the applicant's mark and removal from a promotion list. This replaces the previously existing right of appeal to GREAT. The review mechanism will be incorporated into the regulations following recommendations by the Promotions Implementation Steering Committee as to the appropriate review mechanism and procedures. It is expected that the review will take the following form:

- in respect of the examination it will involve a review by two independent markers who would review or re-mark the officer's examination results in accordance with the promotions examination review policy, which is yet to be finalised and is still before the project steering committee;
- will involve an independent marker who would review or re-mark the officer's eligibility program results, where those results are able to be reviewed, in accordance with the eligibility program review policy, which is yet to be finalised and is still before the project steering committee;
- that all officers will be notified that they must elect to apply for a review or re-mark within seven days of receiving their pre-qualifying, examination or eligibility program result;
- that all officers are notified that if they elect not to apply for a review or re-mark within the seven-day period, they are precluded from subsequently appealing their pre-qualifying, examination or eligibility program results at a later stage in the promotion process.

It is expected that the proposed review processes should be comparable with the Board of Studies New South Wales processes for marking and remarking. An independent standing review panel will also be created to review eligibility marks and rankings on all promotion lists. The panel will be able to take into account special considerations in appropriate circumstances. All review processes will be completed within 14 days of application during which time no appointments will be made. There have been a few changes to the new promotion system from that previously proposed. The new system originally made provision for appointments by way of promotion to the grades of chief inspector. However, following the conclusion of the award negotiations in relation to the rank of inspector and the overlapping pay scales now applicable to that rank, no further promotional appointments will be made to the grade of chief inspector, and the grade will eventually cease to exist.

Therefore the new promotion system does not provide a promotion system for the appointment of chief inspectors. The new promotion system has also changed following the consultation process. The Act now makes provision for a review of an integrity matter that prevents appointment by way of promotion. The Act previously allowed for an applicant for promotion who was prevented from being promoted due to an integrity matter to appeal to GREAT. The Act now provides for the regulations to establish a mechanism for review relating to a decision to suspend or remove someone from the promotions process on the basis of an integrity matter. The review mechanism will be incorporated into the regulations following recommendations by the Promotions Implementation Steering Committee as to the appropriate review mechanism and procedures.

As a result of the consultation process, the proposed promotions model has been changed so that the combined score in the pre-qualifying assessment, the promotions examination and the management performance review, would determine whether an officer could proceed to undertake the eligibility program. This change was viewed as a desirable improvement to the system, resulting in greater fairness to the applicants, and did not depart from the fundamental promotions model concept. These changes to the police promotion system accord with the overall objectives of the new police promotion model. The changes as a result of the consultation process have resulted in improved efficacy and fairness in the promotions process.

The regulations provide also that the Minister will carry out a review of the promotion system established for non-executive police officers two years after the establishment of the first promotion list, with the review to be completed within six months of that time. This is to ensure that the promotion system is working as intended and that the objectives of the new system are being achieved. The Act makes provision for the existing and proposed system to operate at the same time during 2007. The existing promotion system will continue to apply in respect of appointments by way of promotion to positions within the rank of sergeant, inspector and superintendent, and the grade of senior sergeant until the first promotion list is established for the relevant rank or grade within a rank.

As the new promotion system is predicated on an annual cycle for each rank, it takes approximately one year for officers to complete the different eligibility requirements in order to be placed on the promotion list for each rank. The Police Amendment (Police Promotions) Bill 2006 applies to the extent necessary to enable the establishment of the first promotion list and qualification for placement on those lists. During the time that a person is seeking to qualify for placement on a promotion list for the new system, officers will be given the opportunity to apply for promotion under the old promotion system. Existing qualifications such as the prequalifying assessment and assessment centre scores are not, however, transferable to the new promotion system.

Once the promotion list is formed for a particular rank, appointments can be made immediately from that list. Given that it takes one year for a person to complete the promotions process, the first appointments under the new promotion system cannot occur until 2008. However, the new system will commence from 1 January 2007. Appointments by way of promotion under the new system will not occur before 1 January 2008. The Act maintains the right of appeal to GREAT in respect of any appointment made under the existing system, even after commencement of the new system. A comprehensive communications strategy will notify police when the old system will be phased out and when the new promotion system will begin to apply to each rank. At all times officers will be notified of key dates for old and new.

Unmet expectations of promotional opportunities are, understandably, a cause of frustration for officers within NSW Police. Some level of dissatisfaction with the police promotion system will always exist, given the large number of potential applicants

for a relatively small number of positions and given the nature of the policing profession where unsuccessful applicants remain within NSW Police. Whilst these frustrations will never be entirely alleviated, they can be managed through a fairer and more equitable promotion system that provides officers with a realistic understanding of promotional prospects early in their careers and offers professional development opportunities outside the promotion system.

The new promotion system creates an equitable system of promotion that ensures that a person is not prevented from achieving promotion other than by their individual performance during the process. The promotions process is simplified by using one promotion list for all vacancies in a rank for a 12-month period. This reduces the delays associated with the existing promotions process. The new system removes the current costly and protracted appeal system and replaces it with a comprehensive system of review. The new system will ensure that integrity in the promotion process and of candidates for promotion is a fundamental principle of the police promotion system. I believe the new promotion system to be fair and equitable, giving all officers an equal opportunity to apply for a promotional position if they have the requisite skills, knowledge and experience. This bill ensures that there is an appropriate legislative framework for the new promotion system. I commend the bill to the House.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [2.45 p.m.]: The Police Amendment (Police Promotions) Bill amends the Police Act to implement a new promotion and appointment system for police officers based on selection for and appointment from promotion lists for particular ranks or grades within ranks. The changes to the promotion system will apply to the ranks of sergeant, including senior sergeant, inspector and superintendent who are not members of the police Senior Executive Service. Each rank will have a separate promotion list that will last for 12 months. It is anticipated that under the new system the first appointments will be made no earlier than 1 January 2008 and the existing system will run parallel with the new system during the implementation period. Officers must serve two years at rank as a precondition of entry into the promotion system.

It is important in this debate to examine the sad history of police promotions, and I will take this opportunity to do so. The problems inherent in the police promotions system began with the introduction of prequalifying assessment in 2000. The system became a complete mess when, following a change to the pass mark, a ministerial inquiry made 26 recommendations, the Police Integrity Commission's Operation Jetz found unethical conduct by officers in the disclosure of exam information, and changes were made to the Act to enable the Commissioner of Police to "deselect" officers. In December 2001 the *Daily Telegraph* reported that "after 19 months of debate, 75 subcommittee meetings, a Police Integrity Commission inquiry and 600 officers' careers left in limbo" the issue of police promotions had been resolved. It reported further:

Officers ... will require a tenure of at least two years before being given another full-time promotion. The Government and Related Employees Appeal Tribunal [GREAT] will also be given more power to reject vexatious or frivolous appeals against appointments.

These issues were reported in the media in 2001, when the Hon. Michael Costa was Minister for Police. Finally in 2006 some of the recommendations for change to the promotion system are coming to fruition. However, it is still not clear whether this particular change will work. The same December 2001 newspaper report quoted the Minister for Police at the time, the Hon. Michael Costa, as saying that a new system would be more corruption resistant and that visits by him to police stations and consultation with the community had highlighted the need to quickly resolve the problems with the promotion system. In 2002 we read headlines such as that which appeared in the *Sydney Morning Herald* on 9 April: "Scrapped—The Test Police Couldn't Pass."

As a result of continuing complaints about the promotions system the Schuberg report was finally commissioned in July 2002 by the then Minister for Police, the Hon. Michael Costa. Former Assistant Commissioner Geoff Schuberg produced an interim report in December 2002, and he handed a final report to the Minister for Police at that time, John Watkins, in December 2003. The present Minister for Police, Carl Scully, released the Schuberg report in May 2004 and referred it to a working party headed by another former Minister for Police, Peter Anderson, for review and implementation. That was back in 2004 and today we are nowhere nearer a conclusion.

Peter Anderson's final report went to the Minister in February 2005, and the Minister in turn released it for discussion. Now, years down the track, we are finally debating the latest round of legislation to fix the mess created by this Government, with applicants having to act for two years in a position before being promoted, as well as legislation to limit on appeals to the Government and Related Employees Appeal Tribunal. It is disappointing that nothing has happened in the three years since Geoff Schuberg handed his final report to the former Minister for Police, John Watkins. The report was commissioned in July 2002 but the new system will not be fully implemented until January 2008. The promotions system has been a dog's breakfast for some time with a number of senior officers acting in positions for months, and in some cases years, waiting for confirmation of their appointment. My understanding is that the Police Association has not yet signed off on the system; it prefers to wait to see what happens in 2008.

Under the changes proposed by the Anderson report, officers seeking promotion will be subjected to a three-stage process. Stage one will consist of a prequalifying assessment—commonly referred to as the PQA; stage two is an examination followed by an applicant evaluation; and stage three is an eligibility program. The problem with using examinations as a basis for determining suitability for promotion is that an advantage is given to officers, particularly senior officers, in quieter areas of the force—often referred to as "hidey holes" somewhere in police headquarters or in some areas of country New South Wales where the workload might not necessarily be as great as in areas such as Mount Druitt or in the city—who, as a result, have considerably more time to devote to study. The Government has said very little about the eligibility program envisaged under these changes. Rank specific and residentially based, it includes coursework, assignments and an interview.

What is the expected length of the residential component of the eligibility program? Where will it be held? What will be the academic and police background of the instructors and tutors? What skills will they have to determine suitability for promotion and leadership skills? Does the Government intend to set up a separate centre to conduct the program or will it take place at the Goulburn College, as it is currently known—or at the Goulburn Police Academy, as it will be known under a Debnam government? In his second reading speech the Minister indicated that NSW Police is developing the ability to project the number of vacancies for each rank. This will be a vital component of the new system and has the greatest potential for failure. There will be a sliding marking scale in the new system to meet the projected number of vacancies. If there is an unexpected significant increase in the number of vacancies, the potential exists for qualified officers not to be included on the list.

When a specialist vacancy becomes available, officers in order on the promotion list with the appropriate specialist qualification will be offered that vacancy. The bill will allow the commissioner to determine what additional specialist qualifications are required to fill specialist areas of the force. There is a need to ensure that officers considered for promotion in criminal investigation and in seemingly non-specialist areas such as traffic and general duties have the appropriate skills. The Government has told us that everything will be fine. It has said, "Trust us. It is all going to work out at the end of the day." However, there is a great deal of uncertainty, given that it will be possible for someone with a background in traffic to qualify and accept a job in criminal investigation, or for someone who has spent a long time in criminal investigation to be offered a job as a highway patrol or general duties sergeant.

The Government has said that that will not happen and that everything will be fine, but there is nothing in the information we have been given that dispels the concerns of police officers and the Opposition about the potential for senior officers to be directing junior officers with superior skills than those possessed by the senior officers. The new promotions list will be introduced after one year—the planned implementation will commence on 1 January 2007 but the new promotion lists will not be used before 1 January 2008—and the current and proposed systems will operate in parallel for that time. As I said earlier, the current system started to fall apart in 2000 and the new system will not commence until 2008—that is provided the uncertainties I have put on the record that have been raised by rank-and-file officers do not tear it to pieces in the meantime.

I think it is fair to say that this legislation has been designed to assist the Government in getting over the hurdle of the 2007 State election campaign. It will be up to the incoming government in 2007 to clean up the mess. The Government claims that, if successful, the changes will reduce delays in filling vacancies, will link education, training and development with promotion, will set up a clearer system for promotions and will make it easier to fill remote and difficult-to-fill positions. But, concern has been expressed that officers are being pooled together.

The following fitting analogy—that of creating a rugby league team—was suggested to me by a police officer. South Sydney places an advertisement in every daily newspaper calling for potential football players, without specifying any criteria. As a result, 1,000 people turn up on the required day to fill in an application form that asks them how much they know about rugby league and the rules of the game. Some 500 people pass the knowledge test and progress to the next round. Those 500 applicants undertake a fitness test, 200 of whom pass. Those 200 are then asked to undergo intensive training over a week to get their ball skills up to scratch. At the end of the week only 30 are found to have the necessary ball skills to play rugby league. The coach is now faced with 30 people who have passed three tests to determine how much they know about rugby league. They have proved they are fit and have undertaken intensive training. The problem is that the coach might find himself with 30 fullbacks, or 30 props or 30 five-eighths.

The legislation is silent about how specialist skills that police officers bring to the promotions system can be identified if they are all lumped together on one list. Despite the assurances of the Government, I am

concerned that the list will be made up primarily of people with specialist skills in an area that may not be appropriate should they be moved to another position. Referring again to the analogy: If a footballer with the skills of a fullback is moved to play in the position of prop, the team in which he plays would be destined to fail. The same argument applies to this promotions system.

Members of the New South Wales police force are sick and tired of being treated as guinea pigs when it comes to promotion. Many have dedicated their lives to their job and some who have been in the force for many years have a very sour taste in their mouths. Despite their anticipation, the Royal Commission into the New South Wales Police Service has failed to lift the lid on the whole issue of the promotions system. Hundreds of complaints about the promotions system were lodged with that commission and, even if they were all without foundation, the outcome of those complaints should have been exposed in the time leading up to the establishment of the Police Integrity Commission. Operation Jetz did not get to the core of the concerns expressed by police officers about nepotism and corruption in the system. The Minister to Police in 2001 claimed that the Government would build a corruption-free system, but the evidence shows that the Government has failed to deliver on that guarantee. The system relies on examinations and interviews, and does not recognise an individual officer's specialist skills; it will fail to ensure that officers with appropriate skills fill specialist positions.

I put on record my appreciation of the assistance that has been given to the Opposition by the New South Wales Police Association. The association has participated in the development of the new system through membership of the ministerial working party. However, I reiterate that although it was part of the working party and it has kept pressure on the Government since 2000 to bring about change, it is not prepared to endorse this model. Like the Opposition and rank-and-file police officers, the association is concerned about the system and is very unsure about it. The Police Association intends to monitor the effect of the changes before taking the matter to the 2008 biennial conference for determination. In effect, it will be at least eight years before we will be able to determine whether the promises made back in 2000 have delivered the much-needed change that members of the New South Wales police force have been calling for.

There is no doubt that Minister Costa and one of the biggest failures for police, the present Minister, Minister Watkins, have dragged their feet for far too long, particularly Minister Costa. He made more promises than one could poke a stick at—whatever people asked for—but he never intended to deliver. He made those promises with his hand on his heart and rank-and-file police officers believed that this guy from the Labor Council would look after the workers. What a joke! His primary focus has always been election day. Guess what is coming around again? The four-year cycle is nearly complete and election day is looming. That is what this is all about. Members opposite have now realised that their Government is getting long in the tooth and that if they implement the promotions system before the election the wheels could fall off. The slovenly approach taken by Minister Costa and Minister Watkins has probably saved the Government's bacon. This Government has been playing with the lives and careers of police officers, and it is attempting to do so again. I assure the Government that police officers are well and truly aware that its promises have no credibility and they know that they cannot be delivered within a realistic time frame.

Police officers are so desperate that they are prepared to grasp anything they can that might start the wheels of change turning in the promotions system. No-one believes that this is the end of the process. There will be change, but many officers are concerned about the pressure that will be brought to bear once this system fails, which I suspect it will. I would like to believe that it will not fail, but honourable members in the Legislative Council and in the Legislative Assembly have highlighted the many pitfalls in the legislation that will cause it to trip up. This will warrant its return to Parliament to be finetuned yet again. If the Parliament continues to pressure the Government to fix this mess we might have a police force which attracts people who believe in a career and, more importantly, which retains personnel. We are losing 50 to 70 officers a week, particularly those I call the middle-order batsmen—the senior constables and sergeants—who have had a gutful of a system that ignores experience.

Many officers are sick to death of the whole system. They have had it with the promotions system because they believe, quite rightly, that its relationship with the complaints system has a bearing on their future. It has been said time and again—and I will continue to say it—that New South Wales police officers who get in the face of crooks, lock them up, put pressure on them and harass them should be supported. The Coalition wants them to put pressure on criminals rather than be frightened that if they confront them they will be the subject of a complaint. That is the reality of policing in 2006, and that will be the reality until a government is prepared to make changes to the promotions and complaints systems to ensure that officers who are putting their neck, career, jobs and mortgage on the line by getting into the face of crooks are supported. The moment we do that there will be a complete turnaround in the New South Wales police.

Over the past 10 years this Government's approach to policing has led many officers to lose their way. They do not believe that they enjoy real support from the Government, and they certainly do not believe that they enjoy the support of the judiciary or the court system. They know that the community wants them to do more, but the system prevents or discourages them from doing it. We must recognise that the bad old days of policing are well and truly over. There is far more accountability, and transparency, in policing now. From the moment people are taken into custody electronic devices record the way they are spoken to, treated and interviewed. Given the level of accountability and transparency, the Government must finally recognise that the world has changed. The opportunity still exists for officers to be unethical or corrupt, but we have measures in place to identify and target them. We should recognise that and ensure that the officers who are doing what we want them to do—that is, put pressure on criminals to move or to give up their criminal activity, or put them in gaol—have the Parliament's full support through the promotions system and the complaints system. I do not believe they have that now.

Reverend the Hon. FRED NILE [3.06 p.m.]: The Christian Democratic Party is pleased to support the Police Amendment (Police Promotions) Bill, which is long overdue. The inquiries that have resulted in the introduction of this legislation go back to 2002. There has been intense dissatisfaction within the police force about the promotions system. It appeared that the shift from the old system was too radical. That system emphasised experience and seniority, but that was pushed to one side in one fell swoop and greater emphasis was placed on academic achievement and promoting to senior positions younger officers who may not have had street experience, which is a necessity for a police officer.

On one occasion a mob of young men was on a rampage in a country town and the police were called out to bring them under control. The inspector in charge turned to one of the senior constables with an expression almost of fear and asked, "What do you suggest we do now?" The inspector had no experience of the streets or how to handle street crime and street gangs. That illustrates the flaws in the promotions system. That police officer may have performed well before an assessment committee, or may have had good examination techniques and been young and presentable and a smart talker, but he was not qualified to hold that rank. When such incidents happen experienced officers are demoralised because they are under the control of an inexperienced senior officer and they must carry him in that role.

I hope that under this new system occurrences such as I mentioned will never happen again and we will have a balance between people who concentrate on the promotion process—it is necessary for officers to have certain qualifications—and experienced officers. Seniority and even age should be considered. I believe the public will be a lot happier to have experienced police officers who have a lot of knowledge about various types of crime and how to deal with it. This will give the public confidence. People may doubt that young officers in senior positions have the ability to carry out their duties.

One of the major areas of dissatisfaction in the police force has been the promotions system. I have respect for former Assistant Commissioner Geoff Schuberg, who conducted the inquiry into the New South Wales police promotions system under the direction of the Minister for Police. The inquiry made a number of positive conclusions, which I hope the bill will address and thereby remove the previous dissatisfaction. The new promotions system is a step in the right direction but it should be kept under constant review and feedback from police officers should be considered so that the system works and meets the community's needs.

Under the existing system problems have arisen with the promotion of inexperienced and junior officers to critical command or supervisory positions. Those officers sometimes have acted or relieved at an even higher rank. This is the point I was making when I related the story about a particular country town. I hope that under the new promotions system such instances will not occur. Another concern is the isolation of the existing promotions system from professional development and training systems. Officers should have a career plan for their movement through the various ranks.

The Schuberg inquiry identified difficulties associated with assessing workplace performance. Police were concerned about inaccurate assessment and possible bias within some command management teams and the impact of this on promotional opportunities. It was felt that what the teams were looking for was not what was best for the New South Wales police force. There was a perception that inadequate weight was being given to experience or length of service. These matters are very important in an organisation such as the New South Wales police force, and they must be given due recognition when promotions are being considered.

In the eyes of some assessors the person seeking promotion may be of the old brigade—what we would call a tough, experienced policeman—but that may be the sort of policeman we need. There is a role for

experienced officers who can put the fear of the law into criminals, rather than the reverse, which seems to be happening today. There have been problems with the appeals system, which has been costly. Something needs to be done to reduce the need for appeals. I am optimistic that the legislation will address many of the problems identified by the Schuberg inquiry.

The bill provides for appointment by way of promotion, from promotions lists, to all positions within a particular rank according to the highest ranking on that list, removing the delays in filling vacancies that exist under the current system. It also provides that an individual seeking placement on a promotions list for a particular rank must have spent two years at the lower rank before being eligible to start the promotions process. That is a step in the right direction. I am not sure whether two years is sufficient, but at least there is that requirement, and I hope that will be a minimum. Officers will have the opportunity to gain relevant policing experience to assist them in obtaining promotion.

The bill introduces a staged promotion system whereby an individual must successfully complete each stage before being eligible for promotion. Stage one retains the rank-based prequalifying assessment process; stage two introduces a rank-based examination, an integrity check, and a review by management of workplace performance; and stage three introduces a rank-based training program. Where the individual successfully completes all stages and is not subject to an integrity issue he or she will be eligible for placement on the promotions list. It is hoped that the system will ensure that officers are appropriately qualified and trained before being promoted. We are pleased to support the bill.

The Hon. JOHN RYAN [3.15 p.m.]: I wish to emphasise something my leader said earlier: the bill has all the hallmarks of a political fix designed just before a State election. The Government does not have a great track record in managing the police promotions system. We are only about 12 months away from the time when the contribution of the then police Minister, Minister Costa, was to have an examination system in which all the answers were published on the Internet so people could check the answers before they went into the exam. Fortunately, that era has passed; however, I am not sure that the proposed system is particularly sustainable. Why do I believe it to be unsustainable? Simply because it is a reach back into the past.

The Government has borrowed a system formerly used by the Department of Education for promoting schoolteachers. I remember the system well because I was subject to it when I was a schoolteacher many years ago. In the 1970s and 1980s some people thought that people who believed it was their turn should be promoted; others thought people should be promoted on merit. The Department of Education had what we called the old studbook. After people had been teaching for five years they underwent an assessment procedure that lasted a couple of days, and if they were considered appropriately efficient they were placed on to their first stage of promotion.

On the day on which they passed their inspection they were given a number, and that number went with them until they were promoted to the next position. After they had been promoted to that position they were then assessed for that position, and would then be placed on another list. And so it went, with teachers being placed on list after list. Everyone under the role of the subject head—I think when I left the teaching service they were called executive teachers—all the way through to principal used to wait with bated breath every year for the publication of this great book we used to refer to as the studbook. All of us would have a look to see how far we had gone up or down the stud list before we could apply for jobs. Essentially, the people the department was obliged to appoint to the positions were those with the highest ranking in the studbook. Eventually the whole system was abandoned because it was seen as promotion through dead men's shoes: somebody would fly off the top of the list and finally everyone would work their way through the system. That process was seen to be necessary because there were something like 45,000 or 50,000 teachers and that system seemed to be the only way to fill vacancies and manage the expectations of schoolteachers ultimately to be promoted through the system.

It appears that there is not a lot of difference between what the Department of Education used to do back in the 1980s and what is now being proposed for the police service. There is promotion at every stage. Officers have to wait so many years before they are assessed. When they are assessed they are placed on a list, and they stay on that list for 12 months, renewing their application three times over that period. The system is utterly unsustainable. We know from the experience with the Department of Education that the new system will not work. It may meet the political requirements of the Government to suggest to the police service that it is doing something. It may also be politically popular with the police, because it meets the objectives that Reverend the Hon. Fred Nile mentioned: people feel that all of them have a chance, that adequate weight has been given to experience, and so on. But we all know that the system is not sustainable. It will not work for very

long and after the next State election someone will have the job of dismantling the system yet again, starting from scratch, and going through the whole business again.

It has all the hallmarks of a quick fix. I find it astonishing also that the Government is going to operate this new system side-by-side with the old system. The Government does not have any particular commitment to the new system; it is going to be sort of grandfathered in over a period and there will be two promotions systems operating contemporaneously. That is a recipe for disaster. You either have confidence in your new system or you do not. The fact that it is going to operate contemporaneously with the so-called old system is proof positive that nobody has confidence that the new system will work.

But the Government believes there is a need to assure all the men and women in the police service that something is going to happen and it wants to make sure that they feel the Government is listening to their complaints. So the Government has designed a system which looks on the face of it to respect a person's level of experience, but it will be phenomenally bureaucratic, phenomenally slow, endlessly delayed, and people will be waiting unnecessarily for the opportunity to be promoted because good people with merit will have to go through each and every one of the stages whether they need to do so or not. They will be weighted down by the bureaucracy.

The Hon. Ian West: Good and meritorious in the eyes of the member.

The Hon. JOHN RYAN: We might find they will be good and meritorious in the eyes of the police service. I do not believe that age necessarily equals experience: there are people who can acquire experience very quickly because they are intelligent. Some people are quick learners and are able to make decisions quickly and gain respect. One wonders why the police service has not looked, for example, to our military services, which do not seem to have the endless debate and complaints about their promotions system that we have observed in the New South Wales police service. But the New South Wales Government has elected to go by means of the populist quick fix. Everyone knows this it is not going to work.

The Hon. Ian West: After lengthy investigation.

The Hon. JOHN RYAN: Maybe, but it shows all the hallmarks of reaching back to the past to drag something up that will allegedly work for the future. It looks populist to the police service, but if the Government had any commitment to this system certainly it would not be trying to work it side-by-side with an old system. It is almost a certainty that it will fall under the weight of the level of bureaucracy that will be required to record all of these lists and to assess all of the applicants, who will have to reapply every year. The system will be groaning under the weight of a phenomenal level of bureaucracy. I am pretty sure that around this time next year a future Coalition government will be in the position of having to fix up this mess and make decisions on actions that are more likely to work.

The Hon. Ian West: You must be leaving out the word "merit".

The Hon. JOHN RYAN: Does the Hon. Ian West have a problem with promotion on merit? I do not. I think we owe it to the people of New South Wales and to the police service itself to promote people to lead according to their merits. It will probably happen that lots of people have a lot of merit in the ability to lead and we will have to somehow or other choose the best. But it is a fundamental principle of the Liberal Party that we promote on the basis of merit, and it is what we believe in. Merit obviously can be measured in a number of different ways.

The Hon. Ian West: Yes, like seniority of service as part of it.

The Hon. JOHN RYAN: Seniority will obviously be an issue, and I am not suggesting that it is not relevant. The Government appears to have built a system that has a level of weight that may well cramp the capacity of others. As my leader pointed out in his contribution to this debate, the other problem is that this system is bureaucratically correct but not necessarily good for choosing people who have the best skills for the job: people who may well have investigatory skills will be running the highway patrol and people who may well have been performing general duties will be placed into senior roles where investigative or highway patrol skills might be more important. That is obviously a factor in the operation of the police service.

Whilst the Opposition does not oppose this bill, we are utterly convinced that it is a quick fix, it will not last into the future and, sadly, the Government has wimped out on doing what it should have done for the people

of New South Wales: put together a promotion system for the New South Wales police service which had its confidence—and this one does not—and which made sure that police officers were led by people according to their merit, being officers possessing the most enthusiasm and the best level of experience, training and intelligence to do the very, very important tasks that they have to do.

The Hon. ERIC ROOZENDAAL (Minister for Roads) [3.25 p.m.], in reply: I thank honourable members for their contributions to this debate. We all agree that reforming the police promotions system is essential. This bill ensures that the necessary legislative framework is in place to support the operation of the new promotions system and ensure its integrity. Before I make a few points about the bill it is worth reflecting on some of the Coalition's comments, which have been dripping in hypocrisy. I find it astounding that the Coalition dares to raise the issue of the royal commission when it, of course, opposed a royal commission into the police when it was in government. I am even more astounded by the Hon. John Ryan's remarks on merit and how liberalism encompasses merit.

I look over to members on the opposite side of the Chamber and I see a number who would argue that they no longer will be allowed to stay in this place because their service has not been deemed to be of merit. I notice that Peta Seaton is one person who I would have thought, on merit, should be sticking around, but because of the machinations inside the Liberal Party she has been forced out. So the Hon. John Ryan should not lecture this Government about merit. He should look to his own house first: to the appalling way his party is treating Pru Goward. If the honourable member really wants to look at merit, he should look at the Liberal Party candidate for Epping. Is he not a meritorious candidate!

The Hon. John Ryan: Point of order: I thought we were discussing the police promotions system. I do not think there is anything in the bill about the preselection system in either political party, not that this Government would have anything to brag about, given the antics and goings-on on the Central Coast. There are probably plenty of dead bodies under the belt of the Hon. Eric Roozendaal that he might like to brag about.

The DEPUTY-PRESIDENT (The Hon. Penny Sharpe): Order! The member will state his point of order.

The Hon. John Ryan: The point of order goes to relevance. I do not think what the Minister is saying is even slightly relevant to the bill.

The Hon. Michael Gallacher: To the point of order: The Minister started by saying how important the whole issue of reform is. It shows how important the issue is to him when he elects to engage in a diatribe of irrelevancies. It is on the record now for the police to read. This is how seriously he regards the highway patrol that he purports to represent in this Chamber.

The Hon. ERIC ROOZENDAAL: I am not going to be lectured by the Coalition on these issues.

The DEPUTY-PRESIDENT (The Hon. Penny Sharpe): Order! The Minister is replying to contributions made in a wide-ranging debate in which reference was made to, among other concepts, merit in the education system. The Minister is in order and he may proceed.

The Hon. ERIC ROOZENDAAL: It is all right for a member of the Coalition to go down memory lane about the good old days of teaching and think that is relevant. I reiterate the following points: In relation to the Opposition spokesperson's comments about the time taken to develop a new system, as a responsible Government we have an obligation to ensure that major reform to any system is considered and is subject to consultation to enable its successful implementation. Hasty and ill-considered implementation of changes to the current system in order to provide a quick fix would have been disastrous and would have exacerbated the very problems that this new system is designed to remedy.

There has been a rigorous process of review with extensive periods of consultation with the New South Wales Police Association—the Hon. John Ryan should not laugh at the Police Association; that is insulting to the hardworking police officers of this State—and members of NSW Police in order to ensure that an appropriate system is put in place that comprehensively addresses the deficiencies of the current police promotion process. A lot of time and effort has been devoted to developing a new promotions system on the part of former Assistant Commissioner Geoff Schuberg, the Hon. Peter Anderson and members of NSW Police and the New South Wales Police Association. All of this has taken time, but this Government wanted to ensure that it got it right.

I reiterate that the Police Association and members of NSW Police have been extensively consulted during every step of the development of this new system. This Government will continue to work with the Police Association during the roll out of the new promotions system. In relation to the Opposition spokesperson's comments about the use of promotion lists for positions, I advise that the fundamental principle of the proposed system is that to achieve promotion an officer must first meet the required standard to guarantee performance at the rank applied for. Specialised knowledge or skills should not override the necessity for all officers to be able to perform at the rank applied for. It is recognised and accepted that some officers will occupy positions that require some specialised knowledge or skill and the system takes account of the situation. It is imperative that all officers have achieved a certain level of skills before being promoted.

In respect to comments about recognition of experience, the proposed system incorporates policing experience into the promotions process in the following ways. It is expected that officers with a greater breadth of experience will perform well in the job-related knowledge test, which forms the basis of the examination component of the system. The management performance review also provides the opportunity for the experience of the officer to be evaluated in the work performance context. An officer's performance in all aspects of the eligibility program will be heavily influenced by the work experience as well as his or her knowledge, skills and attitude. A small weighting is given to the years of service in the overall eligibility mark. When combined, these components make up a significant part of the overall weighting and an officer with extensive operational experience would be expected to do well in all components of the promotions process.

In summary, I reiterate that there are significant benefits under the new police promotions system for individual police officers and for NSW Police as a whole. The new promotions system will streamline and simplify the promotions process for the ranks of sergeant, inspector and superintendent, and significantly reduce the amount of police time consumed under the existing promotion system, resulting in significant productivity gains for front-line policing. It will significantly reduce delays in filling vacancies by providing for immediate permanent appointment of officers from promotions lists to vacant positions—currently permanent appointment to a position can take several months. This will allow officers to be selected for vacancies as soon as those vacancies arise, minimising delays in permanent appointment. The new promotions system also recognises policing experience gained through years of service in the promotions process.

The new system will link police officer education, training and development with the promotion system by provision of rank-based professional development systems within the promotions process and remove the necessity of interviewing a large field of applicants for a small number of positions, reducing dissatisfaction associated with the existing system whereby applicants are interviewed when they are unlikely to be offered a position. The new system will remove barriers to promotional appointments being made in special remote and hard-to-fill locations through the use of promotion lists that are not qualified by geographic location or position type. At the same time the system will recognise that transfer opportunities must be provided to applicants who have been encouraged to accept remote or difficult locations in order to achieve promotion to a rank.

The new system will remove the delays and costs resulting from the promotional appeal system by providing a fair and efficient system of review at each stage of the proposed promotion system and provide a merit-based and rank-orientated promotions process, where integrity of the promotions process and integrity of the individual candidate for promotion remains paramount. The promotions model will also set the foundation for broader reform in the way NSW Police approaches development of officers by recognising that one of the main causes of officer dissatisfaction will continue to be the limited number of promotional opportunities within NSW Police and by proposing the creation of a separate professional development system for those officers who remain outside the promotions process. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

CRIMES LEGISLATION AMENDMENT (GANGS) BILL

Second Reading

The Hon. ERIC ROOZENDAAL (Minister for Roads) [3.35 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 Crimes Legislation Amendment (Gangs) Bill. Put simply, this bill introduces a raft of reforms to the Crimes Act and other legislation to criminalise gang participation and gang-related activity. The Government has prepared this bill because the citizens of New South Wales deserve the best possible protection against gang violence, thuggery and organised criminal activity. In December last year, Sydneysiders fell victim to unruly, riotous behaviour during the weekend of public disorder in Cronulla and subsequent revenge attacks. Earlier that year, residents and police were attacked during mob violence at Macquarie Fields perpetrated by a brutish few. No-one can forget the horrific shoot-out between rival bkie gangs, the Bandidos and Commancheros, at Milperra on Father's Day in 1984 that left seven dead, one of whom was a 15-year-old girl. These different acts of violence are deplorable. Whether committed by an organised criminal enterprise or an impromptu mob, they should be dealt with swiftly and effectively.

The bill attacks both mobs and organised crime gangs. Its provisions will undermine the very foundations of crime gangs and will further empower police in situations where people form a gang or mob on an ad hoc basis. Before providing the House with details of the bill, I would like to paint a picture of the types of organisations and activities we are trying to prevent. Fortunately, New South Wales cities are not plagued by violent street gangs such as those found in the United States of America. However, criminal organisations do exist. At the highest level, there are well-developed and hierarchical criminal networks such as the Russian mafia and other ethnically based organised crime groups and outlaw motorcycle gangs, known colloquially as bikies. Those organisations terrorise individuals and businesses, run sophisticated drug and firearm trafficking operations, cover their tracks through veiled money laundering operations and make innocent bystanders and businesses their victims.

In recent years, there have also emerged significant crime gangs based on common ethnicity. They include Vietnamese and Chinese gangs with a strong involvement in the drug trade, Pacific Islander groups who are specialists in armed robberies, and criminals of Middle Eastern origin who engage in firearms crime, drug trafficking and car rebirthing. I scarcely need remind the House that the majority of the members of those communities either have no connection at all with such crime groups or, regrettably, are their victims. Many gangs have nothing to do with ethnicity. They are formed rather on the basis of common interests, for example motorbikes, geographical proximity, or, sadly, social contacts made in the prison system. One thing that links those people together is that they are criminals.

Sydney residents were reminded of the presence of crime gangs during the tit-for-tat shootings over past years. Those cowardly and murderous attacks saw pockets of south-western Sydney suburbs terrorised night after night. Unfortunately, my electorate of Bankstown was focused on significantly during that period. Hence, the changes in the bill are very important to my constituents. The Cronulla riots and revenge attacks also showed that violent gangs can be formed quickly and on an ad hoc basis. The vile behaviour of those gangs made headlines throughout the world as violence, racial abuse, bullying and assaults found their way into peoples' front yards, shops and cars.

The bill recognises that crimes committed by gangs, whether they be crimes of violence, revenge attacks, systematic property damage, organised motor vehicle theft, protection rackets, armed robberies or the drug and gun trade, are a far greater threat to the safety and wellbeing of the community than most crimes committed by individuals acting alone. The bill attacks the foundations of two very different types of gangs. It deals with both organised criminal groups and impromptu groups of violent individuals or mobs. The two types of gangs are dealt with separately in the bill.

Schedule 1 to the bill amends the Crimes Act 1900. Item [1] inserts a definition of "public disorder" to mean a riot or other civil disturbance that gives rise to serious risk to public safety, whether at a single location or resulting from a series of incidents in the same or different locations. Items [3] and [7] make it clear that offences involving assault against police and other law enforcement officers include throwing missiles at them. Items [5] and [6] increase the penalties by two years for assaulting a police officer, assaulting a police officer occasioning actual bodily harm and maliciously wounding a police officer. Items [8] and [9] increase from two years to five years the maximum penalty for offences involving obtaining personal information about law enforcement officers or members of their families.

Item [10] increases the penalty by two years for firing at a house or building. Item [11] creates new offences relating to participation in criminal groups and recruiting persons to assist in criminal activity. Items [12], [13], [14] and [15] create new aggravated offences in relation to various crimes involving assault or damage to property where the assault or damage occurred during a public disorder, with a two-year increase in maximum penalties. Item [18] extends the limitation period for bringing proceedings for the offence of consorting from six months to 12 months.

Schedule 2 to the bill amends the Law Enforcement (Powers and Responsibilities) Act. Item [1] gives police further powers with respect to entry and search of crime premises by removing alarms, surveillance devices and the like, as well as blocking drains and pacifying guard dogs. Item [3] gives police further powers to disperse groups during public disorders. Item [5] gives police the power to obtain a court order to remove unnecessary fortifications to crime gang premises. Schedule 3 to the bill makes consequential amendments to other Acts, including the Crimes (Sentencing Procedure) Act 1999, the Criminal Procedure Act 1986 and the Local Courts Act 1984.

The organised crime offences relate to active participation in an ongoing criminal enterprise. The mob offences relate to crimes taking place during a public disorder involving assaults on law enforcement officers or attacks on property. First, let me explain how the bill tackles organised criminal groups. The bill creates a new offence of participating in or assisting in a criminal organisation. The bill defines a criminal group as being a group of three or more people who seek to gain material benefit from serious criminal offences which attract penalties of five years imprisonment or more, or who commit serious violence offences that are punishable by life imprisonment or 10 years or more. These conditions apply also to those who engage in conduct of that nature outside New South Wales.

As can be seen, the threshold used to define an organised criminal group is quite high. This means that three kids spraying graffiti on a billboard could not be classified as an organised criminal group, but a 10-person car rebirthing operation would be. The

proposed legislation does not make membership of a criminal organisation an offence per se, nor does it make every transaction with a criminal organisation an offence. A person can be a member of a gang and not a criminal participant. Similarly, a person can be a participant without being a member. For example, someone may be a member of Hell's Angels but may be largely removed from any criminal activity performed by that organisation. In the same way, a garage mechanic specialising in motorcycle maintenance ought not to be penalised for fixing Comancheros' bikes.

However, persons who participate in a criminal group knowing that it is a criminal group and knowing or reckless to the fact that their actions contribute to criminal activity, may face five years imprisonment. That offence targets a range of activities and people who work with criminal organisations, and obviously some of them will be members. They will wear the colours and have the tattoos. Others will wear tailored suits and appear to be the pinnacle of respectability. The offence targets those hiding in the background of a criminal enterprise and those who facilitate organised criminal activity. They may be accountants, bookkeepers, executives, or even lawyers who fudge records, launder money, construct sham corporate structures and hide assets. It also targets the front men.

These are the so-called cleanskins, people with no criminal record who give criminals a legal front behind which to commit their crimes and minimise the risk of detection by law enforcement. They may be licensed hoteliers, real estate agents, smash repairers, pharmacists or public officials who, in various ways, aid and abet ongoing criminal activity. And, of course, the bill targets the heavies—the people who actively commit ongoing criminal acts: the drug runners, the gun traffickers, the car rebirthers, the armed robbers and the standover men. Beatings, stabbings, shooting of rivals or witnesses who stand in their way, and destruction of property—these are the stock in trade of organised criminal groups.

If crimes of violence towards people or property, actual or threatened, are committed on behalf of a criminal organisation, then the penalty is doubled to 10 years. I stress that the assault or property damage must be committed as a way of furthering the gang's criminal activities. So a gang member who thumps his mate in a pub over a personal disagreement would probably not commit the offence, but if he hits a barman who threatened to report the gang's drug dealing, then he would be part of that organised gang activity. If an organised crime gang member assaults a law enforcement officer to further the gang's criminal activity, he or she faces up to 14 years imprisonment. The bill also introduces a new offence, with a maximum penalty of seven years imprisonment, of recruiting another person—not a child—to commit a crime. While it is already an offence to incite a person to commit a crime, recruiting someone into crime is a different activity. It is less about the crime itself than about corrupting a potential member and drawing him or her into a criminal gang.

New provisions in the Law Enforcement (Powers and Responsibilities) Act 2002 will allow the Commissioner of Police to apply to the Local Court to have an order granted that directs the removal or modification of fortifications at named premises. This will mean that fortified gang headquarters set up, for example, by outlaw motorcycle gangs will no longer be out of range from police. With these new powers police will be able to break down criminal strongholds. These are premises designed to hide the manufacture of illicit drugs, stolen goods, equipment used in identity theft, or guns and other weapons. Sometimes they are even used to dispense brutal rough justice on gang members who have transgressed the gang's rules. New search warrant powers for criminal gang premises enhance existing police powers. Police will now be able to disable alarms, cameras or surveillance devices, pacify guard dogs and prevent criminals from destroying evidence by blocking drains or the like. These powers will only be needed to execute search warrants on well-protected crime gang premises. They will not become a routine procedure for police.

The bill also targets persons involved in less organised gang activities, such as the rioters at Cronulla and those who took part in revenge attacks. I note that the honourable member for Cronulla is in the House. A new section of the Law Enforcement (Powers and Responsibilities) Act 2002 will give police the power to order people to disperse from a nominated area. Failure to comply will incur a penalty of up to \$5,500. This provision is designed to diffuse volatile situations in circumstances of public disorder. This power only becomes available if a lockdown has been declared. A dispersal order can only apply to locations within the area where the lockdown is in place. For example, people congregating on a beachfront or in a town square may be directed to leave those areas.

We ask a lot of our police. We ask them to put themselves potentially in harm's way every day they go to work to protect the public, but that does not give angry mobs a licence to attack them. This bill protects police and other law enforcement officials from becoming victims of gang brutality. Police and other law enforcement officers deserve the full support of the Government in the difficult task of ridding our streets of these low lives. Of course, police officers expect to take knocks in the course of their duties. But we should draw the line at an organised crime gang member assaulting a law enforcement officer to benefit gang criminal activity, and we will not tolerate mobs attacking police during a public disorder. It is totally unacceptable for mafia-type heavies to scrounge together personal information about law enforcement officers and their families to harm and intimidate them. Our police and other law enforcement officers commit their working lives to protect citizens of this State and this House should back any law that offers further protection to police.

The bill increases to seven years the penalty for anyone who, during public disorder assaults, throws missiles at, stalks, harasses, or intimidates a police officer in the execution of his or her duty. If the police officer suffers actual bodily harm, the penalty increases to nine years and if, heaven forbid, a police officer is maliciously wounded or suffers grievous bodily harm during public disorder, the offender faces 14 years in prison. We are also increasing to five years the penalty for snooping on the private affairs of law enforcement officers and their families with the intention of causing them harm. I am sure all members of the House share my disgust at the systematic destruction carried out by the revenge attackers in the wake of the Cronulla riot. Perhaps even worse are the incidents of rival gangs of thugs attacking each other's houses and those of their families and even engaging in drive-by shootings.

The bill increases the maximum penalty for a variety of offences involving damage and destruction of property during public disorder. These range from seven years for malicious damage to 16 years for firing at dwelling house or other buildings. Setting fire to premises with the intention to injure will now earn up to 16 years in gaol. We have ramped up the penalties for gang crimes, we have given police tough new powers, we have introduced Australia's first criminal organisation offences and we have given police and their families the protection they deserve. Crime gangs are on notice. Whether you are a violent mob or an ongoing criminal enterprise, the police are coming after you. I commend the bill to the House.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [3.35 p.m.]: I lead for the Opposition on the Crimes legislation Amendment (Gangs) Bill. At the beginning of the second reading speech in the Legislative Assembly the Parliamentary Secretary, the honourable member for Bankstown, referred to the very unfortunate incidents around Cronulla and south-western Sydney at the end of last year and concerns that Sydneysiders continue to have to this day. He spoke about the 1994 Milperra massacre, which many of us would remember, not necessarily intimately nor in the context of this Parliament. Reverend the Hon. Fred Nile would remember, as he was a member of this place at that time.

I remember vividly in the lead-up to Australia Day the Premier stated that police would take back control of the streets. He said that there would be high-profile policing for Australia Day because he was concerned about gang recriminations resulting from the December 2005 riots in Sydney. His statement that police would take back control of the streets was an admission that police had lost control of the streets. Since then we have not had any clear indication from the Government or, indeed, even from the community that police have taken back control of the streets. We have been unable to test the veracity of the Premier's claim prior to Australia Day.

In addition, during the past 24 hours comments have been made by police officers in and around Macquarie Fields that the powder keg of Macquarie Fields is about to, or has the potential to, erupt. Indeed, what happened at Macquarie Fields could be replicated in a number of places in metropolitan or country New South Wales because the underlying problems that existed prior to riots in Macquarie Fields, Redfern, Bourke and Cronulla still exist. Those problems have not been addressed; there have been merely band-aid solutions. In the lead-up to and on Australia Day the Government's response was that it had lost control of the streets; the Premier said that police were to take back that control.

The honourable member for Bankstown referred also to the Father's Day massacre in 1984, which resulted in the deaths of seven people following a shoot-out at the Milperra Hotel between members of the Commacheros and Bandidos bikie gangs. Another underlying problem was highlighted recently at the Gas Nightclub in the city when a volley of shots were fired into the nightclub one night. It is now alleged that the incident involved organised outlaw bikie gangs, and I shall detail that further in my contribution. Despite claims that everything is fine now following the riots in Cronulla in December last year and that both the events relating to the Milperra massacre and even Macquarie Fields are ancient history, the reality is that problems are simmering beneath the surface and that any one of these areas could erupt at any given time.

Despite the Government's claims, this legislation will not fix the gang problems. However, it will assist the police, who have been calling for these changes for some time. I draw the attention of Government members to the Law Enforcement (Powers and Responsibility) Act—commonly known as the LEPR legislation. Despite promises by the Hon. Carl Scully that the Government would review and fix the LEPR legislation, there are still problems with it. The concerns of the police, the Police Association and the Opposition about the wellbeing and ability of police to do their job properly still exist. The Government has failed to use this opportunity to address concerns about LEPR. I cannot work out why the Government is continuing to drag its feet. We have arguably only five or six sitting weeks left and more changes need to be brought into play in that area.

I looked extensively at the second reading speech by Tony Stewart, in which he drew the fairly clear conclusion that we are talking about two different types of gangs. We are talking about unorganised street gangs—if we turn on *Today Tonight*, *A Current Affair* or the news at any given time we see incidents of unorganised street gang activity—and high-end organised crime such as the Russian mafia, bikies or islanders involved in armed robberies and break and enters, as Tony Stewart referred to them. There are two distinct focuses relating to gang activity. The member for Bankstown focused more on high-end criminal activity or organised crime. He made much about outlaw motorcycle gangs, incidents in America and vicious bashings, and he mentioned the unfortunate events in Cronulla in December last year.

The overwhelming majority of the Tony Stewart's speech was certainly targeted at organised gangs rather than unorganised street crimes. The Government has failed to inform the community about the distinction between gangs, and to recognise the problems that have resulted in unorganised street gangs made up primarily of youths in the suburbs. Many young people in the same geographical area are drawn together. Some are drawn together on ethnic lines as a result of relationships with others in the same geographical area. Many gangs are made up of people of a like mind who live in particular areas and come together at night time—we are always told that it is boredom, never having anything to do. They then start with what I refer to as incrementalism in crime; they get involved in low-level antisocial behaviour. They may simply be loitering.

The Opposition has become aware of one incident—as a result of media attention, I am sure the Government is now aware of it—in which a family in Wollongong has had the roof of its home peppered with stones at night time. Many people would simply dismiss it as a prank, but it has been happening every night of the week. The police either fail to respond or do not take the complaint seriously, which was the complaint to the Opposition about the matter. I give credit to the police in the Wollongong area; they are now taking the complaint seriously and they are taking action. The reality is that young offenders who are involved in low-level gang activity will not be affected by this legislation, although they will become incrementally involved in more criminal activity. They might move on from stoning somebody's roof at night time to graffitiing somebody's property. If they cannot get the same result from stoning a roof they might graffiti a car, which is malicious damage. When that no longer produces a result they might then participate in other criminal activity such as minor stealing, major stealing, break and enter, and so on. Incrementally, they move through gang activities with degrees of criminality.

Nothing in this legislation addresses that problem. In recognising that there is a problem the Government must also recognise that it has made a mess of street level policing activities by taking its eye off the ball in regard to police numbers in New South Wales. The only way to address the issue of antisocial behaviour and street crimes is by providing a visible police presence on the streets, backed up by legislative changes that protect police as they face young offenders to let them know that when they are arrested and brought before the courts the matter will not be treated as a joke. One could bet pounds to peanuts that if the young persons involved in the stoning of the house roof in Wollongong are brought before the Local Court—it will be a juvenile court—they will be given a slap on the wrist. That is part of the problem.

When young offenders appear before the courts, whether or not they are involved in gang activities, well-meaning magistrates think that if they give them a good behaviour bond or a slap on the wrist one more time that will be the defining factor and these young people will not find themselves before court again. However, that will not happen. This legislation will not put a stop to their behaviour until the courts take matters seriously by saying, "No, sorry, you've had enough cautions. You've had enough warnings. That's the end of it. You will now face gaol time." Unfortunately, that will not happen in New South Wales. It is for that reason—whether we are talking about individual crimes by young offenders or gang activities and street crime—that the Coalition has indicated that the never-ending cycle of cautions and warnings will be brought to an end: One caution, one warning and then you face gaol time, as you would if you were an adult offender going through the court system.

The revolving door of warnings and cautions is part of the problem for many young offenders because no-one has put a proper check on their behaviour, and every time they go to court they know they are untouchable. Indeed, they wear their criminality as a badge of honour. Until we address the problem we will continue to go around in circles with more and more young offenders going through the system. The legislation will fail to deal with unorganised street gangs because it does not recognise that young offenders roam around shopping centres and suburbs, there is no visible police presence on the streets to check their behaviour and there is not the necessary backup to draw the line in the sand when the offenders are brought before the courts. These young offenders are constantly given a slap on the wrist. Indeed, some magistrates must be developing repetitive strain injuries from giving so many wrist slaps to these young offenders because they simply do not take the matters seriously.

I turn now to organised crime in relation to the legislation. Some measures in the bill are long overdue, but there is still a long way to go. First, the Government needs to recognise—I should say that it needs to take its head out of the sand—that we have a burgeoning problem with outlaw bikie gangs. The honourable member for Bankstown, in his speech, failed to mention the incident at the Gas Nightclub. That incident highlights that bikie gangs are moving from illegal activities into legitimate business. The police have told me that the incident at this city nightclub resulted from the club's decision earlier in the week to change from one security company to another.

As a result of slackness, the New South Wales Government has not focused on what has happened in Western Australia and South Australia. The significant number of crowd control security organisations in New South Wales that are funded by bikie gangs has spread like cancer. The Gas Nightclub shoot-up related to a security firm owned and operated by one of these bikie gangs losing its contract. It was the get square. I am not in a position to indicate whether the company that got the contract was related to a bikie organisation, but I am told by a secure source that an outlaw motorcycle gang was responsible for the shoot-up. This is not a solitary incident. I am told that many crowd control security organisations that operate freely within the metropolitan area have direct links to bikie gangs.

It makes sense, does it not? In the past few days we have been speaking about police sniffer dogs and their effectiveness. It does not take much to make the jump. If bikie organisations are involved in clandestine amphetamine factories, the distribution of amphetamines and other drugs, and are operating the security at the front door—the first point police have to go through as they commence their drug searches—it is easy for them to make a phone call to those on the inside who are involved in drug distribution. The bikies control the security outside and the activities inside the nightclub. I have been told by people inside the security industry that the bikies are in a position to undercut the more legitimate companies in providing crowd control security at nightclubs. Why? Because they are making a squillion from their illegal activities inside the nightclubs. There is also incentive for many nightclub owners not to knock back bikie firms who are offering to provide security for fear of recriminations or finding their nightclubs subjected to a degree of attention by members of bikie gangs, thereby rendering the nightclubs useless to legitimate patrons.

We have a problem with bikies, but the Government makes no mention of it in this legislation. It does not recognise the seriousness of it. We have problems in Macquarie Fields, in Cronulla and in Redfern, but the situation is developing, primarily in Sydney, where gangs of outlaw bikies are simply moving into legitimate businesses, using black money that has come through any number of sources and washing it through the nightclubs—we have seen similar situations in American movies about the mafia laundering dirty money through the nightclubs and casinos of Las Vegas. The Parliamentary Secretary, the honourable member for Bankstown, spoke about the approach the Government would take. He said:

The proposed legislation does not make membership of a criminal organisation an offence per se, nor does it make every transaction with a criminal organisation an offence.

Why does it not make it an offence to be a member of a criminal organisation? If the Government is serious about identifying gangs involved in criminal activity, as this bill purports to do, why is it not an offence for a person to be a member of such a gang? The honourable member for Bankstown went on to speak about the garage mechanic specialising in motorcycle maintenance who ought not be penalised for fixing Commancheros bikes. That is obvious: He is not involved in the organisation. That is a fairly weak example to use. However, if the local garage mechanic is involved in motor vehicle maintenance for the Commanchero motorcycle gang because he is an active member of that gang, why is that not a criminal offence, if it can be established that that organisation is a criminal organisation?

The Government is not being serious in recognising that we have a problem with gangs. It is not prepared to register these gangs as criminal organisations, whether they be bikie gangs or any other gangs. That is the difference between the position of the Opposition and the Government: We intend to target these gangs and use every possible resource we have to go after them. There was no mention of the Crime Commission in the second reading speech. The Crime Commission has the most incredible investigative powers we have seen in New South Wales. However, there is nothing in the speech about using the commission, in conjunction with a tougher approach to gangs, to go after the gangs or about legislatively outlawing the gangs as criminal organisations and using the commission to take all of their resources and assets. The Government is not serious. The Coalition will be serious about gangs in New South Wales and we will stop fiddling about the edges—the Government is merely fiddling around the edges with this bill.

There is no mention in the second reading speech about high-visibility policing, particularly in the central business district, being stripped away since December of last year. Last year, on any given day, honourable members who walked out of this Chamber and down Martin Place would have seen a police officer wearing a hat best described as the colour of a tennis ball. That was the Government's spin—having all these police running around with brightly coloured hats on, trying to create the impression that they were visible. There is a need for police visibility. However, because the Government has ignored the police numbers issue it is unable to maintain the numbers for high visibility policing in the city. I put it on the record that when the Coalition is elected next year one of our primary focuses against antisocial behaviour will be to make sure there is high-visibility policing in the city.

The Hon. Melinda Pavey: And in country towns.

The Hon. MICHAEL GALLACHER: We have to start in the city because we have a problem with gangs in the city. By introducing this bill the Government recognises we have a problem with gangs—primarily antisocial behaviour and street crime. I am not talking about organised gangs now but about unorganised street gangs. The only way we will target such gangs is by saturating areas where they are operating with high-visibility police—we should not have police roaming blindly around the city trying to work out what they

are going to do for the next couple of hours. One works out where the gangs are operating in the city by using the intelligence system and then targets them. That is the difference between the Coalition, leading towards government next year, and the Government, as it prepares for opposition next year. The Government simply has no idea what to do.

I suspect the Government needs to deploy up to 150 police not only in metropolitan areas but also in country areas where there are problems with gangs. A significant body of men and women could be moved around the State to target street crime and unorganised street gang activity. Right now there are no answers from the Government. I call on Government members to walk through the city from Circular Quay to the cinema strip in George Street and to try to identify police on the street. They are simply not there. We need to do something desperately. If someone calls for help in the city it is some time before police get there to assist.

The Government should not do what it did last year: a high-visibility police stunt; police officers running around with hats the colour of a tennis ball. The Government should use the police intelligently to identify the hot spots of criminal activity, particularly unorganised street gangs, and ensure that they are targeted properly. Instead, the Premier is more focused on a media stunt. He is trying to create the impression that he has taken back control of the streets. There is no measure by which we can test the veracity of his comments until such time as we have another eruption, whether it is in Macquarie Fields, Redfern, Bourke or somewhere else. I pray we do not have another incident. However, as the Government has ignored the problem for so long it is only a matter of time.

Reverend the Hon. Dr GORDON MOYES [3.59 p.m.]: The object of the Crimes Legislation Amendment (Gangs) Bill 2006 is to introduce a range of new offences and enhanced penalties to tackle gang crime. The Christian Democratic Party has looked into this quite closely and I indicate that it will support the passage of this legislation. We all agree that we want to live in a peaceful and democratic society where citizens have regard to the rights of, and exercise their responsibilities to, one another.

Pursuant to sessional orders business interrupted.

QUESTIONS WITHOUT NOTICE

ROADS AND TRAFFIC AUTHORITY ADDRESS SUPPRESSION POLICY

The Hon. MICHAEL GALLACHER: I direct my question to the Minister for Roads. Why has the Roads and Traffic Authority changed its policy relating to the suppression of addresses of police officers? Why must police now have to show they are under direct threat before having their addresses suppressed and having them remain suppressed? Given that police may not be directly aware whether or when their personal safety and that of their family comes under threat, will the Minister agree to overturn this policy and allow suppression of the addresses of all police officers who request it?

The Hon. ERIC ROOZENDAAL: I will take that question on notice and come back to the House with a comprehensive response.

MOTOR ACCIDENTS AND WORKCOVER SCHEMES REFORMS

The Hon. JAN BURNSWOODS: I address my question to the Minister for Commerce. Will the Minister update the House on the benefits flowing from the Government's reform of the Motor Accidents Scheme and WorkCover?

The Hon. JOHN DELLA BOSCA: As a result of our changes to the New South Wales Motor Accidents Scheme, green slip premiums have fallen by \$200 in real terms. The proportion going to lawyers has reduced by a third and the average payment to the seriously injured has increased by 74 per cent. So, premiums are down, payments to lawyers are down and benefits to the seriously injured are up. The average payment for non-economic loss has more than doubled under the new scheme. The average premium for a Sydney car has dropped from \$441 before the 1999 reforms to just \$314 in June 2006. Green slips are the only form of insurance where the premium has fallen to the price it was in 1995, more than a decade ago.

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

The Hon. JOHN DELLA BOSCA: The Government's reforms have also allowed for an historic expansion in benefits. The no-fault-for-children benefit commences on 1 October this year and the no-fault benefit for the catastrophically injured, the Lifetime Care Scheme, will commence on 1 October 2007. In workers compensation we have cut the disputes and delays in half and most people now get their benefits within seven days. We have increased benefits twice for the more seriously injured, and by streamlining the system we have been able to reduce premiums by 15 per cent. The Iemma Government's workers compensation premium reductions represent an annual benefit to New South Wales businesses of \$430 million. The 2001 reforms reduced legal costs by more than \$1.25 billion. It was a scheme wracked by disputes and delays, which prevented injured workers from receiving prompt medical attention and compensation, and created frustrations for employers.

[Interruption]

I acknowledge the interjection from the Hon. Robyn Parker and say that it is not true that a person must be 15 per cent impaired to get benefits from the workers compensation scheme. That applies to one type of payment only. Every injured worker is entitled to all medical costs and weekly benefits until ready to return to work. A coalition of lawyers groups today called on the Government to implement the recommendations of the Inquiry into Personal Injury Compensation Legislation. PricewaterhouseCoopers has calculated that the cost of doing this would require workers compensation premiums in New South Wales to approximately double. Taylor Fry calculated that green slips would need to increase by about \$100. On both occasions when the workers compensation motor accidents legislation was debated, the New South Wales Opposition of course supported the lawyers. Will the Opposition again support the lawyers? Will it back a proposal to increase green slips by \$100 and double workers compensation premiums? That would bankrupt countless New South Wales businesses. We will not make the mistakes of the past. The previous Liberal Government re-opened the WorkCover Scheme and, before we turned it around, the scheme had built a \$3.2 billion deficit. Opposition members do not like to hear it but it is the truth. In motor accidents, the Greiner scheme saw the insurers making profits of up to 55 per cent in one year, while premiums escalated uncontrollably.

The PRESIDENT: Order! I call the Leader of the Opposition to order.

The Hon. JOHN DELLA BOSCA: In both workers compensation and third party motor accident insurance we have delivered stable schemes with lower premiums, lower legal costs and higher benefits to the people these schemes were designed to help: not the service providers, but the seriously injured.

DROUGHT AND WATER RESOURCES

The Hon. DUNCAN GAY: I direct my question without notice to the Minister for Primary Industries. Does the Minister recall indicating during the Primary Industries budget estimates hearing that "We have a great difficulty at the moment in that we have the longest drought in 100 years and very low capacities in all our dams across the State?" How does that equate to the Premier's statement to the *Daily Telegraph* on 30 July that, "In New South Wales we have secure [water] supplies for the next decade and a half?" How can the Premier justify that statement when 92 per cent of New South Wales is drought declared? How out of touch is the Premier?

The Hon. IAN MACDONALD: I do not see any contradiction between those statements. We are in a drought in this State. That is quite clear. It has been going on now for probably five years. I think the Premier was referring to the Metropolitan Water Plan and the fact that we have systems in place across the State to ensure that we can deliver necessary water to our customers of whatever sort. If they look at what is going on, honourable members will find the very innovative programs that the Government has implemented to ensure secure water supplies in metropolitan areas.

BICYCLE NETWORK POLICIES

Ms LEE RHIANNON: I direct my question to the Minister for Roads. Given the cuts in expenditure to the Roads and Traffic Authority's [RTA] bicycle network facilities projects, recent removal of bicycle lanes on William Street and other streets surrounding the Cross City Tunnel and delay in establishing bicycle lanes at the Lane Cove Tunnel, does the Minister agree that cyclists and pedestrians need an advocate for their interests within the RTA? Will he reinstate the Senior Executive Service position of General Manager, Bicycles and Pedestrians, abolished by Michael Costa, the former Minister for Roads, in 2005 or will he perpetuate the anti-bike policies of his predecessor and leave cyclists and pedestrians to their own devices—is he a Costa, or will he change?

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

The Hon. ERIC ROOZENDAAL: I am disappointed that, despite the fact that the honourable member was a member of the Cross City Tunnel inquiry and supported reversal of a number of things that included the bikes, she has changed her position. It is frankly untrue to say that the New South Wales Government does not support bicyclists and cycleways. In 2006-07 the New South Wales Government will spend \$71.3 million on cycleways. In 2006-07 the Roads and Traffic Authority will provide facilities for the use of cyclists as part of major road construction projects and directly fund bicycle-specific programs valued at more than \$7 million. An estimated \$6 million worth of cycling facilities will also be delivered by the private sector as part of the Lane Cove Tunnel project.

As I have advised the House, in 1999 the New South Wales Government released BikePlan 2010 with a commitment of \$251 million over 10 years to deliver an average of 200 kilometres of cycling facilities each year. The Government has provided more than \$220 million for bicycle programs since BikePlan 2010 was released, with a further \$71 million of works to be completed this financial year. As at 30 June 2006, an average of 236 kilometres of cycling facilities have been provided by the Government each year since 1999, which exceeds that projected in BikePlan 2010. This Government is clearly committed to encouraging cyclists and bicycleways as a way to improve the health of the community and to encourage alternative forms of transport.

Ms LEE RHIANNON: I have a supplementary question. Will the Minister reinstate the Senior Executive Service position of General Manager, Bicycles and Pedestrians—yes or no?

The Hon. John Ryan: Point of order: I had difficulty hearing the Minister's answer because of the interjections of the Hon. Michael Costa. He is obviously very enthusiastic about sacking people. I think he had a plan to sack 20 per cent of the public service.

The Hon. Michael Costa: You are planning to get rid of 29,000!

The Hon. John Ryan: Apparently the Minister would better that by a factor of two. If he could curb his enthusiasm—

The PRESIDENT: Order! It would be hypocritical of a member to take offence at interjections unless that member has never interjected. All interjections are disorderly. Does the Minister wish to answer the question?

The Hon. Jennifer Gardiner: Get on your bike!

The Hon. ERIC ROOZENDAAL: There are a lot of bikes around Glebe. That is the extent of the honourable member's geographical expenditure. The honourable member is the only member of The Nationals living in Glebe. I am advised that the new Roads and Traffic Authority [RTA] chief executive officer is finalising plans to streamline the top levels of the RTA.

The PRESIDENT: Order! I cannot hear the Minister.

The Hon. Duncan Gay: He has lost half the voters in Glebe.

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

The Hon. ERIC ROOZENDAAL: This is necessary to refocus the RTA on the core goals of construction, maintenance, road safety and service delivery. As an initial step, some RTA directorates are to be amalgamated, thereby reducing the number of directors. This is an appropriate approach by the new CEO, who is committed to improving client services and customer satisfaction. I will certainly support him as he continues to restructure the directorate and management level of the RTA.

CLUB DRUGS

The Hon. TONY CATANZARITI: I direct my question to the Minister for Health. What is the latest information about the New South Wales Government's initiatives targeting the use of club drugs?

The Hon. JOHN HATZISTERGOS: On Sunday I was pleased to launch a major \$770,000 education campaign—that includes GST—targeting young adults who use illicit drugs at clubs, pubs and festivals. The campaign will begin next week and run for six months to target the upcoming summer party and festive season celebrations. The campaign consists of a series of posters and advertisements with key messages such as the unpredictable individual reactions to club drugs, the highly addictive nature of methamphetamines, the risk of long-term effects from regular use of club drugs, and the importance of seeking medical help when someone becomes ill from drug use.

The New South Wales Government is getting the message out that there is no such thing as "safe" use of these drugs—they are unpredictable and they can result in impulsive reactions. The messages are hard-hitting. They have been developed with the help of drug experts and carefully tested with focus groups of young people. The campaign will include posters in conveniences at nightclubs, bars, universities and colleges in Sydney and major regional centres, print advertisements in student newspapers, street and music press and other event publications, web banner advertisements on music and ticket sale web sites, web-based educational competitions and information cards distributed through fashion and music outlets, and university campuses. Paul Dillon from the National Drug and Alcohol Research Centre at the University of New South Wales welcomed this initiative, saying that the campaign "aims to provide accurate information without sensationalism or distortion".

This is the first New South Wales Government campaign specifically targeting club drugs and it draws on key information on relatively new substances such as crystal methamphetamine or GHB. It is part of the New South Wales Government's ongoing efforts to tackle drug use. It is taking action to reduce the supply of these drugs, to stop associated criminal activity, to provide better treatment and to inform and educate the community. I note that the only contribution to this issue made by the Opposition's Health spokeswoman was on Sunday when she stated that the Government "needs to substantially boost the amount of money allocated to rehabilitation programs". The only initiative so far announced by the Opposition has been an identified expenditure of \$2 million allocated from the confiscated proceeds account now being directed to the medically supervised injecting centre. In other words, the Opposition plans to spend 50 times less than the New South Wales Government is spending on treatment in the health portfolio alone.

This Government's focus on expanding treatment in New South Wales is evidenced by the increase in the number of treatment places since the 1999 Drug Summit. There are 30 per cent more drug treatment places, 300 more residential rehabilitation beds, 4,000 more inpatient detoxification places and two new medicated detoxification treatment units to treat 1,000 more patients a year. It is also providing education, early intervention and treatment information to front-line clinicians.

In November 2005, I was pleased to launch the Amphetamines, Ecstasy and Cocaine Prevention and Treatment Plan. Additionally, specialist training for area health service staff and drug and alcohol service workers across New South Wales has been developed to build necessary skills in the treatment of psychostimulant users. Next week I will be attending and speaking at the Inaugural Australasian Amphetamine Conference and further outlining the range of initiatives the New South Wales Government has to tackle this emerging problem. I assure the House that the Iemma Government is committed to tackling the problem of psychostimulant use and ensuring that the positive results it has achieved are continued. I commend all those involved in the development of the new Club Drugs Campaign.

PAEDOPHILE PROTECTION ALLEGATION

The Hon. Dr PETER WONG: I direct my question to the Minister representing the Attorney General. Is the Minister aware of the report in the *Daily Telegraph* today entitled "Libs in DPP Porn Crisis"? Given the significant number of bureaucrats caught with child pornography since the Wood royal commission, including officers from the Department of Juvenile Justice, the Department of Education and Training, the Department of Community Services and now the Office of the Director of Public Prosecutions, and the number of politicians, police officers and even a magistrate who has been charged and convicted of child sexual assault, what does the Government have to say about the allegations concerning the protection of a powerful paedophile ring operating throughout New South Wales and Australia?

The Hon. Melinda Pavey: Go outside and ask that!

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

The Hon. JOHN DELLA BOSCA: The last part of the honourable member's question contains an incendiary assumption. This matter has obviously been of considerable concern during the day. I will take the question on notice and provide a detailed answer as soon as practicable.

STATE ECONOMY

The Hon. GREG PEARCE: I direct my question to the Treasurer. Given that the Treasurer has admitted that the New South Wales economy will get only worse, will he now explain how much bigger than \$1 billion his deficit will be? Why is he driving the New South Wales economy into recession?

The Hon. Duncan Gay: Can you turn it around?

The Hon. MICHAEL COSTA: I will certainly turn it around. I find it staggering that the honourable member would ask a question about the state of the economy, given what the Federal Government has done with interest rates and petrol prices in recent times.

The Hon. Duncan Gay: Thank you, John Howard!

The Hon. MICHAEL COSTA: John Howard likes to take the credit when the economy is moving ahead. However, he tends to forget history, which clearly shows that Paul Keating opened up the economy and ensured that it was efficient, effective and globalised. When John Howard was taking the credit for Paul Keating's work, he was very happy to do that. Now we have interest rate pressures, inflationary pressures—largely due to the budget delivered by the Federal Government, which was inflationary—

The Hon. Duncan Gay: No, it was not.

The Hon. MICHAEL COSTA: It absolutely was—and it was identified as such at the time. That budget set the preconditions for the last set of interest rate increases.

The Hon. Duncan Gay: Absolute crap!

The Hon. MICHAEL COSTA: Absolute fact—and acknowledged by all independent commentators. I refer members to Ross Gittins' article only yesterday. He made the point that John Howard likes to take credit for the good news but runs a million miles away from the bad news. The reality is that we are facing economic difficulties because of the interest rate increases resulting from the Federal Government's incompetence in managing the interest rate environment and its incompetence in managing expenditure.

The Hon. Greg Pearce: Point of order: We are more than halfway into the Minister's time for answering the question and he still has not addressed the high taxes in this State, his mismanagement, the State's high unemployment rate, and the rest of his problems. He should answer the question.

[Interruption]

The PRESIDENT: Order! The Hon. Greg Pearce will restate his point of order; I did not hear a word of it.

The Hon. Greg Pearce: We are already halfway into the Minister's time for his answer and he has not addressed his economic mismanagement, the highest taxes in the country, and the 5.7 per cent unemployment rate, which is the worst in the country.

The PRESIDENT: Order! There is no point of order. The Hon. Greg Pearce will resume his seat. He knows full well that is not a point of order.

The Hon. MICHAEL COSTA: Is it any wonder that members opposite interject? They do not want to hear the economic facts. The Federal Government's economic mismanagement has put interest rate pressures on families and on our economy. It is leading to a situation where the Federal Government is ducking and covering to find any excuse to blame the State Government for its incompetence.

Talking about expenditure, last week the Federal Government made the astounding announcement that its radar project was a flop. That is \$0.5 billion worth of Federal Government expenditure! The week before, we

had the announcement that its joint strike fighter was not going to work. That is \$2 billion worth of expenditure! The week before that, we had the Federal Government announcement that it had helicopters that were not working. That would have cost \$2 billion! That shows the Federal Government's incompetence and mismanagement of the economy, and expenditure out of control. It shows a government ducking for cover, a government that is in fear of facing the electorate because they would get what they got in Queensland.

FIRE BANS

The Hon. KAYEE GRIFFIN: My question without notice is addressed to the Minister for Emergency Services. Will the Minister update the House on fire danger in the State's south?

The Hon. TONY KELLY: The Rural Fire Service has today declared the first total fire bans for the 2006-07 fire season, in the State's south. The fire bans, covering the Northern Riverina, Southern Riverina and south-western fire areas, have been imposed due to the extreme fire danger posed by predicted hot, dry and windy weather. Firefighters in these areas fear the combination of dry conditions, predicted strong north-westerly winds gusting to 65 kilometres per hour, low humidity and temperatures of up to 32 degrees. Rural Fire Service Commissioner Phil Koperberg advises that this will make fires difficult to control.

I remind local landowners and managers that this extreme fire danger for the Riverina and Victorian border areas means that fire permits are suspended and the lighting of any fires in the open is prohibited for the 24 hours to midnight tonight. Today's total fire bans cover 16 local government areas in three fire areas. In the Southern Riverina fire area, they are Berrigan, Conargo, Corowa, Deniliquin, Jerilderie, Murray, Urana and Wakool. In the Northern Riverina fire area, they are Carrathool, Griffith, Hay, Leeton, Murrumbidgee and Narrandera. In the south-western fire area, they are Balranald and Wentworth. Despite recent rain, which has generally been concentrated in coastal areas, we are currently experiencing very dry conditions around the State. These total fire bans serve to highlight the fact that the summer bushfire season is upon us. This is a timely reminder for people to prepare their families and properties for bushfire—

The Hon. John Ryan: What's timely about this? By the time today's *Hansard* is produced, the fire ban will have been lifted.

The Hon. TONY KELLY: The Hon. John Ryan is going to stand for preselection at large. He had better try to get some country votes. This is a timely reminder for people to prepare their families and properties for bushfire, understand what a total fire ban means, and become familiar with the New South Wales fire area in which they live. Even in Western Sydney, where the Hon. John Ryan lives, and those interface areas, one would have thought this timely reminder would be appropriate as well. As I told the House recently, people can check the Rural Fire Service web site or ring the toll-free information line on 1800 679 737.

Commissioner Koperberg has forecast that we could be facing another potentially long and severe bushfire period this summer. The official start of the bushfire season has been brought forward from 1 October in a number of areas around the State. As of last Friday, fire permits are required in 32 local government areas across the State. But I repeat: these permits are suspended during a total fire ban. I again appeal to families, landholders and managers to prepare now for the bushfire season.

TUGUN BYPASS PROJECT

The Hon. PETER BREEN: My question without notice is directed to the Minister for Roads. Is the Minister aware that the Queensland Government has commenced construction of the Tugun bypass, near Coolangatta airport? Can the Minister inform the House whether the construction of the New South Wales section of the bypass is on target, whether construction has commenced, and whether the New South Wales Government construction program will catch up with the Queensland work? Why does the Roads And Traffic Authority web site have no reference to the Tugun bypass, other than a link to the Queensland Government web site?

The Hon. ERIC ROOZENDAAL: I am advised that the Tugun bypass project is an important infrastructure project involving works within New South Wales, Queensland, and also on Commonwealth land within the Gold Coast airport. I am advised that it is a Queensland Government-funded project, with funding assistance from the Australian Government. The Roads and Traffic Authority [RTA] is assisting the Queensland Department of Main Roads in the delivery of the project. New South Wales priorities remain with delivering the Pacific Highway upgrade.

I am advised that the RTA is the proponent for the section of the project within New South Wales and that it received all the necessary planning approvals to construct this section of the Tugun bypass. The RTA is working with the Queensland Government to ensure a range of measures have been put in place. This includes the approval of an extensive environmental management plan for construction, to ensure that works are closely monitored and that any impacts resulting from the project are minimised.

HEALTHY OLDER PERSONS OUTREACH PROJECT FUNDING

The Hon. JOHN RYAN: My question is directed to the Minister for Health. Why did the Minister's office tell media representatives yesterday that the Government did not provide funding to the Healthy Older Persons Outreach Project, otherwise known as the Healthwise Centre at Blacktown? Is it a fact that the service has received funding of approximately \$15,000 annually from the Western Sydney Area Health Service since 1993? Is it a fact that NSW Health stopped funding the service in February this year? Is the Minister aware that the service's financial reserves will be exhausted in about two months and that the centre, which has been making an important contribution to keeping dozens of elderly people active and healthy in the Blacktown area, will close? Why can the Government not find \$15,000 a year to continue the service?

The Hon. JOHN HATZISTERGOS: I am advised that the organisation has not received funding under the New South Wales Government's Non-government Organisation Grants Program since the 2002-03 financial year, the year in which the organisation's funding agreement expired. I am advised that the base-funded grant provided to the organisation in 2002-03 by the former Western Sydney Area Health Service was \$7,000. I am advised, however, that funds have subsequently been provided by the former Western Sydney Area Health Service and Sydney West Area Health Service on an ad hoc basis to support the organisation's ongoing activities. This funding has not been allocated on a recurrent basis but rather in response to one-off requests made by the association. I understand the area health service has advised the association that it can submit a registration of interest for funding with the health service. This request will be considered as all other applications are assessed.

DROUGHT SUPPORT PROGRAMS

The Hon. CHRISTINE ROBERTSON: My question is directed to the Minister for Primary Industries. What is the current status of drought in New South Wales and what is the State Government doing to help farmers?

The Hon. IAN MACDONALD: I am sorry to say that the latest drought figures are bleak, to say the least. They reflect the stark situation facing our farmers in all corners of the State. The latest figures just released show that 92 per cent of New South Wales remains drought declared. This is down just 1 per cent from last month. Five per cent of New South Wales is classified marginal and just 3 per cent is satisfactory. Needless to say, while our coastal regions have received decent falls of rain lately, regional New South Wales has missed out once again. Patchy falls have provided temporary relief, but that is all. Crops are on a knife edge and water storage is plummeting. Anyone who has visited the bush lately would agree that the drought is tightening its grip.

The four million hectare New South Wales winter crop is in dire need of rain. The New South Wales Department of Primary Industries reports that unless we receive good rain in the next 10 days across the State this figure could rapidly decline to 2.5 million hectares—a loss of 1.5 million hectares of crop. This means that without rain in the next week the potential winter crop harvest area could decline by 40 per cent. The yield potential of the remaining crop could reduce by up to 30 per cent. Some farmers have given up hope of a harvest, opening crops to be grazed by livestock. Drought-stricken farmers are just hanging on and the State Government is hanging in there with them offering assistance and support.

Since 2002 the State Government has spent more than \$215 million on drought support measures. In May this year the Lemma Government announced a \$5.5 million package to assist our drought-affected farmers. The Government has also made a promise to keep a watching brief on the unfolding drought situation across the State and act accordingly. The Government has kept its promise and has extended assistance services to further help our drought-affected farmers. This includes a transport subsidy program for all livestock producers in drought-affected regions. Let me make one thing clear: the Labor Government has actively helped farmers for the full duration of the worst drought in 100 years. This commitment is not about to change.

New South Wales has just experienced one of the driest Augusts on record. Yield potential for cereals, oilseeds and pulse crops across New South Wales is now below average and declining rapidly as each day passes without rain. In August most of the State received very little rainfall: generally, the western parts of New South Wales had less than 10 millimetres. In the east, crops received between 10 to 25 millimetres, with the eastern fringe and southern slopes recording 25 to 100 millimetres. Total storage levels at State-managed dams are at 35 per cent—5 per cent lower than at the same time last year.

Across the State, crops with very low yield potential in areas that missed late August rain are being grazed by livestock or sprayed out to commence long fallow for next season's winter crop. It is fair to say that the amount of crop being grazed out will increase dramatically if solid rain is not experienced this month. On-farm stock and domestic water supplies are at critical levels in some central and southern regions, where livestock owners are carting livestock. The State Government remains committed to helping our farmers through these dry times. The best thing members opposite could do to help is to quickly rally their Federal counterparts to grant exceptional circumstances [EC] assistance where it is needed so that farmers have every chance to see out this drought. It is time for members opposite to do something to help the State's farmers. They should go to their masters in Canberra and make sure EC relief is granted. I have had several requests for that funding to be granted.

THIRD-PARTY INSURANCE BENEFITS

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: My question is directed to the Minister for Finance. How much has the number of people getting benefits for injuries fallen since the changes to green slip insurance in 1999? How many people have been paid benefits for injury in each of the years from two years before and the years since the 1999 changes? Is not the \$6 billion of benefits from the \$8 billion paid by citizens of New South Wales and retained by the insurance companies obtained at the huge expense of the injured people of New South Wales? When will the Minister insist that in the interests of the injured citizens of New South Wales there be a system that actually pays out the premiums charged?

The Hon. JOHN DELLA BOSCA: I found it a little difficult to follow the member's question but I will do my best to do it justice.

The Hon. Dr Arthur Chesterfield-Evans: I will give you a copy of the question.

The Hon. JOHN DELLA BOSCA: The Hon. Dr Arthur Chesterfield-Evans is always very courteous, even if he and I have strong differences of opinion about some things. In regard to the first part of the honourable member's question, I will be able very quickly to get that information for him and provide it to the House. The second part of the honourable member's question is in the same category: I will be able to get that information fairly quickly and provide it to the House. However, the implied question about \$6 billion of benefits and \$8 billion paid by citizens needs an immediate response. There is currently a big misunderstanding because of a campaign of misinformation by a coalition of lawyers group—regrettably, supported, it seems, by the relevant shadow spokesperson for the Coalition, Mr Chris Hartcher—that is, as our own parliamentary Standing Committee on Law and Justice has found repeatedly, based on a furphy.

The reality is that the motor accidents scheme is a long-tail scheme. People injured in motor accidents pursue claims over a very long period of time. There is no doubt that \$8 billion is the correct amount that has been paid in premiums, but the idea that something less than \$2 billion is being returned to victims is an absurd furphy and a deliberate lie by those promoting the idea. In fact, claims already lodged in the system amount to more than \$6 billion against the \$8 billion worth of premiums. The notion that that in some way represents a massive windfall to insurers is simply and demonstrably wrong. What is more regrettable is that the people who are saying that know it is wrong but they are deliberately lying about the system because they simply want to profit themselves at the expense of the victims in the system.

The motor accidents system now gets victims their compensation more quickly, with much less disputation and, generally speaking, it returns people to health much more successfully than the old adversarial-based system presided over by the Coalition, which seemed to get great pleasure from that system. If the people of New South Wales are unfortunate enough to find the Coalition back on the government benches next March—which I am very sure will not happen—they will be faced with the risk that the member for Vacluse and his friend and the friend of the Leader of the Opposition here—

The Hon. Michael Gallacher: A friend of all of us.

The Hon. JOHN DELLA BOSCA: The Hon. Chris Hartcher is a friend of everyone, is he? Is he a friend of David's? David did not give him the tick, so he could be in trouble. The substantive point is that the Hon. Chris Hartcher and the member for Vaucluse represent a very serious risk to the victims of motor and industrial accidents in this State. More importantly, the risk that they pose is that they will reintroduce a system that will leave those victims without adequate care and without some of the advances we have made in the motor accidents scheme—such as the no-fault for children scheme, which will be in place in the next couple of weeks. The lifetime care scheme will also be placed at risk. [*Time expired.*]

NEWCASTLE RAIL LINE

The Hon. CATHERINE CUSACK: My question without notice is directed to the Treasurer, Minister for Infrastructure and Minister for the Hunter. In relation to that part of the Newcastle rail line that the Minister wants closed, what does the Minister estimate the returns will be when the land is sold off to developers? Is it not true that having ripped Bryce Gaudry out of Newcastle the Minister's next step will be to rip out the rail line as well?

The Hon. MICHAEL COSTA: The question is based on a false premise.

SYDNEY NORTH-WEST INFRASTRUCTURE

The Hon. GREG DONNELLY: My question without notice is directed to the Minister for Roads. Can the Minister update the House with the latest information on the Government's investment in infrastructure in Sydney's north-west?

The Hon. ERIC ROOZENDAAL: I thank the honourable member for his question and commend him for his interest in this matter. The Iemma Labor Government is delivering on its commitment to improve local roads and invest in north-west Sydney. I am pleased to advise the House that last Friday, with the member for Riverstone—the hardworking John Aquilina, who has been a member of Parliament for 25 years—I officially opened to traffic a new \$40-million underpass at the intersection of Old Windsor Road and Norwest Boulevard. The project involved upgrading the current intersection by the construction of an underpass, allowing the through lanes of Old Windsor Road to pass under Norwest Boulevard. John Aquilina is to be commended for the hard work he has put into seeing this project completed.

Norwest Boulevard is a vital link to the M7 west of Old Windsor Road and an important access point to the booming Norwest Business Park to the east. The new grade separated intersection means free flow of traffic, reducing congestion and improving safety along Old Windsor Road following the opening of the Westlink M7 late last year. Construction of Westlink M7, along with residential and commercial growth in the area, meant there was a need to upgrade the intersection. The upgraded \$40-million intersection and its connection to the Westlink M7 will reduce travel times for motorists in the north-west travelling to other parts of Sydney.

In addition, pedestrians and cyclists will benefit from a shared cycle path on the eastern side of Old Windsor Road, scheduled for completion by November 2006. This path will connect to the 40-kilometre shared path on the Westlink M7. This significant \$40-million project comes on top of the \$420 million the New South Wales Government is investing to upgrade Windsor Road and Old Windsor Road to four lanes between Parramatta and Windsor. On top of that, work to widen Windsor Road at the Rouse Hill Town Centre from four lanes to six has begun.

I made an inspection of this \$15.6-million upgrade last Friday with the honourable member for Londonderry, the hardworking Allan Shearan, and Landcom General Manager Urban Development, Mick Owens. The project is being jointly funded by the GPT Group, one of Australia's largest diversified listed property groups, and the New South Wales Government through Landcom. The RTA will contribute \$1.5 million to the project. The Rouse Hill Town Centre is currently under construction by Bovis Lend Lease, with business due to begin moving in late next year.

As part of the project, 1.2 kilometres of Windsor Road adjacent to the town centre, between Merriville Road and Commercial Road, will be widened from four to six lanes. The increased capacity of Windsor Road at this point will accommodate the increased levels of traffic that the new development will bring. It will also provide safe access to and from the new town centre for shoppers, businesses and commercial freight operators. This project is about creating extra capacity to reduce travel times through this section of Windsor Road. It is also about creating a smoother journey for the growing number of motorists using Windsor Road and Old Windsor Road.

That is why the Government has undertaken the \$420-million upgrade of Windsor Road, the largest urban arterial road project ever undertaken by a State Government, and why an estimated \$524 million is currently being spent on building the North West T-way, which will provide two interconnected rapid bus transitway links, one between Parramatta and Rouse Hill and the other between Blacktown and Parklea. The T-way links will open during 2007 and will enable improved public transport services from residential areas to employment, education, health and recreational facilities and also to the heavy rail network. As mentioned, the north-west is one of Sydney's fastest growing regions—home to new suburbs as well as major industries. These projects represent a major part of the Government's response to that growth and its infrastructure investment for this region.

GOOLAWAH AND GRASSY HEAD RESERVE LAND

Mr IAN COHEN: My question is directed to the Minister for Lands. The Minister stated in a recent budget estimates hearing that the agreed procedure for the transfer of reserve lands to the Department of Environment and Conservation was that the department would secure the agreement of the reserve trust prior to any transfer and that, in relation to the Goolawah and Grassy Head reserve lands in the Kempsey Shire Council area, the council, as trustee, had formally indicated that it wished to retain management responsibility for the reserves. Given that I have in my hand a Kempsey Shire Council resolution in relation to these two reserve areas indicating that the council reached that decision only because of a personal visit from the Minister for Lands during which he unilaterally advised the council that "the lands would not be transferred" to the Department of Environment and Conservation, does the Minister now acknowledge that his actions have been contrary to agreed protocols for the transfer of Crown lands to the national parks estate and in direct contravention of the north-east forest Cabinet decision in 1998?

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

The Hon. TONY KELLY: Obviously the answer that I gave to that estimates hearing stands. The question implies that the council decided not to transfer the land after I visited it and said that I would not transfer the land. That is not true. Council decided that it wanted to keep the land. I visited the council, agreed with its decision and gave it \$100,000 to help it with that decision.

INVERELL HOSPITAL RADIOLOGY SERVICES

The Hon. RICK COLLESS: My question is directed to the Minister for Health. Is the Minister aware that there is still no radiographer at Inverell Hospital and that patients needing access to these services have to go to Armidale, a three-hour round trip; to Tamworth, a five-hour round trip; or to Toowoomba, a seven-hour round trip—in addition to the time required for the treatment? What action will the Minister take to reinstate radiography services to Inverell?

The Hon. JOHN HATZISTERGOS: I welcome the honourable member's interest in Inverell, a town in which, as I understand it, he resides but from which he does not have a lot of support.

The Hon. Rick Colless: I beg your pardon?

The Hon. JOHN HATZISTERGOS: Well, the last election demonstrated that. The honourable member suffered a crushing defeat.

The Hon. Rick Colless: Point of order: I distinctly recall asking the Minister about radiography services in Inverell and I ask that he direct his answer to that issue. He is trivialising the question.

The Hon. JOHN HATZISTERGOS: To the point of order: The honourable member responded, in the course of my remarks, by saying, "I beg your pardon", and I was elucidating.

The PRESIDENT: Order! I cannot hear anything over the interjections. The Minister may answer the question in the way he sees fit, so long as his answer is relevant.

The Hon. JOHN HATZISTERGOS: I was welcoming his interest in issues relating to Inverell.

The PRESIDENT: Order! I call the Hon. Rick Colless to order.

The Hon. JOHN HATZISTERGOS: The question is about radiology services. There is a national and international shortage of radiologists and radiographers. Part of the Government's plan to ensure the provision of such services includes networking with other regional hospitals that are in a position to provide additional services and also through the use of facilities that enables radiography to be interpreted from remote sites. I am not particularly aware of issues specific to Inverell. I will ascertain the details and come back to the House.

UNPAID WORKERS WAGE CLAIMS

The Hon. PENNY SHARPE: My question is directed to the Minister for Industrial Relations. Can the Minister advise the House what the Iemma Government is doing to help unpaid workers?

The Hon. JOHN DELLA BOSCA: I commend the honourable member for her ongoing interest in industrial matters. From this week workers in the industrial relations system will have doubled the maximum small claims limit they can make for unpaid wages; changes to the New South Wales Industrial Relations Act mean that the limit has been increased from \$10,000 to \$20,000. Unfortunately, the Howard Government does not offer the same level of support for workers caught under the unfair WorkChoices regime. Employees under Federal awards can also make small claims cases to the Local Court in New South Wales. They are limited to the amount of only \$10,000.

Today I am calling on the Howard Government to follow our lead and increase its limit to \$20,000. Given that WorkChoices allows unscrupulous employers to exploit workers, it is important these employees also have greater access to small claims services. Being able to make a small claims application is an important option for workers seeking early payment of unpaid wages. Small claims matters can be heard before courts and the New South Wales Industrial Relations Commission, making them more accessible and less formal. As legal representation is not required, disputes can be resolved more quickly and are less costly. The system provides a legal remedy that maintains a real level of protection for workers in the fair New South Wales industrial relations system.

The Iemma Government is committed to providing real support to New South Wales families. The increase in the small claims limit is backed up by an active inspectorate from the New South Wales Office of Industrial Relations. During the past financial year inspectors undertook 358 targeted compliance campaigns across New South Wales to check that workers were receiving their correct entitlements and wages. Nearly 12,000 New South Wales workplaces were inspected as a result of these campaigns, covering the employment of more than 62,000 workers. The Office of Industrial Relations also completed investigations into 1,950 complaints from New South Wales workers. Early intervention by inspectors resulted in more than 1,200 of these complaints being resolved without the need for formal investigation.

The Hon. Duncan Gay: Why does the Minister not you go down to Canberra? He is more interested in what happens there than what happens here.

The Hon. JOHN DELLA BOSCA: Members opposite do not understand that this is a big issue for them. It will lose them the election—not that they do not deserve to lose it otherwise.

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

The Hon. JOHN DELLA BOSCA: The New South Wales industrial relations system has existed for 140 years. The Deputy Leader of the Opposition should get used to it because he will hear more about it. Members opposite will hear it right up until they lose the election on polling day because of their silly stance on industrial relations. The industrial relations policy of Debnam and the Liberal Party is an anvil around the neck of the Deputy Leader of the Opposition, and doesn't he know it!

The Hon. Duncan Gay: They have just doubled the money—the Minister knows that but he didn't say it.

The Hon. JOHN DELLA BOSCA: The Deputy Leader of the Opposition does not know anything about it. Members opposite do not like that they have to put up with the fact that this is a State issue. It is an outstanding achievement for New South Wales employees, as well as an outstanding achievement for the Office of Industrial Relations. The inspection campaigns are also beneficial for New South Wales businesses as it helps them learn more about workplace rights and obligations under New South Wales industrial laws, and helps head off disputes before they arise. The New South Wales industrial relations system is fair and based on encouraging

a culture of co-operation between employees and employers. It is just one way the Iemma Government is helping working New South Wales families and businesses.

In March the Government announced that it would do everything in its power to protect New South Wales families from WorkChoices, and we are delivering on that commitment. The Iemma Government has introduced new legislation to protect front-line public sector workers like nurses, TAFE teachers and ambulance officers, and we will be introducing new laws to ensure that younger people under 18 remain under the protection of the New South Wales industrial relations system, to protect injured workers, and to strengthen the powers of the New South Wales Industrial Relations Commission. The Iemma Government's approach is in stark contrast to that of the Leader of the Opposition, Mr Debnam, who is committed to handing over New South Wales workers to the Commonwealth if elected to government next year. The member for Vacluse has declared that he is in lock-step with his Federal colleagues on WorkChoices. This will deny even more families access to the New South Wales Industrial Relations Commission, forcing people to fend for themselves in the dog-eat-dog world of WorkChoices.

FUNERAL INDUSTRY REGULATION

Ms SYLVIA HALE: I address my question to the Minister for Health. Is the Minister aware that an officer of the Health Department told Mr Wayne Howell that the report into allegations of multiple bodies being cremated at the same time would not be released publicly? Will he release the report publicly? Does he recollect stating in response to my question of 7 September on this matter, "I am advised that no formal complaint was received"? Is the Minister aware that Health Department officers met with Mr Wayne Howell on 1 September for more than one hour to discuss his complaints about the funeral industry? Will the Minister correct the wrong information that he provided to the House on 7 September by informing the House that a formal complaint about this matter had in fact been received?

The Hon. JOHN HATZISTERGOS: I am aware of the claims to which the honourable member referred about multiple bodies being cremated at a crematorium between 1988 and 1992. I understand that Mr Howell, who featured in the article, also wrote to the funeral industry inquiry conducted by a committee of this House last year outlining similar claims. The Public Health (Disposal of Bodies) Regulation under the Public Health Act was introduced in November 1991, and that is within the four years about which Mr Howell has made allegations. The regulation, which was introduced by the previous Government, states:

A person must not cremate more than one body in the same crematory retort at any one time, except with the approval of the Director-General.

I have referred Mr Howell's allegations to NSW Health for appropriate action. Again, I am advised that no formal complaint had previously been received—that is, prior to that referral—that would have allowed further investigation of the allegations made in the article. I am further advised that the area health service's environmental health officers have met and interviewed Mr Howell, but at this stage are not satisfied that the allegations are substantiated. I am further advised that the environmental health officers are now considering site inspections.

THORNTON BRIDGE, MAITLAND

The Hon. ROBYN PARKER: My question without notice is directed to the Minister for Roads. Will the Minister advise the House about the situation regarding Thornton Bridge near Maitland, which is the site of major current and proposed housing developments? Is the understanding of residents and developers correct that the bridge will not be upgraded by the Government and a bypass will not be constructed? Given that the bridge is 70 years old and dilapidated, and is expected to service some 10,000 residents once the development is completed, will the Minister inform the House why the Government was decided to pass responsibility for a new bridge to the council, considering that these costs will be passed on to buyers in an already cost-prohibitive housing market?

The Hon. ERIC ROOZENDAAL: I had trouble hearing the question. I gather that the honourable member is talking about the third Hunter River crossing. Is that what the question was about?

The Hon. Robyn Parker: No.

The Hon. ERIC ROOZENDAAL: I had some trouble hearing the question so I will take it on notice and come back to the House.

ILLAWARRA CORRECTIONAL CENTRE

The Hon. HENRY TSANG: My question is addressed to the Minister for Justice. Will the Minister inform the House on developments with the new Illawarra Correctional Centre?

The Hon. TONY KELLY: Yesterday I had the pleasure of announcing a short list—

[*Interruption*]

Members opposite are not interested in regional development for country New South Wales. Yesterday at Nowra I had the pleasure of announcing the short list of sites for a new 500-bed gaol to be built on the South Coast. Present with me at that announcement were the mayor, Councillor Greg Watson, the member for Kiama, Matt Brown, and the Labor candidate for the South Coast, Michelle Miran. The widespread search across the State for potential locations of the new gaol began in June 2005, and has now been narrowed down to four sites, all within 15 kilometres of Nowra. The list was culled from more than 14 alternative locations that were initially considered during the site selection process. Only the most suitable sites have been selected, having matched the strict criteria used to measure the viability of a potential location.

Nowra offers many advantages as an ideal location for the State's newest state-of-the-art prison. The South Coast region is well equipped with important infrastructure and services, boasts a stable economy and is within easy reach of Sydney. From this week the department will begin an extensive consultation process to further investigate the suitability of these four short-listed properties. Throughout the next three months the department will consult widely with all stakeholders, including members of the community, councils, local politicians, business and interest groups, and landholders. It is the Government's priority to ensure that everyone has input into the final decision. Every point of view will be sought and considered.

Information will be made available through meetings, mailouts, public notices in local papers, an Internet site and a special 1800 hotline number so that individuals and groups can provide their informed opinion. In addition, from 6 to 21 October an information office in Nowra will be opened to enable people to discuss the proposals. We will be exhaustive in our assessment of these sites to ensure that the final location meets community and government expectations for suitability on environmental, cultural, economic, safety and security grounds. The department will submit a report and final recommendation for the gaol's location when the consultation process is completed.

The Iemma Government will then make the announcement on the final site by the end of this year. Benefits to the local community from this project will be significant and sustainable over the long term. The experience in Kempsey, where a new prison began operations in 2004, and the construction phase of a 500-bed gaol in Wellington, show that tens of millions of dollars flow into the local economy every year from such projects. Construction of the facility alone for the South Coast prison is a \$130-million project. The Government is spending \$10 billion a year on infrastructure, which is \$27 million a day, and this \$130 million is part of that infrastructure spending.

This will generate more than 350 jobs in the next three years and 200 jobs ongoing. Much of the labour and materials will be sourced locally. Tenders will be called next year and the first construction is scheduled to commence late next year with a completion date of 2010. Once in operation, the gaol will provide in excess of \$10 million a year and 200 permanent jobs. I express my thanks to the Shoalhaven council for its support for the project so far, and I look forward to the input of the stakeholders. I admit I was a bit dismayed this morning to see in the media that my shadow Minister, who is— [*Time expired.*]

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

ABORTED AND STILLBORN CHILDREN MEMORIAL GRAVES AND POST-MORTEM ORGAN RETENTION RECOMMENDATIONS

The Hon. JOHN HATZISTERGOS: On 6 September this year the Hon. Dr Peter Wong asked me a question relating to post mortem practices recommendations and aborted and stillborn children memorial graves. I seek leave to have my answer incorporated in *Hansard*.

Leave granted.

I am advised that the moratorium on disposal of Human Tissue retained in collections in New South Wales remains in place as a result of an Australian Health Ministers Advisory Council decision of July 2006.

The advice of the Community Advisory Panel on Post mortem practices chaired by Professor Ian Webster in 2002 recommended that tissue which is not identified by families for repatriation should be disposed of in an ethical manner and that a public ecumenical service be held and a memorial be established.

New South Wales Health has accepted that advice and will act on it at the appropriate time.

As the Human Tissue Inquiry Project (allowing families to lodge an inquiry into whether there has been tissue retained following a relatives post mortem) remains in place until February 2007 it is premature to be discussing the disposal arrangements of the non-repatriated tissue at this stage.

The Department is unaware of any mass graves of aborted and stillborn children.

If the member could provide further precise information on these matters the Department will investigate further.

Foetal Tissue which is not requested by families for return is disposed of by the relevant Health facility according to local protocols.

The bodies of deceased patients which require burial or cremation (including stillborn babies over the age of 20 weeks gestation) where the family circumstances do not allow for the family to bear the costs of burial are considered under the destitute burial provisions of New South Wales Health policy.

These provisions allow for appropriate burial or cremation but do not meet the costs of erecting individual memorials on the burial sites used.

ROADS AND TRAFFIC AUTHORITY ADDRESS SUPPRESSION POLICY

The Hon. ERIC ROOZENDAAL: Earlier in question time the Leader of the Opposition asked me a question regarding the suppression of addresses of police. I am advised by the Roads and Traffic Authority [RTA] that the current policy in respect of the suppression of addresses on the RTA's database was approved by the then Minister for Roads in December 1997. The policy requires all applicants to be interviewed by their local police area commander, who must be satisfied that a threat against the applicant exists. Address suppression for judicial officers is handled exclusively by the Attorney General's Department, which advises the RTA of those officers to whom address suppression is to be granted or removed. With the exception of judicial officers, all suppressed addresses are reviewable each year and applicants must again satisfy their local police area commander. The RTA has not been advised of any change to this policy. Should the honourable member have any further information I would be happy to pursue the matter.

Questions without notice concluded.

CRIMES LEGISLATION AMENDMENT (GANGS) BILL

Second Reading

Debate resumed from an earlier hour.

Reverend the Hon. Dr GORDON MOYES [5.02 p.m.]: Madam Deputy-President the Hon. Patricia Forsythe, I feel honoured to be speaking during what may be your last occupation of the chair. I wish you well for the future. Before question time I was saying that the object of the Crimes Legislation Amendment (Gangs) Bill is to introduce a range of new offences and enhanced penalties to tackle gang crime. We all agree that we want to live in a peaceful and democratic society where citizens have regard to the rights of, and exercise responsibilities towards, one another.

As Australians, most of us strive to live in harmony and in a peaceable fashion. This is what makes our nation such an outstanding place to live. However, it is with great dismay that certain individuals and groups within Australia do not aspire to such notions. There are countless reasons why groups and individuals seek to enact violence on other people. It may be because they are consumed by greed, fed by thoughts of retribution or revenge or enlivened by the prospect of gaining power over others. This was evidenced in the Cronulla area last year and also in the Macquarie Fields riots, where people became embroiled in violence and succumbed to a mob mentality. These riots brought to our attention the potential for wanton disregard for the rights of others and showed a darker side of humanity, one that we would all prefer to forget.

Some gangs manage to attract others of the same ethnicity. For example, we have all known of Chinese triads, Vietnamese gangs and, regretfully, Pacific Islander gangs, which have increased in number in recent times, and gangs of people with Middle Eastern appearance. We have discovered that these gangs become heavily involved in the trade in firearms, in drug manufacturing and selling, facilitating the distribution of drugs within the community, car rebirthing and a host of other things. In more recent times hotel and nightclub security companies have been developed by gangs as a way of laundering money they have obtained from other areas. There is quite an amount of evidence concerning smash repair services and other such activities.

Further, these gangs demonstrate that strength exists in numbers. Gangs and mobs depend on their size to intimidate others. The legislation before us conveys the message that involvement in such groups will not be tolerated. Clearly, this House must support this purpose. The bill also, more specifically, seeks to reform legislation dealing with gang crime. Most significantly, the new offences introduced by this bill constitute Australia's first criminal organisation offences. Under this proposed legislation courts will be able to consider cases where criminal groups are involved or where persons participate in criminal groups. By and large, heavy penalties will apply to offences arising in this context. It was stated in the second reading speech in the Legislative Assembly:

The bill recognises that crimes committed by gangs, whether they be crimes of violence, revenge attacks, systematic property damage, organised motor vehicle theft, protection rackets, armed robberies or the drug and gun trade, are a far greater threat to the safety and wellbeing of the community than most crimes committed by individuals acting alone.

This is true. But it is also true that acts committed by individuals on individuals demoralise victims and, inevitably, the community surrounding that victim. The bill amends the Crimes Act 1900 and the Law Enforcement (Powers and Responsibilities) Act 2002. Incidental amendments are also made to the Criminal Procedure Act 1986 and the Local Courts Act 1982. A number of offences are introduced to the Crimes Act by this bill and I will endeavour to point out the more salient ones. Part 3E is introduced to create new offences relating to participation in criminal groups. Importantly, "criminal group" is defined as a group of three or more people who have as their objective one of the following: obtaining material benefits from conduct that constitutes a serious indictable offence, or obtaining material benefits from conduct engaged in outside New South Wales—including outside Australia—that, if it occurred in New South Wales, would constitute a serious indictable offence, or committing serious violence offences, or engaging in conduct outside New South Wales—including outside Australia—that, if it occurred in New South Wales, would constitute a serious violence offence.

It is not entirely clear what is meant by material benefits, but commonsense dictates that monetary or financial benefits would be central here. Of great interest is the possibility that gang rapists could also come under the term of criminal group, especially in view of the Bilal Skaf and K trials that shocked many across this country. Involvement in such gang rapes could then be dealt with on a joint and severable basis.

The bill introduces proposed section 931K subtitled "Participation in criminal groups". It provides that a person who participates in a criminal group knowing that it is a criminal group and knowing, or being reckless as to whether, his or her participation in that group contributes to the occurrence of any criminal activity will be guilty of an offence. A maximum penalty of five years applies to anyone found guilty of this offence. Clearly, the breadth of the wording of this offence is deliberate. The act of participating in a criminal group would capture someone who is involved on an incidental basis in this group to, more obviously, the ringleader of the group. It would seem that the degree to which a person participates would be reflected in the degree to which they are sentenced to imprisonment. The bill does not, however, explicitly address the implications arising from being a leader of a criminal group. In the corporate world a hierarchy exists between chairmen, directors, company secretaries and other office bearers, and the same exists within the criminal realm. Some recognition should be given to these distinctions.

I also refer honourable members to the comments of the Legislation Review Committee in this context, based on the fact that the meaning of "participate" in proposed section 931K is unclear. Other amendments under the section 931K framework recognise the role of law enforcement officers in our communities, thus heavy penalties are attached to offences against those officers. For example, under the bill assault of a law enforcement officer will include throwing missiles at an officer. An attack on police, the vanguards of public safety, is a blight on the health of our society and must be strictly sanctioned. We all have vivid images in our minds of the riots in Redfern and other places, where the police stood with great patience and dignity while they were attacked with flaming bottles filled with petrol and other inflammable liquids thrown by scores of young rioting criminals. Another amendment creates new, aggravated offences in relation to various crimes involving assault or damage to property where the assault or damage occurred during a public disorder.

The bill makes a number of amendments to the Law Enforcement (Powers and Responsibilities) Act 2002. The central purpose of these amendments is to increase police powers and penalties attached to offences that arise in the gang violence context. For example, the bill increases from two years to five years the maximum penalty for offences involving obtaining personal information about law enforcement officers or members of their families. The bill also expands the powers of police to deal with aspects of gang violence and crime. For example, police will be given additional powers with respect to entering and searching crime premises, the removal of alarms, surveillance devices and the like, and the blocking of drains—in case those inside seek to flush away evidence. Police will be able to seek court orders to remove unnecessary fortifications to crime gang premises. We have all seen pictures of motorbike gang premises surrounded by high tensile steel walls to keep other gangs, as well as police, at bay.

More controversially, the police will be given additional powers to disperse groups during public disorders. The section proposed will allow a police officer to give a direction to a group of people to disperse immediately. Certain prerequisites must be satisfied however. First, the police officer giving the direction must inform the persons to whom the direction is given that an authorisation has been given for the direction under the Law Enforcement Legislation Amendment (Public Safety) Act 2005. Second, the police officer must warn those persons that a refusal or failure to comply with the direction may be an offence. Failure to comply without a reasonable excuse will constitute an offence. That provision is very similar to the old "reading the Riot Act". It is recognised that people have the right to peaceful assembly under international and also common law. Notably, and as indicated by the Legislation Review Committee, there is a threat in these kinds of scenarios that people not involved in riots or any kind of protest will be subject to these powers.

Debate in relation to the merits of such powers ensued last year when the Law Enforcement Legislation Amendment (Public Safety) Act 2005 was brought before the House. It is imperative that appropriate safeguards are in place to warrant against the inappropriate use of these powers. As with any legal measure, it is important that concerns attached to the outworking of legislation are discussed and allayed. It is in this vein that I mention the work of the Legislation Review Committee, and its concerns with aspects of this legislation. I look forward to hearing the Minister's response to the concerns expressed by that committee. None of us wishes to see this legislation triggered by another spontaneous or even preconceived riot. It is a sad reality, however, that the past is a predictor of the future. Hopefully, we will be better prepared to tackle these incidents through the passage of this bill. The Christian Democratic Party commends the bill to the House.

The Hon. Dr PETER WONG [5.14 p.m.]: I take the opportunity, in speaking to the Crimes Legislation Amendment (Gangs) Bill, Madam Deputy-President the Hon. Patricia Forsythe, to wish you all the very best in your new career. With an election looming it should come as no surprise that we are witnessing another raft of law and order legislation being brought before both Houses of the New South Wales Parliament. We can only expect that this raft will soon become a flood, given that the Coalition now has a law and order trophy par excellence in the form of the Liberal candidate for Epping, Greg Smith. No doubt the gentlemen in Sussex Street now regret the fact that they did not think to get a serving prosecutor as a candidate. In Sussex Street at this very moment they are probably formulating a list of legislation to bring before the House to prove that Labor is toughest on crime.

Once again, this bill, apart from trampling upon a working system, does not actually create a new offence for anything. Initially, I thought that the section related to throwing missiles at police might be a new provision, and that the statute law of this State might have missed something interesting, but I was wrong. I direct the attention of honourable members to the Crimes Act 1902 and to part 3A offences relating to public order. Section 93A deals with the definition of "violence" and states that violence means any violent conduct, so that:

- (a) except for the purposes of section 93C, it includes violent conduct towards property as well as violent conduct towards persons, and
- (b) it is not restricted to conduct causing or intended to cause injury or damage but includes any other violent conduct (for example, throwing at or towards a person a missile of a kind capable of causing injury which does not hit or falls short.

Other provisions in this bill dealing with criminal recruitment, while interesting and seemingly new, are probably quite easily dealt with under the Crimes Act 1900, which reads:

546A Consorting with convicted persons

Any person who habitually consorts with persons who have been convicted of indictable offences, if he or she knows that the persons have been convicted of indictable offences, shall be liable on conviction before a Local Court to imprisonment for 6 months, or to a fine of 4 penalty units.

All this bill does is codify the already existing legal system with regard to aggravated offences. I support the position of the Law Society of New South Wales, which is opposed to the trend of creating new offences that are really matters of aggravation that can be taken into account when sentencing for existing offences. That is the crux of the issue with this bill. The problem is that police are not properly exercising their powers, such as seeking to have aggravation taken into account by judges or magistrates at sentencing, and the Government is attempting to somehow fix that by introducing tougher laws.

We saw this in relation to Cronulla when police failed to use provisions then available to them to deal with riotous behaviour, public disturbance, consumption of alcohol in public, inciting to riot and many others to introduce a whole level of what it called new crimes. One has to ask, as I did of the commissioner when he appeared before a Government legislation briefing following the Cronulla riots: If we give police these new powers they seek can we be sure they will actually exercise them? Or will the commissioner come back to us, when police have failed to exercise their new powers, seeking even more powers? It is clear that there is no real difference between the Iemma Government and the Carr Government with regard to the introduction of already existing law.

The Government has continued this tired method for generating a public belief that it is actually doing something to protect the public. Bob Carr introduced a new art form by taking an existing provision, usually one little succinct section or subsection, and turning it into an entirely new bill, sometimes up to 15 pages long. The parental responsibility law was a wonderful example of this legislative art. A provision that has been on the Statute since the late 1800s was dressed up in its own wonderful little volume and introduced in a flurry of press releases and press conferences as a major breakthrough in New South Wales law and order.

Given that the Government announced its intention once again to dress up the parental responsibility law, I recently asked how many cases have proceeded through the courts. I hope that even the Government is surprised by the answer it will undoubtedly have to supply to the question and knock back the Department of Community Services legislation, which will lead only to more child deaths and harm and increase the backlog in the department's core responsibilities. The situation in New South Wales of the Government conjuring up the new from the old is becoming a bit of a joke. I do not support the bill.

Ms LEE RHIANNON [5.22 p.m.]: The Greens oppose the Crimes Legislation Amendment (Gangs) Bill, which is yet another knee-jerk chapter in the Government's law and order narrative. It is the latest in a raft of measures that are designed more to grab headlines and win votes than to address crime rates and community safety. This law is clearly unnecessary. New South Wales already has the toughest laws to deal with gang crime and the police already have powers to respond to assault and property damage, to take action against people aiding and abetting and to take action to quell a riot.

At some point we must ask whether these increasingly punitive laws are actually working. Have these laws reduced crime rates? No, they have not. Have these laws delivered safer communities? No, they have not. Last year the number of prisoners in New South Wales gaols increased to more than 9,000. I remember Premier Bob Carr boasting about that figure when he should have been ashamed about it because it clearly demonstrates his policy's failure. However, according to the Bureau of Crime Statistics and Research crime rates remained stable from April 2004 to March 2006. Rather than reducing crime, these laws succeed only in encroaching on civil liberties and creating a more divided society in New South Wales.

The title of the bill alerts us to the sham that is being perpetrated. It is not a bill title; it is a headline. The word "gang" can be found nowhere in the bill. In fact, "gang" is not defined in the criminal law of any Australian jurisdiction. This smacks of cheap electioneering. It is a media release masquerading as a bill. Safe communities are part of the Greens vision for a sustainable future. Crime is a serious issue and people have the right to live free from the fear of violence. However, we believe that safer communities are created through social justice policies and a humane and fair criminal justice system, not by creating more crimes with longer sentences. The money spent on locking up someone could be much better spent on health, education and transport services. People who commit serious crimes should be imprisoned, but many people should not be. Honourable members should remember that the \$60,000 annually it costs to keep one person in prison is equivalent to the wage of a youth worker or a teacher—people who are well placed to support young people facing critical issues.

I will not speak on every provision in this legislation, but I will draw out a few of the key provisions that concern the Greens. This bill introduces new aggravating offences relating to participation in criminal gangs. The Greens oppose this move to create new offences out of factors that are matters of aggravation. This

is unnecessary. Matters of aggravation can be taken into account by judges when sentencing offenders. Indeed, section 21A (2) of the Crimes (Sentencing Procedure) Act 1999 already lists committing a crime as part of a group as an aggravating factor to be taken into account when sentencing.

The Greens also have serious concerns about proposed section 87MA of the Law Enforcement (Powers and Responsibilities) Act. This proposed section creates a new power to disperse groups once public disorder is declared. The bill defines "public disorder" as a riot or other civil disturbance that gives rise to a serious risk to public safety. The maximum penalty attached to this proposed section is \$5,500, which is excessive. I am concerned that this proposed section is a threat to the right to peaceful protest—a right that is enshrined in Article 21 of the International Covenant on Civil and Political Rights.

Police officers are given a wide discretion to decide when a gathering is a public disorder. What is the trigger? Can it be used against three people protesting outside Parliament? Can it be used at a union protest where there is a clash between workers and police at a picket line, at a local community protest at the Australian Defence Industries site or at the proposed Anvil Hill mine? What are the safeguards to stop these powers being used to stop legitimate protests? I will be interested in what the Minister has to say in reply. I will not be surprised if he says that the legislation will never be used at such events. Perhaps this Government believes that and that is its intention. However, once the legislation is enacted it can be abused. That is why it should not be passed.

The Greens are concerned about the combined effect of proposed sections 931J and 931K of the Crimes Act. These proposed sections dangerously expand the boundaries of criminal liability. They create a new crime for participating in criminal groups where there is either knowledge by the accused that the group is a criminal group, or knowledge or recklessness by the accused that their participation contributes to the occurrence of any criminal activity. The bill provides no definition of what it means to "participate". Nor is there an explanation of what "contributing to the occurrence" means. Despite these ambiguities, a person can potentially be held criminally liable—and be subject to five years imprisonment—for conduct that is peripheral to the commission of an offence if the person was merely reckless that their participation contributed to any criminal activity. No intent is required. Does this mean that someone who catches a lift with friends who have committed a crime or who are about to commit a crime will be caught by this provision? Can that person be sent to gaol for a car ride? Potentially, yes. How does someone know whether he or she is associating with a gang, which is not allowed, or a group, which is allowed? It seems inevitable that innocent people will be caught in the wide net of this legislation.

It is worth raising that this proposed section may discourage people from reporting crimes. I understand that many offences committed by groups are reported to police by people who were present at the time of the crime. That occurred in the gang rape case involving Bilal Skaf. This proposed law actively discourages people from reporting offences to police because it effectively makes being a bystander a criminal offence. The Greens most definitely want safer communities—we work hard to achieve that—but this bill is not the answer. The causes of crime are complex and varied. If the Government is serious about reducing crime, money should be devoted to policies aimed at early intervention, poverty alleviation, education and employment programs and drug law reform. The Greens will not support this bill and I urge other members to draw the line. It is time that the law and order auction was thrown out by both major parties. It certainly does not bring credit to either of them. I thank Cameron Murphy from the Council of Civil Liberties and the Law Society for their advocacy and advice on this bill.

Reverend the Hon. FRED NILE [5.29 p.m.]: I support the Crimes Legislation Amendment (Gangs) Bill, which is designed to tackle gang crime, in its organised and spontaneous forms. It particularly attacks organised gangs. It will undermine the foundations of the crime gangs and further empower police when people form a gang or a mob on an ad hoc basis. I agree that the people of this State have a right to the fullest protection against gang violence, thuggery and organised criminal activity.

I am sure honourable members have noted this week the passing of Mr Abe Saffron, the notorious crime boss who operated in Sydney. Nicknamed Mr Sin, Abe Saffron died last Friday at the age of 86 and his funeral was held yesterday. Even though the rabbi conducting the funeral service described Mr Saffron as an Australian icon, he did not, obviously, refer during the funeral service to any of his criminal activities. It is reported that Mr Saffron had made more than \$60 million from his criminal activities. He was known as the King of Kings Cross vice activities such as porn shops, prostitution, brothels, strip clubs and, in the early years, the operation of illegal drinking premises after hours when 6.00 p.m. closing hours applied.

There has also been a lot of evidence showing Mr Saffron's close association with organised crime in the United States of America, and with visits to Sydney from prominent figures of the mafia. One can only assume that he was somehow recognised by them as the crime boss in this city and therefore they would not interfere with his operations. Maybe he had to pay money to them as well. We will never know. One of the most tragic events with which Mr Saffron is associated was the murder and disappearance of Miss Nielsen, the editor of a Kings Cross newspaper, in which she ran a vigorous campaign against the redevelopment of the historic buildings in Victoria Street. The last time Miss Nielsen was seen was when she entered a club owned by Mr Saffron, the Carousel Club. Recently a person who worked in the club at the time claimed she saw Miss Nielsen murdered in the basement of the club. Even though Mr Saffron has become a character, there is a lot of evil in his background.

One of the problems in fighting organised crime is the need to have incorruptible police. How can we have police officers carrying out the law and protecting society if they themselves become corrupted? It has now been proven that Mr Saffron had close links with Mr Bill Allen, who was a police commissioner, and that Mr Saffron had a right of entry to the police headquarters. Apparently he visited the headquarters on at least seven occasions and handed cash to Mr Allen, who then distributed the money to senior police officers in return for them not carrying out their duties in fighting crime in this city. Eventually Mr Allen was identified in that role. It seems strange that the only penalty he received was that he was demoted from police commissioner to the rank of sergeant.

In another case, Mr Anderson, one of Mr Saffron's employees, had a falling out with Mr Saffron and handed over to the taxation authorities two sets of books that Mr Saffron had organised to avoid paying taxation. I also had information about this. On one occasion someone gave me a set of books, which I gave to police. In criminal activity that is semilegal—for example, running porn shops or other activities—a small amount of income is shown for taxation purposes and another set of books shows the total income. They must supervise their employees and make sure that they are not robbing their employer, so they have two sets of taxation books. Mr Saffron's books were handed over to the taxation department. Like Al Capone, the infamous American criminal, Mr Saffron was found guilty of tax evasion—which is the only major crime ever pinned on him—and he spent a short time in prison.

In later years, as far as I can gather, Mr Saffron was pushed aside by the new drug gangs operating in that area of our city, activity that is still going on today. I would say, together with other members of Parliament, the words that were often used in the past when a judge was sentencing a murderer: May God have mercy on Mr Saffron's soul. He has to answer to God for his activities. It is a tragedy that such organised criminal activity has operated in our city with the support of the most senior police officers and, I would say, with the support of senior politicians—whom I will not name on this occasion. Allegations have been made about politicians of that era, on both sides of politics. We can never hope to defeat organised crime if we have corruption within police activity or political activity. I am pleased to support the bill. I hope it will make the people of this State not only feel safer but be safer.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.38 p.m.]: The Crimes Legislation Amendment (Gangs) Bill is part of the law and order auction leading up to the State election. It is interesting that the second reading speech was delivered by the Parliamentary Secretary, Tony Stewart, in the other place, rather than by the Attorney General. I wonder whether the Attorney General wants to distance himself from this sort of legislation at a personal level. I am rather sorry to hear that Tony Stewart resigned from his position of Parliamentary Secretary after having a blood alcohol reading of 0.06, given that the new level of 0.05 would not have been an illegal reading under the old level of 0.08, which is now recognised as the higher level.

Tony Stewart is doing the right thing with regard to drugs. If one really wants to do something about gangs and crime, it may be good to take a less punitive approach to drugs. The fact that they are illegal, in addition to compounding the harm, makes them extremely lucrative, and of course this is the basis of crime. Indeed, it could be argued that poker machines were legalised because gambling was such a big problem with organised crime. At one level the Government is being pious about doing the right thing in terms of getting the hardworking member for Bankstown to resign, but at another level, by making drugs illegal, it is allowing a large profit motive for organised crime.

My view is that this legislation is fundamentally about the election in Cronulla, and that the bikie gangs and the supposed organised crime is really a fig leaf thrown in. The Opposition's response to the bill is that it should have been introduced a long time ago. If the problem is genuinely the bikies, that is true. But if that is the case, why does the Opposition support the bill? According to the Parliamentary Secretary, the bill has two

targets. One is organised criminal gangs and the other is rioters—that is, where people form a gang or mob on an ad hoc basis. The second is really aimed at what happened in Cronulla, where it seems white Australians terrorised people of Middle Eastern appearance and there was then the retaliation of ethnic groups in cars in Maroubra, where the provocations escalated.

In Western Australia a gang crime squad has been targeting biker gangs for some time. The squad has the power to break down fortifications, as is proposed in proposed section 210F (1). The Northern Territory is also proposing gang legislation. I have received communications from the Law Society, which is of the view that this part of the bill is unnecessary. The society contends that the aggravating factors are already taken into account in sentencing under the Crimes (Sentencing Procedure) Act 1999, and that it is unnecessary to create new offences. It is also argued that under the Sentencing Act the list of aggravating offences is non-exhaustive, so that any factors surrounding an offence can be taken into consideration.

New section 87MA creates a new power to disperse groups that are the subject of a public disorder authorisation under the Law Enforcement (Powers and Responsibilities) Act 2002. The Law Society suggests that an amendment is needed to this proposed section to require that before a direction is given a police officer must believe, on reasonable grounds, that the dispersal of the group would assist in controlling or preventing public disorder. The society also believes the penalty of 50 penalty units is excessive and that a more appropriate penalty would be five penalty units.

The Law Society echoed concerns of the Legislative Review Committee relating to the new offences of participation in criminal groups. The concerns relate to the vague meaning of "participate", which could mean that a person may be criminally liable for participation in a group without actually having the intent to advance the criminal objectives of the group, as set out in proposed section 93IJ. Similarly unclear is the phrase "contributes to the occurrence of any criminal activity" in proposed section 93IK. The concern with this vagary is that section 93IK carries a penalty of five years imprisonment. This is a serious penalty for conduct that is peripheral to any criminal enterprise, and is therefore a totally inappropriate penalty. That is why I have said this is a law and order auction bill before the election, rather than a piece of legislation to be taken seriously.

The Law Society has valid concerns, and I share those concerns. This Government is in election mode and the Opposition is encouraging and supporting this lurch to the right in New South Wales. It is pointless my proposing amendments to the bill, because the Opposition will not contemplate supporting anything that appears to soften the Government's approach on law and order issues. The ultimate end point for all this silliness and point scoring, when combined with the paranoia surrounding terrorism and the policies of the Howard Government that have produced a group of people who now are angry enough with Australia and Australians to commit an act of terrorism, will be that our civil rights will be trashed and we will have a police state in New South Wales. It is a very foolish approach and this bill is a result of that folly. The bill should be opposed.

The Hon. HENRY TSANG (Parliamentary Secretary) [5.42 p.m.], in reply: I thank honourable members for their contributions to the debate. The Crimes Legislation Amendment (Gangs) Bill is unapologetically tough on gang crime, whether by unruly mobs or organised criminal groups. However, it also incorporates protections against misuse of the new powers or catching people in a net who have a trifling or unavoidable association with crime gangs. Before this debate concludes I will address some of the comments made by some honourable members. The bill does not propose to make membership of a gang a criminal offence. Quite simply, the bill is all about checks and balances. It is not about identifying who is a card-carrying member of a gang and proving beyond reasonable doubt that the offender is a gang member. Rather, the bill is about identifying organised and ongoing criminal activity in the name of a gang, and punishing accordingly.

I further emphasise that the bill attacks mob-like and serious antisocial behaviour. The bill builds on the increased powers provided to police in December 2005 in response to the Cronulla riots by providing police with the power to disperse crowds in a public disorder situation. Further to these powers, the bill introduces increased penalties to deal with thugs and louts who use intimidation and coercion in public disorder situations. Increased penalties will be introduced for violence towards law enforcement officers during public disorder; attacks on property during public disorder, including firing at houses or other buildings with reckless disregard for persons' safety; and maliciously destroying or damaging property and maliciously destroying or damaging property with intent to injure a person.

I will now respond to some questions raised by honourable members. A question was asked about what new offences the bill introduces in relation to organised crime groups and how they will protect shopkeepers from violent participation offences. If the participation consists of assault or property damage, actual or

threatened, the penalty is doubled to 10 years. Gangs that threaten shopkeepers with violence if they do not pay money or even join a gang will be caught either by the violent criminal group offence with a penalty of 10 years or the aggravated offence of attacking property during a public disorder with a penalty of up to 16 years. In the latter case, public disorder does not have to be a full-scale riot; a serious threat to public safety will be enough to attract the new aggravated penalties.

Another question asked was: Why do we need a special law for criminal recruitment, and is not incitement to commit the crime already an offence? With so many young men from Middle Eastern, Asian, and sometimes Pacific Islander backgrounds increasingly drawn to the gang life, it is important to punish attempts to recruit them into a violent, dishonest and often tragically short life of crime. This bill will protect people—especially school students—from intimidation to join youth gangs. The question was also asked: Will not these powers be used to pick on groups of ethnic youth who are simply standing around? The answer is no, the thresholds for organised criminal group offences are quite high and each element must be proved beyond a reasonable doubt. These powers would certainly not allow police to characterise any group they wish as a "gang" and charge them with gang membership. In the case of aggravated offences, the youth in question must have committed an underlying offence for the question to arise as to whether they be charged for doing so during a public disorder. Suspicion that a group of people are up to no good will not be a basis for any of the proposed offences. Also, for the aggravated offences to apply for an impromptu group, police must have established that a public disorder, as defined by the statutes, is occurring.

On the question of how can someone be punished for simply being a part of a group, some members of which may have committed a crime, when this is just guilt by association, my response is that the bill sets the thresholds for organised criminal group offences quite high. Membership itself does not constitute an offence. The new offence will not catch someone who, for example, works for a company that quite unbeknownst to him or her has been involved in money laundering or other criminal activity. Nor will it catch the boy who delivers the sandwiches to a bikie gang—even if he knows it is a criminal gang. In such a case his assistance to the gang does not contribute to the occurrence of criminal acts. However, the new offence may catch someone who supplies that gang with baseball bats—in itself a lawful action—knowing or reckless to the fact that they are going to be used to assault people.

The new criminal organisation offences are aimed at people who are active participants in groups, one of whose primary activities and objectives is serious criminal activity. But just because they also engage in non-criminal activities as well, such as surfing or riding motorbikes, does not absolve them from being organised criminal groups. In the words of Assistant Commissioner Nick Kaldas, former commander of the Gangs Squad, "Just because bikies deliver teddy bears to children's hospitals once a year doesn't mean they're not criminals the other 364 days." With reference to the Legislative Review Committee's interpretation of what "participation" means, to commit the new offence of participating in the criminal activity of a group, a person must know that it is a criminal group and also know or be reckless to the fact that their actions help the group commit crimes. Before the same provision was introduced into New Zealand legislation, the select committee that examined the bill observed:

We consider that the mental element appropriate to a particular offence has to be determined in the context of that offence and the conduct at which it is aimed ... We note that to be criminally liable for "reckless" conduct requires proof beyond reasonable doubt that the accused deliberately ran a known risk when it was unreasonable in the circumstances to do so. This is a high threshold. This clearly excludes from liability any unwitting associates, such as a secretary of a company, or those who have good reasons, such as social contacts and family members.

The committee continued:

We note that new section 98A was vetted for compliance with the New Zealand Bill of Rights Act and we are advised that the Crown Law Office considered it contains adequate safeguards, specifically its requirement for both participation and for knowledge that the group is an organised criminal group. We further note that the interpretation of "participation" by the courts should be consistent with a New Zealand Bill of Rights Act interpretation. We understand that "participation" and "association" would not be treated as synonymous.

Obviously, many people may trivially, unwittingly or incidentally assist criminal groups. However, for this new offence to be committed there must be, first, some causal connection between the individual actions and criminal activities, actual or planned, of the group and, second, these crimes must involve serious offences of the sort that are among the objectives of the group. This seems to be the view of the New Zealand courts, which have considered the same offence in its Crimes Act. In *Mitford v R* 2004 Court of Appeal of New Zealand Reports 216 of 9 September 2004, the court found:

The gist of the present offence is knowingly taking part as a member of the group which have come together to commit the proscribed activity, whether or not any substantive offence has been committed. If it has there will be a further offence carrying a separate penalty within the limits of totality. Of course commission of the further offence, like the overt acts in a conspiracy, will often be powerful evidence of breach of s 98A.

Thus, a person who is a professional tattooist may be well aware that some of his clientele are members of criminal gangs. He may even tattoo them with the gang insignia. However, the crimes committed by that gang do not depend on the assistance of this tattooist. However, if that same tattooist allowed a criminal group, which believed its headquarters to be bugged by the police, to use his shop to commit serious crimes, he probably would be committing the offence of criminal participation. This may be the case even if he did not know precisely what criminal acts were occurring.

On the question of whether someone must know that his or her participation with a criminal group will lead to a particular crime or crimes, the answer is no. This is one of the major points of the legislation. Unlike the traditional doctrines of conspiracy, complicity and accessory, a person can commit an offence of participating in a criminal group without knowing what particular crime, or even types of crimes, he or she may be assisting. An example may be if a person rents his back shed to a known criminal group and members of the group carry in equipment and install surveillance devices around the shed and the person is asked to warn the group immediately if he sees police in the vicinity. Such a person may genuinely have no idea what criminal activity is being carried on in his shed. However, by lending the criminal his shed and being reckless as to whether crimes are being committed there, he may well commit the offence of criminal group participation.

The offence will prevent people who actively assist crime gangs from using wilful blindness to particular crimes to escape liability. The criminal occurrence by the group to which a person contributes is not defined in the bill. However, New Zealand courts, when considering the same provision in the New Zealand Crimes Act, have referred back to the kinds of crimes that are taken to define criminal groups in the legislation—that is, serious crimes of violence and profit. But a person who makes an insignificant contribution to the occurrence of a minor criminal offence by a member of an organised criminal group is unlikely to have committed a participation offence. On the question of why the bill does not contain an aggravated offence of gang leadership, the bill goes much further than the Opposition's gang leadership proposal. Contrary to the Opposition's assertion, it is not a defining characteristic of a criminal gang that it has a clearly identifiable leader. Perhaps Coalition members have been watching too many episodes of *The Sopranos*.

The Hon. Catherine Cusack: I've never seen that in my life.

The Hon. HENRY TSANG: Your leader probably has. Some gangs have a formal leader; for example, bikie gangs. However, many do not. Criminal groups involved in organised car rebirthing tend to be overlapping family groups with no clear hierarchy or command and control structure. Under this bill prosecutors will not have to go chasing down rabbit warrens to prove the leader of the criminal group. Any active participant in the group's crimes—whether a boss, foot soldier, enforcer or front man—will be deemed to have committed the offence.

Under the existing law a person who takes a leading role in perpetrating a particular crime can already be more severely punished by the courts. The Court of Criminal Appeal in the Skaf case supported the adverse finding by the sentencing judge as to Skaf's leadership role in the offences concerned. The finding that the crime was not in the worst category of sexual assault was quite distinct from and notwithstanding the finding about his leadership role, so making leadership an aggravating factor by statute would make no difference in such a case. The Government responded to crimes such as the Skaf case by introducing section 61JA into the Crimes Act—that is, the new offence of aggravated sexual assault in company. This new offence has a maximum penalty of life imprisonment. Apart from the difficulties involved in defining a gang leader, the risk with making leadership an element of the offence rather than just a matter that may be considered on sentencing is that it will be harder to prove. The proof will be beyond reasonable doubt rather than just on the balance of probabilities, as with normal sentencing factors.

How do we know that these powers will not be used against legitimate demonstrations? And what is a legitimate demonstration? That is a good question. At the time of the Cronulla riots many participants probably convinced themselves that they were engaged in a just cause. The same was no doubt the case in the minds of the revenge attackers over the following nights. The bill in no way curtails the right to lawful protest. Only riots and attacks on police or damage or destruction to property will be affected. The maximum penalties are not mandatory. In the case of minor damage to property occurring during a rowdy demonstration, in the unlikely

event that charges were brought under the new provisions, the court would undoubtedly impose a very low penalty, if any. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

ASIAN ELEPHANT IMPORTATION

Production of Documents: Return to Order

The Clerk tabled, pursuant to the resolution of 5 September 2006, documents relating to an order for papers regarding Asian elephant importation received on 19 September 2006 from the Director General of the Premier's Department, together with an indexed list of the documents.

Production of Documents: Claim of Privilege

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

POLICE INTEGRITY COMMISSION AMENDMENT BILL

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [6.01 p.m.], on behalf of the Hon. Eric Roozendaal: 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 established the Police Integrity Commission in 1996 in response to a recommendation by the Wood royal commission. The main function of the Police Integrity Commission is to detect, investigate and prevent serious police misconduct and corruption. In fulfilling this function the commission has broad-ranging oversight and investigative powers under the Police Integrity Commission Act 1996. On 21 February 2005 Cabinet approved the transfer of jurisdiction to investigate civilian members of NSW Police from the Independent Commission Against Corruption to the Police Integrity Commission. This transfer of jurisdiction occurred by amending the definition of "police officer" under the Police Integrity Commission Act 1996 to include all employees of NSW Police.

The effect of the broadened definition of police officer was that all the provisions of the Police Integrity Commission Act that previously dealt with police officers were applied to administrative employees. However, this has resulted in some unexpected anomalies within the legislation. For example, by virtue of the amendment to the definition of "police officer", section 10 (6), which governs the involvement of police officers in carrying out investigations on behalf of or at the direction of the commissioner, applies to administrative employees, although it is certain that the intention of the section was that only qualified police officers be able to undertake investigations.

Administrative employees hold no special office or exercise any special powers. Therefore, the Police Integrity Commission was of the view that administrative employees of NSW Police should not be equated to sworn police officers for all purposes under the Act. Following amendment to the definition of "police officer", both the Police Integrity Commission and NSW Police requested that the Act be further amended to remove the anomaly created by the definition of "police officer" and to establish a more robust system for the investigation, referral and oversight of complaints against unsworn members of NSW Police.

I now turn to the amendments to the Police Integrity Commission Act 1996 and the Independent Commission Against Corruption Act 1988. The bill establishes a system for the investigation, referral and oversight of complaints against members of NSW Police who are not police officers, enables criminal proceedings in respect of certain summary offences under the Act to be brought within a period of three years from their commission, and confers on the Inspector of the Police Integrity Commission the power to conduct investigations into the conduct of former officers of the Police Integrity Commission.

I take the opportunity to address some of the reforms in more detail. The bill provides for a definition of "administrative officer" to be included in the Act. The definition forms the basis for the distinction between the complaints system for unsworn members of NSW Police and the complaints system for NSW Police officers. This definition will also ensure consistency in the definitions of "police officer" and "administrative officer" between the Police Integrity Commission Act 1996 and the Police Act 1990. A definition of corrupt conduct will also be inserted into the Act consistent with the definition of corrupt conduct under the Independent Commission Against Corruption Act 1988.

This provision defines the type of conduct that the Police Integrity Commission will investigate and ensures that administrative members of NSW Police are treated in the same manner as other public servants. This provision will also ensure that corrupt conduct by former administrative officers can be investigated by the Police Integrity Commission. The bill sets out the functions of the Police Integrity Commission regarding administrative officers. These functions include the detection, investigation and prevention of corrupt conduct by administrative officers and the oversight of other agencies in the detection or investigation of corrupt conduct by administrative officers. A new part will be added to the Act that provides for a system for the referral of complaints to the Police Integrity Commission.

The provisions are modelled on sections 10 and 11 of the Independent Commission Against Corruption Act 1988. This part outlines who can make a complaint about corrupt conduct to the Police Integrity Commission and imposes a duty on certain officers, such as the Commissioner of Police, to notify the commission of corrupt conduct by administrative officers. The amendments will ensure that complaints against unsworn members of NSW Police are referred to the commission by NSW Police in a similar manner as they are currently referred to the Independent Commission Against Corruption.

The Act will also be amended to enable certain public officials to make complaints to the Police Integrity Commission about the conduct of administrative officers. In addition to amendments to establish a complaint management system for administrative members of NSW Police, the Police Integrity Commission requested that amendments be made to the limitation period for certain offences under the Act. Section 141 of the Police Integrity Commission Act 1996 will be amended to allow criminal proceedings for certain summary offences under the Act to be brought within the period of three years after their commission.

These provisions are section 25, which makes it an offence to fail to provide information to the Police Integrity Commission, or by providing false information, when requested to do so; section 52, which makes it an offence to publish evidence where the person has been given a direction not to do so by the Police Integrity Commission; section 53, which makes it an offence to publish evidence given at a private hearing of the Police Integrity Commission without authorisation; section 54, which makes it an offence to make disclosures prejudicing investigations being made by the Police Integrity Commission; section 56, which makes it an offence to divulge information acquired by reason of, or in the course of, exercising functions under the Act where not authorised to do so; and section 106, which makes it an offence to fail to comply with a summons issued by the Police Integrity Commission. The current limitation period for these offences is six months from commission.

This amendment will bring the limitation period for these offences in line with the limitation period for an offence under section 104 (c) of the Act. Section 104 (c) prohibits a person from wilfully making any false statement to attempt to mislead, or to attempt to mislead the Police Integrity Commission, an officer of the commission, the inspector of the commission or an officer of the inspector of the commission, in the exercise of functions under the Act. The bill proposes that the limitation period be extended to enable the Police Integrity Commission to prosecute breaches of these offence provisions where it is not provable or apparent that a breach has occurred until after the limitation period has expired, and where the commission is aware of the misconduct and such misconduct is provable at the time of commission of the offence, however the initiation of a prosecution may jeopardise any investigation in progress. The commission advises that a three-year limitation period is reasonable, given the length of the more involved investigations.

The Police Integrity Commission Act 1996 will also be amended to confirm that the conduct of former officers of the Police Integrity Commission may be investigated by the inspector of the commission. It is appropriate that any officer of the commission be investigated for any involvement in corrupt conduct whilst employed with the commission, particularly given his or her role in investigating corrupt conduct by NSW Police officers. The Commissioner of the Police Integrity Commission has the power to investigate former NSW Police officers who may have engaged in serious misconduct and it is appropriate that the Inspector of the Police Integrity Commission has the same powers in respect of former officers of the commission.

Any officer who has engaged in corrupt activities or other misconduct whilst employed by the commission should not escape investigation on the basis that he or she is no longer employed by the commission. This bill will ensure that there continues to be appropriate independent and accountable oversight of the conduct of all NSW Police employees. The proposed amendments to the Police Integrity Commission Act 1996 are essential to ensure appropriate detection, investigation and oversight of complaints against all members of NSW Police. I commend the bill to the House.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [6.01 p.m.]: I indicate at the outset that the Opposition will not oppose this bill, which provides for a system of investigation, referral and oversight of complaints against certain members of NSW Police who are not sworn police officers. The bill will enable criminal proceedings relating to certain summary offences to be brought within three years of their commission, instead of the current six months. The summary offences covered by changes to the bill include: failure to provide information to the Police Integrity Commission [PIC], or providing false information when requested to do so; publish evidence after being directed not to do so by the PIC; publish without authorisation evidence given at a private hearing of the PIC; make disclosures prejudicing investigations being made by the PIC; and, finally, failure to comply with a summons issued by the PIC.

The bill confirms that the conduct of former officers of the PIC may be investigated by the inspector of the commission. On 21 February 2005 State Cabinet approved the transfer of jurisdiction from the Independent Commission against Corruption [ICAC] to the PIC to investigate all employees of NSW Police. The PIC believes that NSW Police administrative employees should not be equated with sworn police and that a more robust system for the investigation, referral and oversight of complaints against unsworn members of NSW Police was necessary. The bill defines "administrative officer" and forms the basis for the distinction between the complaints system for unsworn members of NSW Police and the complaints system for NSW Police officers.

Complaints against unsworn staff will be referred to the PIC by NSW Police in a similar manner as they are currently referred to the ICAC. The bill addresses the situation when one offence is committed by both sworn and unsworn police staff, in relation to which currently, both the ICAC and the PIC have jurisdiction. The changes mean that only the PIC will be required to investigate such a complaint. The bill provides that the Commissioner of Police is not bound to report to the ICAC any matter that may involve corrupt conduct unless the commissioner suspects on reasonable grounds that another public official may be involved. A definition of "corrupt conduct" will also be inserted in the Act consistent with the definition of "corrupt conduct" in the Independent Commission Against Corruption Act. The bill expands the functions of the PIC to prevent corrupt conduct of administrative offices, and to detect or investigate, or oversee other agencies in the detection or investigation of, corrupt conduct of administrative officers.

Reverend the Hon. FRED NILE [6.04 p.m.]: The Christian Democratic Party supports the Police Integrity Commission Amendment Bill, which amends the Police Integrity Commission Act 1996 to establish a system for the investigation, referral and oversight of complaints against civilian employees of NSW Police, and for other purposes. The bill became necessary because of changes to the powers of the Police Integrity Commission to detect, investigate and prevent serious police misconduct and corruption, and that included civilian members of the New South Wales police force who were subject to the same powers of investigation by the Police Integrity Commission. That occurred when the powers were transferred from the Independent Commission Against Corruption to the Police Integrity Commission.

What appeared to be a simple legislative procedure has created problems in the legislation. For example, by virtue of the amendment to the definition of "police officer", section 10 (6), which governs the involvement of police officers in carrying out investigations on behalf of or at the direction of the commissioner, applies to administrative employees, although it is certain that the intention of the section was that only qualified police officers be able to undertake investigations. Obviously, administrative employees do not hold any special office or exercise any special powers. Therefore, the Police Integrity Commission requested that administrative employees of NSW Police should not be equated to sworn police officers for all purposes under the Act. This legislation will simplify the process, remove the confusion created by the definition of "police officer", and establish a direct system for the investigation, referral and oversight of complaints against unsworn members of the New South Wales police force who are civilian employees—they are not sworn and they are not in uniform.

The legislation provides for the Police Integrity Commission to conduct such investigations. It also provides further detail relating to serious corrupt conduct. The bill inserts a new part setting out the system for referral of complaints to the Police Integrity Commission and the duty of the commissioner and other officers to notify the commission of possible corrupt conduct by administrative officers. This mechanism is the same as that for the referral of complaints based on sections 10 and 11 of the Independent Commission against Corruption Act 1988. The bill makes amendments to provide that the Commissioner of Police does not have a duty to report to the Independent Commission Against Corruption any matter that may concern corrupt conduct by a police officer or an administrative officer unless the commissioner suspects on reasonable grounds that the matter may concern corrupt conduct by another public official.

The bill limits the function of the Independent Commission Against Corruption in relation to the conduct of police officers and administrative officers as this role is now performed by the Police Integrity Commission. It also provides that the Inspector of the Police Integrity Commission will be able to investigate former officers of the Police Integrity Commission. This complements the existing power of the Police Integrity Commissioner to investigate former New South Wales police officers. The limitation period for certain offences has been extended from six months to three years, enabling the Police Integrity Commission to prosecute such offences when to do so previously may have compromised ongoing investigations.

The bill streamlines provisions and removes the duplication that occurs when the Independent Commission Against Corruption and the Police Integrity Commission are involved in investigating the same complaint against police. The powers are now centred on the Police Integrity Commission, and that raises the question of what resources the Police Integrity Commission will have to carry out the extra responsibility. I ask the Parliamentary Secretary to indicate in reply whether the Government will review the budget and staffing of the Police Integrity Commission in order that it can carry out its duties as required by law. It is no good giving the commission extra responsibilities if its budget is not increased—or if its budget is decreased, as has been threatened in the case of the Independent Commission Against Corruption. Such bodies need adequate funds and staff to carry out their important duties for the people of this State.

The Hon. HENRY TSANG (Parliamentary Secretary) [6.09 p.m.], in reply: I thank honourable members for their contributions to this debate. The proposed amendments to the Police Integrity Commission Act are necessary to ensure appropriate detection, investigation and oversight of complaints against all members of NSW Police. The bill will enable the Inspector of the Police Integrity Commission to investigate former employees of the Police Integrity Commission and will ensure that the commission is given sufficient time to prosecute offences under the Act by extending the limitation period for certain offences from six months to three years.

Reverend the Hon. Fred Nile questioned whether the Police Integrity Commission was adequately resourced to undertake its new function. Only a very small number of complaints about unsworn members of NSW Police are made each year and the Police Integrity Commission is able to handle the small number of complaints about the conduct of administrative officers with its existing resources. It should also be noted that the Police Integrity Commission supports these amendments. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

FAIR TRADING AMENDMENT BILL

Second Reading

Debate resumed from 6 September 2006.

The Hon. CHARLIE LYNN [6.13 p.m.]: When this debate was last adjourned I advised that on a number of occasions I had brought to the attention of the House concerns about increasing the powers of the Commissioner of Fair Trading. In fact that was third time I had referred to that matter in this House. I reiterated my contention that the situation was intolerable. If the Department of Fair Trading had sufficient evidence to issue a notice of suspension against Mr Leach based on the grounds of his unfitness, it should have had no hesitation in filing a complaint and summons under section 29 under the Property, Stock and Business Agents Act in the New South Wales Licensing Court. On the other hand, if there was insufficient evidence to substantiate such a claim or the investigation, which had then been in progress for six months, was incomplete, it was manifestly unfair for the commissioner to issue a notice of suspension.

I said on the last occasion that if the Minister was unable or unwilling to instruct the director general of the department to either file a complaint or lift the suspension, the Minister should resign to make way for somebody who was willing to display the necessary leadership to make bureaucrats accountable and to ensure that honest, hard-working Australians are given a fair go. In the same context, if the Minister for Police could not get his detectives to at least interview a person who had committed a crime, he too should resign.

Honourable members will recall that I sought leave to table copies of letters forwarded to the Minister for Fair Trading, the Minister for Police, the Ombudsman and the Commissioner of the Independent Commission Against Corruption so that members of the House could decide for themselves whether Mr Leach was deserving of a fair go. This afternoon Mr Leach visited Parliament at my invitation. As a result of this case, he now lives in Wollongong. This is a bloke who spent the first 60 years of his life earning an honest living.

The Hon. Amanda Fazio: How old is he now?

The Hon. CHARLIE LYNN: He is a bit over 60 years of age. And during that time he did everything right. He was a real estate agent in Camden—and a good real estate salesman. Indeed, his reputation was such that he was headhunted by other real estate offices in the area. As I have said previously, I purchased the home I currently live in from Mr Leach, who lived around the corner from me. As a result of this case, and because the commissioner took no notice of the material and pleadings brought to his attention by a host of people, Mr Leach lost his business, his employees lost their jobs and he lost his house and his marriage. I invited Mr Leach here today so he could see that he is finally going to get some closure. Any system that gives the director general of a department such dictatorial powers to take people out must be corrected. When I sought leave to table those papers so honourable members could make up their own minds about whether Mr Leach was getting a fair go, the Hon. Jan Burnswoods took a point of order, stating that it would be inappropriate for me to table the documents, and leave was not granted.

The Hon. Catherine Cusack: How petty.

The Hon. CHARLIE LYNN: Absolutely petty. On 24 January 2002—about four months after Mr Leach reported the business irregularities that led to this—solicitor Peter Richardson wrote to Mr O'Connor, the Director General of the Department of Fair Trading, on behalf of Mr Leach. Mr Richardson has been in the real estate business for 30-odd years and has dealt with the Department of Fair Trading on numerous occasions over that time, so he knows what he is talking about. When Mr Leach discovered the irregularities on Friday 7 September he called in his partners and people from L.J. Hooker and on the following Monday he advised the Department of Fair Trading of the irregularities. The Department of Fair Trading then turned its investigations to John Leach. After a three-month investigation Mr Leach was called in for an interview that lasted a couple of hours.

The day after the interview the director general issued a notice of suspension claiming that Mr Leach was not a fit and proper person to run a business, or even to work as a salesman, in the real estate industry. I believe it to be a corruption of the process that the interview went on for so long. The investigators expect us to believe that they transcribed the evidence that night, tested it and then the next morning arrived at a conclusion. We know that that is impossible. In response to that claim, Mr Peter Richardson wrote to Mr O'Connor as follows:

The Notice of Suspension ... sets out in detail a number of grounds which are said to constitute evidence of our client's unfitness to continue to hold licences. Having regard to the facts that firstly your officers' investigations had been in progress for a period of four months before the Notice of Suspension was issued, secondly that all records and documents available had been duly produced by my client to the Department's investigators and thirdly that the day before the Notice of Suspension was issued Mr Leach attended a lengthy interview with Messrs Stanley and Robinson, the Department's investigators, you would need to have been satisfied before signing the Notice of Suspension that sufficient evidence had been found by the Department's investigators to prove and establish each of the grounds set out in the Notice which are said to constitute the basis for licence cancellation orders under Section 29 by the Licensing Court of New South Wales.

Mr Richardson wrote further:

Our client strongly denies that he is no longer a fit and proper person to hold licences under the Property, Stock and Business Agents Act. As a matter of natural justice and in procedural fairness to our client, Mr Leach, we are instructed to formally request that you know instructed the Department's Legal Branch to cause a complaint and summons under Section 29 of the Property, Stock and Business Agents Act to be drafted and filed in the Registry at the Licensing Court of New South Wales, 323 Castlereagh Street, Sydney ... You would not have issued and served any Notice of Suspension of our client's licence unless sufficient proof was available to establish the alleged grounds which are said to constitute the basis for licence cancellation orders. In those circumstances we have advised our client that there is no cause for disciplinary proceedings under Section 29 to be delayed. Your Department may rest assured that Mr Leach and the writer will co-operate so that any such disciplinary proceedings under Section 29 can be heard and determined by the Court promptly.

He concluded:

The time has now come for the Department's assertions as to our client's alleged unfitness to be judicially determined by the Court. We respectfully submit that, given the circumstances of the investigation, the issuing of the Notice of Suspension and the fact that our client is now prohibited from continuing to act as a licensed agent, it is not only in our client's interest but also in the public interest that Mr Leach's fitness to continue to practice in his chosen profession should be determined by the Court with out delay.

Yours faithfully,

PETER BRUCE RICHARDSON

Because of the director general's arrogance a member of Parliament brought the matter to the notice of this House on two occasions. Indeed, a lawyer very experienced in dealings with the Department of Fair Trading pleaded with the director general to take the matter to court so that any evidence that was available after four months of investigation could be tested. The director general put Mr Leach out of business and as a result Mr Leach has no income. I have in my possession a licence signed "D. O'Connor, Director General", certifying that John Leach was licensed under the provisions of the Property, Stock and Business Agents Act 1941 to act as a real estate agent and restricted stock and station agent. The licence was dated 12 December 2001, three months after Mr Leach first reported the discrepancies he discovered. Three months after that date the Director General of the Department of Fair Trading issued Mr Leach with a licence with an expiry date 11 January 2005, four years later.

I brought the matter to the attention of the House on two occasions and on each occasion read that letter, but the Government declined to treat it as a genuine grievance and as a gross miscarriage of justice. Instead, the Government, through the Minister for Natural Resources, attacked me for raising the matter in the

House. On 21 March 2002 the Minister advised the House that the complaint would be filed in the court on 20 May 2006. So even after six months, from September to March, it would be a further two months before Mr Leach could expect any sort of natural justice. The Minister for Natural Resources, in outlining the facts as provided to him by the Director General of the Department of Fair Trading, said:

The statement was made in relation to the department's quite proper investigation to ascertain what had happened to more than \$200,000 of consumers' funds, money that had been placed in trust with a real estate agency. There is no more important duty of a real estate agent than the proper supervision of moneys received on trust to be dealt with as directed by the clients. These unfortunate people who lost their money are now left with having to seek compensation through the Property Services Compensation Fund administered by the Department of Fair Trading. I understand that a large number of claims for compensation have already been lodged and that compensation is being approved as quickly as possible.

The director general had obviously failed to inform the Minister for Natural Resources that \$200,000 had been misappropriated by Camden Property Marketing Pty Limited, an entity with which Mr Leach had had absolutely no association. We tried to tell the director general that, a solicitor tried to tell him that, and that is what the official record states. Interestingly the licence for Camden Property Marketing Pty Limited expired some months before and had not been renewed. The company was unlicensed. The people from whom the \$200,000 had been misappropriated had no claim against that company; it was unlicensed.

But this was the director general's way of getting out of it, otherwise the department would have been responsible and unable to make a claim against an agent. The way out for the department was for it to destroy Mr Leach, and that is what it set out to do. The Minister said that he was trying to put the other side of the case. He suggested that the statement I made on 13 March was wrong and misleading. He said that I took issue with the Director General of the Department of Fair Trading exercising his power under the Fair Trading Act 1987 to suspend Mr Leach's real estate licence. The Minister said further:

This power was provided to the director general by this Government as an aid in ensuring that persons will not suffer significant harm or significant loss or damage as a result of conduct by a licensee if action is not taken urgently.

I would suggest that the licensee has suffered far more damage as a result of the actions of the director general than had the reverse applied. The Minister continued:

Suspension action may only be taken if the director general is of the opinion that there are reasonable grounds to believe that a licensee has engaged in conduct that constitutes grounds for suspension or cancellation of the licence. ... The legislation also has a built-in safeguard. The Act is quite clear ... The licensee has the right to apply to the Administrative Decisions Tribunal for a review of the decision of the director general to suspend a licence. I am advised that as of today Mr Leach has not made an application to the Administrative Decisions Tribunal for review of the decision to suspend.

Mr Leach had been advised by his solicitor not to take that course of action because it would have prolonged the process and he would have incurred additional cost. The matter was so serious that the solicitor wanted it brought before the court to be tested. I should add that the person Alex Cameron, who had misappropriated the money and was sprung on 7 September 2001, had been walking the streets of Camden and Sydney for six months! It seems that the police were the only people not to know of his whereabouts. The Minister went on to state:

Third, besides disparaging the actions of the Ombudsman, the ICAC and the Police Service in relation to this matter the Hon. Charlie Lynn made a baseless and scurrilous attack under privilege on a senior staff member of the Department of Fair Trading in Parliament on 19 March. The honourable member's statement is inaccurate and completely without foundation. There was no checking of the facts and no opportunity for the officer to defend himself against the statement. The attack on the integrity of the investigator is without parallel. I am advised that the officer is distraught at the besmirching of his character.

All I can say is that that officer still has a job whereas Mr Leach has nothing.

[The Deputy-President (The Hon. Patricia Forsythe) left the chair at 6.30 p.m. The House resumed at 8.00 p.m.]

The Hon. CHARLIE LYNN [8.00 p.m.]: The complaint to which I referred before the dinner break was finally lodged with the Licensing Court of New South Wales on 20 May and the hearings began on 2 November. The court sat for two days—26 and 27 November—and the case was then held over to March. The hearings continued on 4, 5 and 6 March and on 22, 23 and 29 May. I was concerned about the issue and the miscarriage of justice, so I accompanied Mr Leach to court to assist him and to find out for myself what was going on.

The Department of Fair Trading's complaint was made under section 29 of the Property, Stock and Business Agents Act 1941. The bulk of the evidence comprised various exhibits, which ran to many hundreds of

pages. Written submissions alone covered 162 pages. Despite the large number of documents, ultimately there was little in dispute factually. That being so, the magistrate could not understand why no agreement had been reached. Oral evidence, with the exception of that given by Mr Stanley, was largely uncontentious.

The complaint contained 18 particulars. Most of the adverse particulars 3 to 16 were not established against Mr Leach. The office argued that the overall evidence was sufficient to establish particulars 17 and 18, which covered the contentious issue. The office's submission was that the defendant be disqualified permanently or temporarily from holding a licence within the meaning of the Act on the ground that the defendant was guilty of conduct that rendered him unfit to hold a licence. It then made 16 complaints, many of which were minor. Even though they were minor, they were all that the Department of Fair Trading could produce to support its assertion that Mr Leach was not a fit and proper person to continue to hold a licence and that he was not fit to be the holder of a licence within the meaning of section 29 (1) (c).

The magistrate went through each of the 16 particulars building up to the two major assertions. Mr Leach's solicitor admitted that Mr Leach did have a company, that he was practising and so forth. However, the main thrust of the office's case was that John Leach was the licensee and was responsible for Camden Property Marketing Pty Limited. Although I have mentioned this in the Parliament many times, his solicitor has raised it and it is on the public record that he had nothing to do with the company, the office continued to pursue Mr Leach on this basis.

We found during the hearing that the corporate licence for Camden Property Marketing Pty Limited had expired on 30 March 2001. Mr Leach's discovery of the irregularity on 7 September 2001 exposed the fact that the Department of Fair Trading had allowed the company to operate without a licence. That meant the taxpayer would have to fund the \$210,000 in compensation claims. The only way that the Department of Fair Trading could cover its tracks was to blame Mr Leach and to take him out.

The magistrate agreed that particular 3 was correct and that Mr Leach had acted as the licensee in charge of Modena Investments, trading as L.J. Hooker Camden, from 1 May to 10 May—for 10 days—when he discovered that an application for a corporate licence had not been lodged. The magistrate found that that clearly showed Mr Leach believed Modena Investments was the corporate licensee at the time and that he had taken over as licensee in charge of L.J. Hooker Camden. He stated that that particular was proved in the terms of the words used in the letter. I say that because these are what I regard as minor issues, although I suppose they are important in the eyes of the law.

Mr Leach's solicitor defended each of the particulars, but I will not go through them all in detail. However, the magistrate stated that all moneys paid as rent to L.J. Hooker Camden Pty Limited were processed through the Camden Property Marketing Pty Limited books and that compensation was paid by Modena Investments for missing rent money due to a Mr Wheeler. The magistrate further stated that the evidence indicated that Mr Cameron exercised final control over the Camden Property Marketing Pty Limited books, particularly the banking transactions, at all times until he disappeared. That included the period from 1 May to 30 June 2001. We all knew that, but two Department of Fair Trading investigators who investigated the issue for eight months could not work it out. That added to Mr Leach's frustration and stress because he knew the facts were available to anyone. The crux of the case was that the Department of Fair Trading asserted that John Henry Leach was not a fit and proper person to continue any longer to hold a licence within the meaning of section 29 (1) (b) of the Act. The magistrate said:

The evidence does not disclose this. The matters that have been proved in those paragraphs fall short of showing he is not a fit and proper person to hold a licence. In the main it shows he was at times careless as to his legal position such as when he had the right to commence as licensee in charge and careless as to the use of forms and stationery with incorrect particulars on them, both by himself and his staff. Particular 17 is not proved by Particulars 3 to 16.

Particular 18 for the same reason as particular 17 is also not proved by particulars 3 to 16.

The court case over those couple of days was an absolute massacre. It was embarrassing to see Mr Leach's solicitor absolutely humiliate the investigators from the Department of Fair Trading who brought the complaint. They sat in court for a number of days. Mr Richardson completely destroyed their case, but then they made more submissions. I recall speaking to Mr Richardson about halfway through the court case. I said to him, "It is painfully obvious that they have no case. Why don't they just settle with Mr Leach and withdraw the suspension?" I remember his words. He said to me, "Nobody's game. They've told the director general that they've got a watertight case, that they're going to win. They know they're not, but nobody's game to tell him."

It did not worry the investigators, fat cats sitting in the chair, because they were not footing the legal bill; the taxpayer was footing the legal bill. The investigators knew that John Leach could not afford what he was doing, and that if they kept him there long enough maybe he would fly the white flag. So they made further written submissions which had nothing to do with their original case. I will not go through the submissions in detail except to say that they did not carry any weight. The main thrust of the investigators' submissions was set out in paragraph 9 as follows:

What he did was by his conduct facilitate the misappropriation of funds by Cameron. He [Leach] compounded the situation by failing to report Cameron to the police and the Department immediately he became aware of financial irregularities.

The magistrate found that the evidence disclosed that Mr Leach could have reported matters slightly earlier. On the Friday afternoon Mr Leach suddenly discovered, as a result of a client's inquiry, that \$92,000 was missing from the account. He did a quick check, called Mr Cameron in, and found out that the deficiency was in excess of \$200,000 for Camden Property Marketing, over which he had no responsibility. The very next morning Mr Leach called in Alex Cameron and confronted him with what he had found out on the Friday afternoon. He also called in his business partner and L.J. Hooker, and they sat down to discuss this serious matter.

Cameron promised them that he would replace the money straight away, on the Monday morning. Monday morning came, but Cameron did not turn up. Mr Leach immediately rang the Department of Fair Trading and reported the irregularity, and also reported the matter to the police. Now they allege that Mr Leach compounded the situation by failing to report Cameron to the police. He reported Cameron to the police on the Monday morning, and Cameron walked the streets for more than two years before the police even interviewed him. They only found him because John Leach told the police where he was.

The Hon. Rick Colless: Why didn't the police do it?

The Hon. CHARLIE LYNN: They did not want to know. I wrote to the Minister for Police, and I raised the matter in the Parliament. This bloke had stolen \$200,000. If he had gone to the bank and stolen \$200,000, maybe—just maybe—someone would have chased him. But he actually stole \$200,000 and they did not regard it important enough to chase him. Indeed, they chased John Leach and tried to destroy him. The magistrate posed the question:

Should the additional material that came out in evidence be allowed against Mr Leach to show it may render him unfit to hold a licence? There is no doubt that the affairs of the L.J. Hooker Camden office were unsatisfactory and exposed members of the public to fraudulent behaviour by Mr Cameron. The involvement of Mr Leach in allowing that situation to occur is in the main not specified in the complaint before the Court. The matters that have been proved or admitted in the complaint before the court fall short of showing Mr Leach is unfit to hold a licence.

The magistrate went on to say:

There was little evidence critical of [Mr Leach's] position as a director of Modena. He was never a director of Camden P/L. These cases whilst correctly stating the law are of no assistance ... It relates to the obligations of partners. Again, whilst correctly stating the law, it would seem to have no application to this case.

The defence submits that this amounts to procedural unfairness that is prohibited by the High Court in *Smith v. NSW Bar Association*. In the absence of any law to the contrary, the Court accepts that submission of the defence as more fully set out in the written submissions ... It would seem unfair to proceed on evidence adduced at the hearing that did not relate to any allegation in the complaint. No application was made to amend the complaint to include an allegation that might be substantiated by the evidence.

In this case a large amount of evidence was tendered on behalf of the complainant and the defence, and whilst it might be suggested that Mr Leach would not be disadvantaged by allowing findings on evidence not averred to, that could never be accepted. Mr Leach may have produced additional evidence to meet different allegations.

Confining the allegations against Mr Leach to those set out in the complaint before the court, the complaint is not made out. The particulars that are proved fall short of establishing paragraphs 17 and 18 of the complaint. It was suggested, although not strongly, by the defence that paragraphs 17 and 18 were themselves duplicitous. In view of other findings it is not necessary to decide that point.

The complaint is dismissed.

I want to refer to some of the evidence of Mr Stanley, the chief investigator from the Department of Fair Trading, to give the House a feel for the operations of the office. Mr Stanley's experience in investigating trust account deficiencies and so on can be summarised as follows. On about 5 November 2001 Mr Robert Laughton, the Department of Fair Trading senior investigator, endorsed a report prepared by Mr Stanley recommending

that Mr Leach's licence be suspended. When Mr Stanley prepared his report Mr Leach had not been interviewed. In other words, Mr Stanley had not even interviewed Mr Leach when he made his recommendations.

The first invitation that Mr Leach had to be interviewed was contained in an exhibit dated 14 November 2001, which was about nine days after Mr Laughton endorsed Mr Stanley's recommendation for Mr Leach's licence to be suspended. Mr Stanley also raised with Mr Leach, for the first time, the proposition that Mr Leach had allegedly contravened the provisions of section 36 of the Property, Stock and Business Agents Act. In the solicitor's letter to Mr Stanley dated 20 November 2001 it was put to Mr Stanley that Mr Leach knew nothing of any allegations having been made to the department by any person that Mr Leach had contravened the provisions of section 36, and a request was made to urgently forward full particulars of all such investigations to Mr Richardson's office by express post within 48 hours. Mr Stanley agreed that there was no response by him to that request.

It therefore follows that on 5 November 2001 Mr Stanley was quite prepared to proceed to make recommendations that Mr Leach's licence be suspended on the basis of alleged contraventions of section 36 of the Act without ever having interviewed Mr Leach, without inviting Mr Leach to be interviewed, and without having supplied Mr Leach or his solicitor with any of the particulars which were said by Mr Stanley to support allegations of serious breaches of the Act. The date 9 January 2002 was the very next day after the interview under section 20 of the Fair Trading Act was conducted. However, Mr Stanley did not provide a report to the director general as to matters discussed in the long interview with Mr Leach.

So Mr Leach was subjected to a long interview on 8 January and no report was submitted to the director general, who on the next day made the decision to suspend him. Therefore, the director general had no information from Mr Stanley about the interview conducted on 8 January by Mr Stanley and Mr Robinson before the director general suspended Mr Leach's licence on 9 January 2002. Mr Stanley agreed in court that the schedule of conduct and reasons for decision in the suspension notice and the grounds in the section 29 complaint before the magistrate were substantially identical with similarly numbered paragraphs in the suspension notice.

Mr Stanley could not explain to the magistrate why it took from 9 January 2002 until 20 March 2002 for the complaint to be filed in court, given that Mr Leach was suspended, given that Mr Leach had closed his office, given that the corporation had ceased to trade and given that the grounds in the complaint and summons as filed are virtually identical to the grounds in the suspension notice. He could not give any reasons, but I can: it is because they are lazy and they are incompetent.

On page 11 of the transcript, when asked what was Mr Stanley's final assessment of the extent of this apparent deficiency in the trust account of Modena Investments, Mr Stanley said, "The final amount which was approximately \$220,000". In relation to compensation claims by landlords, Mr Stanley agreed that there were no agency agreements signed by any of those defrauded landlords, being agreements dated earlier than 11 September 2001 appointing Modena Investments to manage their properties. When asked if he was able to obtain a print-out of bonds held by the Department of Fair Trading Rental Bond Board for bonds paid to the board by Camden Property Marketing, Mr Stanley said from his memory he was unable to get a print-out of bonds lodged by Camden Property Marketing with the bond board, and he was not sure whether Mr Leach had supplied him with a list of bonds lodged by Camden Property Marketing.

It was then put to Mr Stanley that there was a print-out of rental bonds for the period ended 30 June 2001 showing Camden Property Marketing as the responsible letting agent and the list contained a considerable number of properties that were being managed where compensation claims were lodged. That did not assist Mr Stanley's recollection about ever having seen such a list at some stage previously. On 8 January 2002, when he interviewed Mr Leach, Mr Stanley still did not know—as the bank had not responded—whether Mr Leach had ever been a signatory on any trust accounts of Camden Property Marketing. Mr Stanley agreed in court that when he wrote the recommendation for the suspension of Mr Leach's licence and completed it about 5 November 2001 he had no information from the bank one way or another as to whether Mr Leach ever was or had ever been a signatory on any accounts of Camden Property Marketing.

Mr Stanley agreed that on 9 January 2002, which was the day after the section 20 interview, he rang Mr Leach's office and requested that he, Mr Stanley, be urgently and immediately supplied with records of the first receipt and first banking to the Modena Investments rent trust account and also sought the urgent supply of the first trust account receipt and the first depositing of moneys to the sales trust account of Modena Investments. It was Mr Stanley's evidence in court—and this gives an indication of the quality of the investigator appointed by

the Department of Fair Trading to put people in the real estate industry in New South Wales out of business—that he first joined the Real Estate Investigations Branch of the Department of Fair Trading on 9 July 2001 and therefore when he went to Mr Leach's office on 11 September 2001 he had been working with the Real Estate Investigations Branch for just two months.

Between 9 July 2001 and 11 September 2001, Mr Stanley had not attended any courses, seminars or lectures in relation to the Property, Stock and Business Agents Act and regulations either within the department or any seminar organised by any of the franchise associations. During that period of about eight weeks Mr Stanley said that for approximately the first month or so he was reading and studying the Property, Stock and Business Agents Act and regulations while he was at work and he also attended other agencies and conducted inspections with other investigators. Up until the time that Mr Stanley went to Mr Leach's office on 11 September 2001 he had never previously recommended the suspension of any real estate agent's licence. Mr Stanley's experience with the New South Wales Police Fraud Squad was for a period of 12 months. At no time during that 12-month period was he called upon to investigate any frauds committed by licensees under the Property, Stock and Business Agents Act, nor was he called upon to investigate any frauds by licensees at any other time in the New South Wales police service. Mr Stanley has no accounting qualifications.

No work undertaken by Mr Stanley from 1997 until the time he joined the Department of Fair Trading in July 2001 had any connection with real estate agencies. Mr Stanley stated that the investigation of Mr Leach's agency was one of the very earliest cases in which he had to undertake any extensive investigations while working for the Department of Fair Trading. He agreed that the letter written to Mr Leach by the Department of Fair Trading did not confirm Mr Leach's appointment as the licensee in charge of any office of Camden Property Marketing Limited. He was shown the document signed by Mr Leach. Mr Stanley agreed that Mr Leach's letter did not say that Mr Leach was seeking any appointment as a licensee in charge of the office of Camden Property Marketing. When Mr Stanley was pressed for details about his calculation of an alleged trust account deficiency in excess of \$200,000 in the accounts of Modena Investments, he said:

Your Worship, I've taken a view that it was sort of like an umbrella as in the complaint of Camden and Modena.

On the alleged trust account deficiency of the order of \$220,000, the magistrate said to Mr Stanley:

You referred to Modena, but you are now saying that refers to both Modena and Camden.

That was the apparent trust account deficiency of about \$220,000. Mr Stanley responded:

Well, I am saying that, your Worship, yes.

It was later put to Mr Stanley:

This umbrella which you're talking about, Mr Stanley, that is a sort of amalgam of total failures to account, is it, involving both Camden and Modena, is that right?

Mr Stanley answered yes. He was then asked to give the court an apportionment of the apparent deficiencies in the trust accounts of Camden Property Marketing and the apparent deficiency in the trust accounts of Modena Investments; in other words, the shortfall of funds available in the trust accounts of each company to pay each company's unpaid trust creditors. Mr Stanley was asked to provide the magistrate with his calculations of the alleged deficiency in relation to the Modena Investments trust accounts. That was the amount of money that should have been in Modena Investments trust account but which was not there and was therefore not available to pay its unpaid creditors. To this specific question Mr Stanley responded:

Your Worship, without going back over the receipts which were issued by Modena Investments Pty. Limited, I wouldn't be able to hazard a guess, which is all it would be.

The solicitor asked the question:

Mr Stanley, all of Ground 15 is as it was and as it has been amended was a matter of adding up all of the claims that were lodged against the Compensation Fund, wasn't it? That's all it is, isn't it?

Mr Stanley answered yes. The solicitor asked:

And is this what you're saying, that if you add up all the claims against the Compensation Fund, then some of those claims in some unknown amount represented an apparent trust account deficiency in the accounts of Modena Investments, is that right?

Mr Stanley answered yes. The solicitor then put it to him:

... in relation to the property management matters which we touched on a little earlier in which you agreed that in all of the property management defrauded landlord cases we have over here, there were no management agency agreements appointing Modena as the managing agent for the properties of those defrauded landlords. Are you with me?

Mr Stanley answered yes. Then he was asked:

How could it be said that Modena has received money for those landlords for which it has not accounted for if it was never authorised to receive any money for any of those landlords in the first place?

Mr Stanley responded:

About May 2001, or June or July 2001, any rent that was paid into the agency was receipted on receipts of Modena Investments Pty. Limited. As such, any money which was received on the receipts of Modena Investments should have been banked into the trust accounts of Modena Investments.

Mr Stanley was then asked the question:

How much money are you talking about, Mr Stanley?

Mr Stanley answered, "I don't know." After eight months of investigation he says, "I don't know." The transcript continues:

Question: How many receipts are you talking about, Mr Stanley?

Answer: I don't know.

Question: Have you made a list of all these receipts somewhere so that His Worship can read them and see precisely what you are talking about?

Answer: I believe the receipts are in with the other documents which were produced to Mr Leach on 8 January in the record of interview.

Question: Are you talking about computer generated receipts, i.e. for rentals?

Answer: I believe they were computer generated, yes.

Question: So you're not able to help His Worship in relation to the total of these receipts, Mr Stanley, which you say constitute a failure of Modena to account. Is that right?

Answer: Not off the top of my head.

Question: You haven't added them up?

Answer: No.

After eight months of investigation he still had not added them up. The transcript continues:

Question: And they are somewhere in exhibit 29, are they?

Answer: I believe they are, yes.

Question: Are there any more receipts except for the receipts in exhibit 29 that you are referring to?

Answer: I don't think so. I believe the receipts I am referring to are encompassed in exhibit 29.

Trust account deficiencies in the records of Modena Investments were put to Mr Stanley and that a tax accountant, Mr Peter Hawketts, would be called to give evidence and would say that Mr Hawketts audited the Modena sales trust accounts and Modena rent trust account for the period 1 July to 31 December 2001 and he will say that in his opinion those trust accounts were properly maintained, that it was his opinion the two trust accounts have been properly maintained and that procedures were being adhered to. He put the question:

Question: That doesn't quite square up with your view of the alleged deficiency in these trust accounts, does it?

Answer: No.

It is interesting that no questions were put to Mr Hawketts in cross-examination on this issue by the Department of Fair Trading. Mr Stanley was asked:

Question: Was there anything you want to comment by way of a response to what it is expected Mr Hawketts' evidence will be in relation to the way these records have been maintained?

Answer: I'm only glad I don't own that agency and have that accountant working for me, sir.

Question: What training do you have in trust account book-keeping, Mr Stanley?

Answer: None.

It was also put to Mr Stanley that Ms Sonia Rahme, a director of Consolidated Business Services, had been engaged by L.J. Hooker (NSW) to inspect the trust account books and records of the L.J. Hooker Camden office. The inspection was carried out on Thursday 6 September 2001, the day before Mr Leach discovered the irregularity with Camden Property Marketing and that Ms Rahme's evidence would be that she met Mr Leach on that day, that she inspected the trust account records of Modena Investments Pty Limited, which included sales, trust account receipts, sales trust account cash books, ledgers, bank deposit records and cheque books, et cetera, and she also inspected all other records produced by Mr Leach and concluded, "All of the trust account books and records of Modena Investments Pty Limited provided to me by the licensee in charge, John Henry Leach, appeared to be in order". The question was then put to Mr Stanley:

Question: Now, having regard to what you've told His Worship about those alleged trust account deficiencies of Modena Investments Pty Limited, is there anything that you want to comment about Ms Rahme's evidence?

Answer: I say she's wrong, Your Worship.

Question: Do you? Why do you say she is wrong?

Answer: Because of the receipts that were issued for rent received that were issued in the name of Modena Investments prior to 11 September or back to July 2001.

Question: Notwithstanding that your own evidence and from your own investigations none of these defrauded landlords ever instructed Modena Investments to act for them or receive any money for them before 11 September 2001. Do you maintain that position? Do you, Mr Stanley?

Answer: Yes, I do.

It was interesting that again the Department of Fair Trading did not put any questions to Ms Rahme in cross-examination. Cross-examination continued and Mr Stanley agreed that just because a trust account receipt may be issued with one company's name on it does not necessarily mean that those moneys were received by that company. For example, as Ms Badewitz said—she is one of his workers—she made a mistake by using or creating computerised receipts with the wrong company name on them. Mr Stanley agreed therefore that just because a receipt was issued with a company's name on it, that of itself does not automatically mean that that company is entitled to receive those trust moneys. One would expect an investigator who had been looking at a case for eight months would have concluded that, but it took cross-examination in a court to bring this evidence out. Mr Stanley also agreed that there could be any number of reasons, including deliberate falsification of records by a person who wished to conceal what he was doing, which might account for a particular company's name being shown on a particular receipt.

We are talking about the quality of an investigation that destroys honest, hardworking small business men in the real estate industry, and it is interesting that no evidence was called on behalf of the Department of Fair Trading from any independent witness who had any accounting qualifications or any Department of Fair Trading senior investigator experienced in reviewing, analysing and reporting upon trust account records kept by real estate licensees. Mr Stanley had negligible experience in investigations into the trust account books and records of real estate licensees and had been working for the Real Estate Investigations Branch for only eight weeks before commencing his investigations into the affairs of Camden Property Marketing and Mr Cameron.

Robert Laughton did not give any evidence in relation to the alleged trust account deficiencies in the books of Modena Investments. However, he did tell the magistrate on the first hearing date of these proceedings back on 26 November 2002 that he had commenced duties in the Real Estate Investigations Branch as recently as December 2000 and had not worked in any capacity with the Real Estate Investigations Branch before December 2000. It therefore follows that Mr Laughton had been working in the Real Estate Investigations Branch for only about nine months before he was briefly associated with the preliminary investigations that led

to the institution of these proceedings. Mr Laughton conceded that before December 2000, review of real estate agents trust account records was not part of his duties.

Mr Laughton had not undertaken any tertiary studies in accountancy nor anything of that kind. Mr Laughton at no stage had ever been employed in the office of any accountants, book-keepers or auditors. Mr Laughton said that his examination of the Modena Investments rental trust account bank statements was "purely cursory". Mr Laughton did not intensively review documents in the same way as Mr Stanley did, as the investigation was being conducted under Mr Laughton's management by Mr Stanley. Mr Laughton's only visit to the L.J. Hooker Camden office was on 11 September 2001. Laughton's part in the investigation was that he "basically jumped in and helped on the smaller parts of the investigations, such things as intelligence searches, there was some correspondence from Mr Leach around that time, those types of things".

Mr Laughton also attended Westpac Camden where trust accounts of Camden Property Marketing were being operated but "they wouldn't speak to him" on the grounds of confidentiality. Mr Laughton said that he was "heavily involved in the claims against the Compensation Fund", which were starting to be received, but his role principally was to manage the work Investigator Stanley was doing. He said, "The time between there and when I was moved into another area had had no further involvement with this matter; it was a bit of a blur and it was really a matter of putting things together and not understanding what had happened in the organisation." Talk about a couple of keystone cops in charge of an investigation, who could just walk in and destroy a business today. It is frightening. However, Mr Laughton did say that one of the tasks that he undertook up until 5 November was:

The only significant matter was that I was involved at that stage was the suspension notice and preparation of the brief. Tony Stanley finalised it and submitted it to me, but it was principally my own work.

Mr Laughton referred to his witness statement, which said that around 5 November 2001 Mr Laughton endorsed a report of Investigator Stanley that recommended that Mr Leach's licence be suspended and Mr Stanley confirmed when he was telling the magistrate concerning that report that "it was mostly Mr Laughton's own work", which recommendation for Mr Leach's suspension was submitted to the acting branch manager on 5 November 2001. This involves two Department of Fair Trading investigators who have not done any bookkeeping or courses and who have no experience. Their evidence is stacked up against, firstly, Sonia Angela Rahme, a director of Consolidated Business Services at Kogarah, which provided professional services to the real estate industry, including L.J. Hooker and Elders Real Estate, which services included inspection of trust account records of L.J. Hooker franchise offices, verification of returns on reports on the books and records of licensed agents in the L.J. Hooker network and the Elders Real Estate franchise network.

Ms Rahme had seven years experience in the Department of Fair Trading, including experience as personal assistant to the manager compliance of the real estates investigations branch, an audit manager and an assistant investigator. She completed the licensing course for real estate agents at GyMEA TAFE and she holds an advanced certificate in accountancy from GyMEA TAFE. Ms Rahme carried out an inspection of the trust account books and records of Modena Investments on Thursday 6 September 2001 at the request of the L.J. Hooker office. She reviewed the trust account receipts, cash books, ledgers, bank account deposit records, cheque books, trial balance statements, bank reconciliations and cash book balances. She made lists of sales account receipts numbers and dates on which those sales trust account receipts were banked and receipted.

Ms Rahme confirmed that it was apparent that Modena Investments had been trading only since 1 July 2001. She gave evidence that she undertook a bank reconciliation of the sales trust account of Modena Investments, and that the sales trust account balanced. She obtained all the trust account receipts for the sales trust account and verified that all those receipts were in fact banked. That included reviewing the trust account receipts, the bank deposit book and the bank statements. Ms Rahme concluded:

All of the trust account books and records of Modena Investments Pty. Ltd. provided ... by the licensee in charge, John Henry Leach, appeared to be in order.

There was absolutely no evidence from Ms Rahme of any apparent or alleged trust account deficiencies in the accounts of Modena Investments Pty Limited. No questions whatever were put to Ms Rahme by counsel for the Department of Fair Trading on that important issue, notwithstanding Mr Stanley's assertion that Ms Rahme's evidence was allegedly, in his opinion, "wrong". Ms Rahme was available for cross-examination by counsel for the Department of Fair Trading on the important issue of these alleged and unproven trust account deficiencies in the Modena Investments accounts. There was no cross-examination, which brings into issue the principles established in *Browne v Dunn*.

Let us look at the evidence of Peter John Hawketts on the alleged trust account deficiencies. Mr Hawketts told the magistrate that he conducted his accountancy profession practice in Picton. He worked for the Australian Taxation Office for 17 years, until 1997, where he worked in Canberra and Wollongong. He conducted appeals, tax investigations and audits, including special examinations where he worked on VIP taxation issues and investigating illegal activities. Since 1997 Mr Hawketts had been in practice as an accountant. He currently carries out audits of agents' trust accounts, including one real estate agent and six travel agents. Mr Hawketts also provides audit services to a number of community and government-funded organisations. He holds a Bachelor of Business degree from Charles Sturt University and a certificate of accountancy. He is a Fellow of the Association of Tax and Management Accountants. He has professional experience in relation to the Travel Compensation Fund and auditing accounts of licensed travel agents, including travel agent trust accounts.

Mr Hawketts attended at the office of Modena Investments in January 2002. He was under instructions from Mr Leach's partner, Mr Powers, to audit the company's sales trust account and rent trust account. Those trust account books and records were produced to Mr Hawketts by Mr Leach on 15 January 2002. Mr Hawketts had never had any previous professional dealings with Mr Leach. Mr Hawketts found that both trust accounts of Modena Investments were being properly maintained and the required provisions were being adhered to. He was satisfied that office procedures were in the main following the guidelines and rules set out by the Department of Fair Trading, and the trust bank accounts were being properly maintained and regularly reconciled.

In the course of his inspection of the trust account books and records, Mr Hawketts found no evidence whatever of any apparent deficiencies in the trust accounts of Modena Investments Pty Limited. Also, he found no evidence in the course of his inspection that Mr Leach had failed to keep adequate trust account records of Modena Investments Pty Limited in accordance with the Property, Stock and Business Agents Act and regulation, except for those matters noted in his report. He found no evidence in his inspection that the trust account records of Modena Investments were either incomplete or in disarray. He said the records he inspected included trust account cash books and ledgers, cash book balances, bank reconciliations and trial balance statements, and that the trust accounts of Modena Investments were being properly maintained and regularly reconciled.

Despite Mr Stanley's scornful rejection of Mr Hawketts' evidence, there was not one question put in cross-examination of Mr Hawketts on the important issue of alleged trust account deficiencies in the books of Modena Investments. The failure to do so was inexplicable, given Mr Stanley's derisive comments about Mr Hawketts' professional abilities when those matters were put to Mr Stanley in cross-examination on behalf of the respondent. Mr Hawketts was an independent witness who had no personal interest in the proceedings. His evidence not only reinforced and supported the evidence of Mr Leach and Ms Rahme, but the conspicuous failure of the complainant to cross-examine Mr Hawketts should in turn—according to Mr Leach's solicitor—have left the magistrate in no doubt whatsoever that no case had been made out by the Department of Fair Trading and Mr Stanley on the unproven grounds of alleged trust account deficiencies in the records of Modena Investments Pty Limited. The purported evidence of trust account deficiencies led by the complainant totally failed to measure up to any required standard of proof.

The attempt to prosecute Mr Leach for alleged trust account deficiencies was in every way an ill-advised venture undertaken as a result of inadequate investigations by departmental officers with little appropriate experience in investigating trust accounts who made recommendations to their more senior officers, which were then never properly checked or verified by departmental senior staff, nor by independent accountants engaged by the department for that purpose. What I found distressing during the court case was the evidence given by Mr Stanley and the attitude of the department's solicitor and the barrister. Mr Stanley was being embarrassed at every step because of his incompetence and laziness. He was slothful. He did not care—he was getting paid by the taxpayers. He had no worries. He had a job next week—he would put someone else out of business.

On 8 January 2002 when Stanley interviewed Leach he still did not know, as the bank had not responded, whether Leach had ever been a signatory on any trust account of Camden Property Marketing. He agreed that when he completed the suspension of Mr Leach's licence on about 5 November 2001 he had no information from the bank one way or another as to whether Mr Leach was or had ever been a signatory on any accounts of Camden Property Marketing. One of these audit reports was done the day before Mr Leach discovered the discrepancy and immediately reported it. I believe that any reasonable person would have said, "He responded as quickly as anybody could respond."

One can imagine a small business man, mortgaged to the hilt, working seven days a week to keep the business afloat and suddenly somebody walks in and says, "You have a deficiency of \$200,000." That would take the wind out of one's sails. It would take a little time to recover from that. One would make a few phone calls, have the few discussions. Panic would probably set in; one could see everything going down the gurgler. Even during that time of stress, as I said, Leach did the right thing. He called in the right people and discussed the matter. Cameron gave Leach his word that he would return the money to the account. He did not, and Leach reported it immediately. That audit was conducted the day before the irregularity was discovered and the other audit was conducted by two expert witnesses on 20 January.

On 24 January—I alluded to this earlier—Mr Leach's solicitor wrote to the Director General of the Department of Fair Trading. Basically, he argued that the department had no case and that it should lift the suspension of Mr Leach's licence so that he could practise. However, that did not do any good because, as I said, on 9 January the department gave notice of the suspension. Mr Stanley could have lifted the suspension at any time. So we have two keystone cops with no accountancy qualifications saying one thing, and we have two expert, highly qualified accountants saying another thing. And the Director General of the Department of Fair Trading accepted the evidence of these two slothful keystone cops who were working with Mr Stanley. It concerns me greatly—and I think it would send a shiver up the spine of every real estate agent in New South Wales—to think that these two keystone cops are still walking the beat for the Department of Fair Trading.

The outcome of the investigation—the outcome of this sad and sorry affair—is that Mr Leach's life has been totally destroyed by the Department of Fair Trading. At the end of the case, when the whole case was dismissed, one would say that he has an opportunity to take legal action against the department to recover all his money so he can re-establish himself in the real estate industry. The legal advice he received was that it could take another couple of years, there was no certainty of success and he could lose the lot. After a couple of years he could not afford the stress and he faded out.

Mr Leach's solicitor, who had done all this for free, then put in his costs to the department. It was about \$162,000, which is not too bad for four years work, and the department even fought that. It got the Law Society to do an independent investigation and it sliced \$40,000-odd off that fee. The department did not mind employing a barrister and more solicitors, more legal staff and investigators against Mr Leach. It probably spent a couple of hundred thousand dollars cutting \$20,000, \$30,000 or \$40,000 off his bill. The department did not know where to stop. It is absolutely frightening that a Government can allow a bureaucracy to run amok against innocent, hardworking, honest Australians in business in this State. It is a sad and sorry state of affairs.

I spoke to Mr Leach today while he was at Parliament House. As I have said, he was a well respected real estate agent in Camden who was often headhunted by other real estate agents, until he went into his own business. He was doing well. His earnings were about \$100,000 a year. He is now earning about \$40,000 a year, which is just enough to live on. He has had to cut everything back. As I said, it has cost him his house, his marriage and his business. He was strongly advised not to go back into the real estate industry because the department would get him for something. He would live every single day in fear that he would not dot an I or cross a T. Therefore, he cannot work in the real estate industry. His life has been totally destroyed so the Director General of the Department of Fair Trading can tell his Minister that they got a scalp. If the Government had any sense of justice it would review this case and seriously consider an ex-gratia payment to John Leach. That is the least it could do. Nothing will ever repay the stress. He will never get his marriage back. He will not live in Camden again. As I said, that is the least the Government could do.

I have another issue with the bill. I refer to the part that will increase the powers of the Commissioner for Fair Trading. I received a letter from Angelo Russo from Wentworth Williams Auditors advising me that he had conducted research on section 178 of the Property, Stock and Business Agents Act and he made a number of points. He said that inspectors from the Department of Fair Trading are going into real estate agents' offices, finding discrepancies and then giving them an arbitrary fine, but they are withholding information. I suppose that is helping them get their statistics as well. Mr Russo believes that the Department of Fair Trading has a duty of disclosure to release to a real estate agent what he calls a material fact.

This issue was raised in a court case in North Ryde, the case of *Hinton and Ors v Commissioner for Fair Trading*. It concerned the sale of a house where a murder had been committed and the estate agents had not told the purchaser. It was a fairly high-profile case. The court found that the estate agent had a duty to disclose

material fact. Mr Russo's association's view is that if that is the case, the Director General of the Department of Fair Trading has the same duty of disclosure when dealing with an agent. Mr Russo's letter stated:

Section 178 of the Property Stock and Business Agents Act, 1941 allows for the Director General to recover, jointly or separately, from any person who was a director of the corporation an amount of money where payment has been made out of the Compensation Fund as a consequence of the act or omission of a corporation. However Section 178(3) says:

"In any proceedings for the recovery of an amount under this section, judgment is not to be entered against the defendant who proves that the act or omission occurred without the defendants expressed or implied authority or consent."

We say this section is a "Material Fact" the agent needs to be aware of in making an informed decision as to whether in its dealing with agents the agent has an obligation under section 178. However, the Office of [Fair] Trading is failing [to] disclose to agents this "Material Fact" in written correspondence and records of interview.

He went on to advise:

... there are threats within the letter about disqualifying the agent from holding a licence, however, at no stage does the letter disclose the "Material Fact" pursuant to section 178(3) that a director is not obligated to pay if the act or omission leading to the payment from the compensation fund did not occur with the directors express or implied authority or consent.

This also applies to the Office of Fair Trading in conducting records of interviews with agents.

At one stage during a record of interview with an agent an investigator attempted to question an agent about his and his partner's financial position. The investigator stated that this line of questioning was adopted to enable the Office of Fair Trading to obtain information relevant to the agent's ability to personally reimburse the Compensation Fund. However, at no time in the course of the interview did the investigator see fit to refer to Section 178 or disclose the "Material Fact" pursuant to section 178(3).

The Tribunal member found that Mr Hinton had engaged in misleading or deceptive conduct for non-disclosure of a "Material fact" and therefore was in breach of Section 42 of the Fair Trading Act 1987.

Our concern is how many agents have been induced to make a decision based on the Director General failure to disclose a "Material Fact" and has the Director General engaged in misleading or deceptive conduct for non-disclosure and is in breach of Section 42 of the Fair Trading Act 1987.

This is yet another example of the Director General abuse of power and there should be an inquiry into the Director General's failure to disclose.

As I said at the beginning of my contribution to this debate, the Opposition has grave concerns about giving any additional power to the Commissioner for Fair Trading. I am concerned that that will happen under this Government, because it has Ministers with training wheels. The Ministers for Fair Trading have probably never run anything more than an ALP branch. I do not believe they have any qualifications in public administration or large-scale enterprise. The Ministers are at the complete mercy of a director general and staff that do. It is a sad case of *Yes, Minister*. Until the Labor Party is able to recruit people with qualifications along those lines, rather than just branch hacks or trade union hacks, this situation will continue. That is why I have grave concerns about giving any extra power to the Director General of the Department of Fair Trading.

Ms SYLVIA HALE [9.00 p.m.]: The Greens support the Fair Trading Amendment Bill, which proposes a number of amendments to the Fair Trading Act 1987. The insertion of a new section 5A will allow the Act to have extraterritorial application to enable it to extend to conduct, either within or outside New South Wales, in connection with goods and services supplied in New South Wales that affect a person in this State or result in loss or damage in New South Wales. This will bring New South Wales legislation into line with changes made to fair trading Acts in other States and Territories that allow provisions to operate outside State or Territory borders where the matter concerns that State or Territory.

The amendments would apply to misleading, deceptive and unconscionable conduct, and will allow the Commissioner for Fair Trading to create injunctions to restrain unlawful conduct outside New South Wales if there is a link with New South Wales. This can result in imprisonment if a party breaches an injunction, rather than a fine, which may be no deterrent to cashed up operators who could pay the fine and carry on with their fraudulent businesses. The proposed amendments to section 20 will have the effect of giving the commissioner greater powers to obtain information in order to carry out the role of the Office of Fair Trading in relation to complaints received under section 9. Thus the commissioner will be able to seek information in cases that do not involve a breach of the Act, but rather are complaints and disputes, and the commissioner will be able to delegate his or her powers to an officer.

The Hon. Charlie Lynn spoke at great length about what he said is officious, heavy-handed and incompetent investigation of a real estate agent by officers of the Department of Fair Trading. One can only take

what he had to say at face value. I think we also need to look at the other end of the spectrum—the people who are victims because of the department's failure to investigate, or because of the tardiness or inadequacy of its investigation. At the other end of the spectrum are people such as the members of the Building Action Review Group [BARG]. Only today 24 members of that group briefed members of the crossbench on their dissatisfaction with the home building services and the activities of the Office of Fair Trading. I believe that the investigations that are undertaken, if indeed they are undertaken at all, are often extraordinarily tardy, superficial and unsatisfactory. The result is that the unfortunate clients—or, rather, victims—of such builders are left financially and psychologically broken.

Today we heard stories of people whose marriages have been destroyed, whose families have been split, who have been personally bankrupted and are suffering from an enormous psychological and financial stress—all, they believe, because their complaints have either been ignored or discounted, or action has been so slow that they are left with buildings that are structurally unsound and in respect of which they can obtain no redress either from the builder or from the insurer. Of course, these are not the first representations that members of the New South Wales Parliament have had from the Building Action Review Group. What the group wants is fairly straightforward. It is concerned that, despite the recommendations of the Campbell inquiry, the State Government has not set up a home building advice and advocacy centre independent of the Department of Fair Trading. BARG is concerned that there has been no performance audit of the home building service. It is concerned that the Office of Fair Trading issues licences to people often without checking whether the recipients are fit and proper persons or have the necessary qualifications.

We were told today that of the 180,000 licensed builders in this State, a maximum of 1,800, that is 10 per cent, have their licences checked in any one year. That means that 162,000 can continue to operate year after year without having their licences checked. The Building Action Review Group also expressed concern that when investigations are undertaken the investigations are tardy and drawn out, and the department seems to accept the excuses offered by many of incompetent or corrupt builders. I am sure many members of this House have received the report prepared in August by the Building Action Review Group that itemised in detail the length of time taken to investigate its complaints. The group provided evidence also of licences being issued to people who patently should never have been granted a licence or, if they had been issued with a licence, should not have had their licences renewed once they had expired.

As I said, BARG was concerned that the Government had failed to set up an advice and advocacy centre that was independent of the Department of Fair Trading. This matter was raised during a budget estimates hearing on 28 August. The Minister, when questioned as to why that centre had not been set up, said that money was being made available to the Macquarie Legal Centre to establish a 12-month pilot program with an additional three months establishment period. The Minister seemed to suggest that this was an appropriate response and that, rather than a centre being set up, this function would be tacked on to the Macquarie Legal Centre. But the people from BARG had at least done their homework. They had telephoned the legal centre to inquire whether the service was operating and to whom it would be available. From what they had to say today it would seem that if the Macquarie Legal Centre has been asked to conduct this program, it was not aware of it. BARG was told, and this concerned its members greatly, that the only advice that would be offered was telephone advice—that is, there would be no opportunity for people to present written evidence or to provide photographs and plans and whatever else might be needed to examine the extent of inappropriate or improper building practices.

Even worse, the service would only be available to people who live within the area in which the Macquarie Legal Centre operated. Obviously, in terms of this being an appropriate pilot study, it just does not measure up. It certainly is no satisfactory response to the recommendation of the Campbell report that an advice and advocacy centre be established independent of the department. Other speakers may well refer to experiences brought to their attention by members of the Building Action Review Group who are ordinary hard-working people who have, in good faith, entered into contracts with builders and have been taken to the cleaners. Because of substandard building work the value of their properties has been reduced, but they have received no proper compensation and have had no avenue for redress.

As is true of much of the legislation dealing with fair trading, if the provisions of this legislation and the Act were properly implemented and the department provided with adequate resources, the Greens would agree that this is a step forward. However, the problem is that the department is not given appropriate resources,

whether it be staff, funding or expertise. Therefore, while the Greens applaud the provisions in this legislation, we must wait to see how they work in practice.

A further amendment in the legislation reduces the number of statutory advisory bodies that provide policy advice to the Minister for Fair Trading. Three existing advisory bodies are to be retained: the advisory councils for fair trading, property services and retirement villages. However, the legislation will abolish the Motor Vehicle Repair Industry Authority and the Motor Trade Advisory Council and amalgamate their functions to form the Motor Vehicle Industry Advisory Council. The membership of the advisory councils is to be reduced, with each advisory council having no fewer than six and no more than sixteen members. The Home Building Advisory Council will, as a result of these amendments and of amendments to the Home Building Act, come under the Home Building Act and not the Fair Trading Act.

Other amendments relate to the powers of search and seizure under warrant and disposal of goods seized. Proposed section 19A would permit the director general to order that things seized by an investigator under the authority of a search warrant issued under section 10A be sold, destroyed or disposed of if they are no longer required as evidence, if the owner does not wish them to be returned or if the owner cannot be found. Proceeds of any sale are to be paid into consolidated revenue. Proposed section 93 contains the same provisions in relation to anything obtained in the course of an investigation but not seized under a warrant.

Proposed section 58A is probably the most significant part of this amendment bill. It relates to assertions of right to payment for unauthorised advertisements—that is, false billing. According to the Minister's second reading speech, this is a growing problem in New South Wales and consumes much of the time and resources of the Office of Fair Trading. The Minister estimates that small businesses are being defrauded of up to \$20 million a year. The proposed amendments are in line with similar amendments enacted in Queensland and Victoria.

The new provisions are designed to prevent a demand for payment being made for unsolicited goods or services. Any notice that purports to bill a person or business for unsolicited advertising or listing in a directory will have to bear the words, in upper case and in type no smaller than 18 point: "THIS IS NOT A BILL. YOU ARE NOT REQUIRED TO PAY ANY MONEY". The penalties range from up to \$22,000 for persons to \$110,000 for corporations for contravention of the section. The amendments exempt those publications that have an audited circulation of more than 10,000 copies a week and related subsidiaries, the Crown, and other prescribed persons, from complying with proposed section 58A. This parallels the Victorian legislation.

The Greens do not oppose the legislation. However, the situation will need to be monitored to ensure that false billers do not find yet another loophole, such as placing unsolicited advertisements in a newspaper. The Greens support this legislation, which will further enhance consumer rights in New South Wales. However, if the provisions are not actively enforced and the Office of Fair Trading is not given appropriate resources to do so, this will constitute hot air rather than positive action.

Reverend the Hon. FRED NILE [9.15 p.m.]: The Christian Democratic Party is pleased to support the Fair Trading Amendment Bill, which will amend the Fair Trading Act 1987 to improve the efficiency and effectiveness of the fair trading consumer protection policy and regulatory framework in New South Wales as it relates to consumers being robbed by persons who are guilty of deceptive and dishonest commercial conduct. Many of us have been sent what appear to be genuine invoices for the placement of advertisements in certain publications although we have authorised no such transaction. The problem arises when such fraudulent invoices are sent to big, busy companies that stamp them as approved when they are received because they do not involve huge amounts.

It is estimated that bills are being sent for advertisements in 170 false publications. The combined annual income from this fraudulent activity in 2000-01 was estimated to be \$2.367 million, or \$236,000 for each publication. If each of the 170 identified publications generated half that amount, it would mean New South Wales small businesses were being defrauded of \$20 million each year as a result of false billing. It is a major fraud problem and the Christian Democratic Party is pleased to support the bill because hopefully it will stop this activity. The perpetrators are particularly devious and they will probably try to continue to circumvent the law, and the Parliament can pass legislation to deal only with a particular problem.

Proposed section 58A provides that when an unsolicited invoice is sent, a warning statement must be included printed in upper case, in type not smaller than 18 point and located at the top of the first page of the document stating, "THIS IS NOT A BILL. YOU ARE NOT REQUIRED TO PAY ANY MONEY". Obviously,

as those involved in such enterprises are criminals, it is unlikely they will include such words on their false invoices, but at least the provision gives the Office of Fair Trading a legal basis for taking firmer action against the perpetrators. I imagine that perpetrators will not include the warning on their invoices in the hope that they will still be able to trick busy business people into paying the accounts because they do not check thoroughly whether someone else authorised the advertisement or because they want to avoid trouble with a supposed creditor.

The legislation provides the Commissioner for Fair Trading with the power to require the provision of information, documents or evidence that are believed on reasonable grounds to be relevant to the investigation of a complaint or investigation into the laws in force or other matters affecting the interests of consumers. The legislation also empowers the Commissioner for Fair Trading to order the sale, destruction or disposal of items that are in the possession of the Office of Fair Trading that were obtained under the authority of a search warrant or in the course of an investigation and are no longer needed as evidence or are otherwise of no assistance in carrying out the office's function and cannot be returned to the custody of any person. If such items have some value—for example, clothing falsely labelled—perhaps they could be supplied freely to a charity such as the Salvation Army or St Vincent de Paul rather than destroyed. The Office of Fair Trading could consider that suggestion. Obviously those organisations would not be able to resell the items; that is why the Department of Fair Trading confiscated the items in the first place.

Like other members, I am concerned about the operation of the Department of Fair Trading, given that the bill substantially increases the department's powers. As other members have said, it is no good giving the department increased power unless it uses that power in a valid way. Crossbench members receive many complaints regarding the building industry. We regularly receive deputations from individuals and collective groups of home owners who have been defrauded by builders—indeed, often they have been defrauded not by one builder but by three or four builders. It seems that some people get into a series of arrangements with dishonest builders. They have a problem, they try to get another builder to fix the problem, and that builder also takes advantage of them. We have had reports of up to three or four different builders being guilty of improper conduct. Today I received a letter for my personal urgent attention, and I would like to bring it to the attention of the House and hopefully to the attention of the Office of Fair Trading. The letter is from Luisa Berg of Castlecrag, and the opening paragraph reads:

I am a self-supporting retiree and was for 18 years, until 2002, a part-time Member of the Consumer, Trader and Tenancy Tribunal.

In other words, she was part of the machinery. That is an important point. This is a complaint from a person with ability and commonsense. Members sometimes receive complaints from people who are obviously a little irrational, but this letter was written by someone who was for 18 years a part-time member of the tribunal. The letter continues:

I write this letter, as my claim against the Builders' Guarantee Corporation ... must be one of the worst examples of gross incompetence by a builder and dilatory treatment by the Builders' Guarantee Corporation ... and the Home Building Service ... of the Office of Fair Trading.

In 2001, I started building a new house on my block of land at Castlecrag. Now, 5 years later, because of the incompetence of my builder and lack of help from the legal system and the bureaucracy—

which I take to mean the Office of Fair Trading—

I am left with a partially completed house that may have to be demolished, and **legal and consultants' bills for \$241,300 to prove my claim.**

This self-supporting retiree does not have a house she can live in, and she has lost in legal expenses and consultants' fees nearly a quarter of a million dollars. The letter goes on:

Despite supposedly being covered by the government rescue package provided to victims insured under the HIH Home Warranty Insurance policy, the Builders' Guarantee Corporation has during the last 5 years wrongly treated me as a victim of last resort and not dealt with my claim.

To add injury to insult, the Home Building Service has imposed inadequate penalties on the builder and supervisor of the project without advising me of the basis of its findings and breach of the statutory warranties, and then advised me that the Builders' Guarantee Corporation and the Home Building Service can do nothing for me. Surely, this cannot be right!

I would be most grateful if you could make representations on my behalf to Parliament in the hope that you may be able to right the serious injustice which I have suffered. The Ombudsman cannot resolve my matter because he has no power to make relevant orders. Thus, I have nowhere else to turn!

I enclose copies of my letters to Mr S. Griffin of the Home Building Service dated 19.5.06, 14.6.06, 17.7.06 and 14.8.06 and summary notes for your information.

The Building Action Review Group has told us of many other such cases, and this seems to be an ongoing scenario. The Minister must take strong action to organise and authorise audits of the professionalism of the department and its various units, to ensure that the people of this State are getting justice and a fair deal. It seems that that is not occurring at all. The Building Action Review Group stated in its submission to crossbench members today, as well as at previous meetings we have had with the group, its ongoing concerns with the home building system. They include the need to audit the Home Building Service, and the need to establish an advice and advocacy centre. I would suggest appointing the Building Action Review Group to do that, and that funds be provided to the group, because they are the ones who are in contact with consumers.

The Building Action Review Group also referred to the failure to check criminal records before granting a licence; the failure to check-reference practical work experience; the failure to check technical competence and trade qualifications; the fact that only 10 per cent of all licence applications are checked; and the length of time it takes to investigate complaints. Often nothing happens, despite the lengthy time taken to investigate complaints. The group also pointed out that when disciplinary action is taken the fines are often too lenient. Even though the Government has dramatically increased the penalties, the courts are still awarding only minor penalties, and that is not enough to deter some of these rogue builders. They are probably making so much money that they can pay the fine and continue their business of defrauding consumers in this State. There is an urgent need for a shake-up in the Office of Fair Trading, and I call on the Minister to take direct action urgently.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [9.26 p.m.]: The Fair Trading Amendment Bill makes minor amendments to the Fair Trading Act. I do not suggest that these changes are not in the right direction. The bill's main provisions address the extraterritorial provisions—that is, whereby companies trade across State borders, which is realistic in this day and age. The bill also creates a new offence of false billing, so that if a document is not a bill it must say so. Presumably, someone who sends what amounts to a scam bill will not comply with this provision, in which case it will be a clear case of that person trying to bill for services that have not been provided.

It is interesting that apparently false billing is a huge concern for the Office of Fair Trading. I believe it shows that businesses rather than citizens are more inclined to complain to the Office of Fair Trading. If businesses were to keep track of what they were buying, when they received a dodgy invoice they would say, "Hang on, we didn't buy this. We are not going to pay for it." They would then put in a complaint to the Office of Fair Trading, which receives a large number of complaints. For most people who get a bad deal it is simply a case of caveat emptor: tough luck. If people buy something that is not much good, mostly they say, "Okay, I did my dough this time. I'll never buy that again. If I'm in a pub conversation, I'll tell somebody not to buy that item if it comes up, but I won't do much about it, and really it is not worth complaining to the Office of Fair Trading." Given the ineffectiveness of the Office of Fair Trading—in most cases it is not able to do very much—such an attitude is probably right. Some people would say a State that has an Office of Fair Trading that prosecutes people who do not trade fairly is a nanny State, but some of us think that that is what governments are for.

Some time ago I attended a dinner held in the Parliamentary Dining Room put on by the Public Relations Institute. Ever since my BUGA-UP days, my relationship with public relations people has always been a bit dicey, but that is another story. I recall that at that dinner I had been having a little tiff with a fellow from the McDonald's chain about whether his company was or was not responsible for the childhood obesity epidemic. After that little conversation, one of the corporate fellows who was sitting at our table said to me, "Tell me, what right have you to interfere in our businesses?" I did not know what I was supposed to say. I was probably supposed to tug my forelock and say, "If you are making money, sir, I really would not like to interfere at all". But I thought he was being a bit aggressive and, as I had always wanted to be asked this question, I thought I would answer it. I said, "I am glad you asked me that. It is like this: 4 per cent of voters in New South Wales elected me to this Parliament and they elected me to look after their interests. But I am not just going to look after the 4 per cent; I see my job as looking after the 4 per cent who know what I am like and who vote for me and also the 96 per cent who would vote for me if they knew what I was like."

I see my job as looking after the people of New South Wales. Government is about people clubbing together to elect representatives to deal with problems and to deal with powerful people who would ignore the interests of ordinary people. I see government as having the legitimacy derived from the people to take on the role of leader and to stand up for those people. So I said to this fellow, "Four percent of New South Wales voters elected me to look after their interests and that is what I am going to do. And I am going to create a framework

in which business can do anything that is good for the people of New South Wales but cannot do anything that is bad for the people of New South Wales. If you don't like it that's tough luck."

The fellow looked at me as if he had been hit with a wet fish. His mouth gaped and he said nothing. There was nothing he could say. Then I said, "As I say, 4 per cent of voters in New South Wales elected me. How many people elected you?" He had nothing to say, of course, because he had his answer. But I wondered when he asked that question so smugly, so happily and with an air of self-satisfaction, what he expected. I could only reflect that he expected someone in the Government—or, indeed, the Opposition—to tug his or her forelock and say, "Gosh, I'm sorry, sir, we would not do anything to stop you making money because we know that is frightfully good and we are all pathetically grateful that you employ our people." That is not what it is about. People employ people and they build businesses because they make money by doing so—that is their incentive. It is the Government's job to set the framework. When I see a bill from the Office of Fair Trading, which is a fairly pathetic, effete department and fairly low priority—

[Interruption]

Madam Deputy-President, could you tell the peanut gallery to shut up?

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

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Fair trading is where government can set a framework for all the commerce in this State. The Office of Fair Trading is actually quite significant, and yet it is seen as a minimal ministry doing very little. I talked to Gary Moore about the funeral industry and he said, "Members of the combined pensioners association have come to me and said the funeral industry is doing a bad deal. Can you set up an inquiry into that?" I asked, "What sort of model are we looking for to regulate the funeral industry, to see that people are not ripped off?" He said something I had never thought of before: he said there are very few good models for regulating anything. He said the Energy and Water Ombudsman regulates, and you have to think twice before you cut people's electricity and water off and you have to think about the fact that pipes leak or electricity gets stolen or people cannot afford it; you have to think of the social ramifications of the trade in electricity and water. Because the Energy and Water Ombudsman was set up at a time when these utilities had been publicly owned and they had had a social conscience but were being, effectively, privatised—or at least allowing the private sector with a profit motive to move in—it was a sensitive issue. The existing big player was the Government and thus it could, firstly, afford a regulator and, secondly, was willing to pay for one without complaining. The Energy and Water Ombudsman model was set up and it works very well.

But if we look at the models in most industries—and this was a point that Gary Moore made and I had not thought it through—there is a lot of self-regulation, which is regulation of the self by the self and for the self, as one might guess. The medical profession has the Health Care Complaints Commission, and we saw how well that worked when the fuss about Campbelltown Hospital burst out of the woodwork. That industry simply cannot be regulated. The Law Society has a self-regulatory system for solicitors and we wonder about that. I gather legislation will be introduced to cap their liabilities. Just what the consumer needed! Also, of course, there is the legendary effect of motor vehicle repairers and real estate gazumping and so on—the light hand of regulation that does not really come down on people who are not doing a good job for the consumer. The model for this is the Consumer Claims Tribunal, which works sometimes but does not work very well. A lot more attention should be given to it, and that is really the function of government. In a sense, this legislation is yet another missed opportunity, another bit of tinkering at the edges while the huge ocean of what needs to be done remains untapped.

It was brought home to me very strongly today because the Building Action Review Group [BARG] came to the crossbench meeting. Twenty-six people came—normally we have only three or four at our meetings—and there were children there and people of all ages who have been ripped off by builders. We have had endless amounts of legislation through this House supposedly tightening up the building regulation system, dickering around with the insurance and so on, pleading for some corporation to be an insurer who does not rip everybody off, who does not go broke in five minutes, who actually insists that there be some regulation and who actually takes out the builders who are dodgy. But who would ensure builders in New South Wales are not dodgy when there is no regulation of the builders? Builders have come to me and said, "We will regulate ourselves if you give us the power. We will get rid of dodgy builders because we do not want a bad name and we do not want to pay the insurance premiums so the crooks can rip people off and then all our money goes to the clients of the crooks." But, again, the Government has not got the guts to support the strong people within the building industry.

I note the comments of Reverend the Hon. Fred Nile about the meeting of BARG today. He went through the list and related the history of a lady from whom I also received a letter. The points made by BARG are important to note. People persist a lot longer with their complaints against builders. It is one thing to buy a bad hamburger and not go back to the shop; it is another thing to pay for a house that is not built properly and sends you broke. You are never able to recover financially from the huge mistake you made by choosing a dud builder. The points that were made were very well laid out by BARG. The home building service audit after two years of performance, as recommended by the Campbell committee, has not been implemented.

The home building advisory centre—which the Government guaranteed and in respect of which it made an amendment to the legislation to the effect that it would fund such a centre—has not been set up. I think there is one little centre out at Macquarie, which is very localised and does not offer a comprehensive service. Years after that legislation was passed by Parliament and the Government promised to do something about it there is still no advocacy centre, never mind the Government actually doing something about the builders. So poor old BARG still exists on no money while the Office of Fair Trading fiddle faddles around and does not very much. The Office of Fair Trading and the home building service do not check criminal records when considering granting or renewing a licence. I do not know what fell off a truck but I hear from BARG that there is a builder who is decidedly dodgy and has six complaints against him. A criminal records check was done on him and it was discovered that there were 14 events, five charges, two legal processes and one licensing issue. And this fellow, who is 51 years old, is a licensed builder. Even with a criminal record like that, he is still working.

In this House I spend my time talking about rehabilitation of criminals and I am all for it, but I am not going to give the bloke's name in this Parliament—which I think is more than generous under the circumstances—but here is a bloke who has got a criminal record and yet it has been missed by the Office of Fair Trading. Even after six complaints against him he is still working. It is not a very good regulatory system when we pass legislation in this Parliament to double penalties but do not enforce the laws. The same applies to smoking in pubs: the penalty has been doubled but no-one is ever prosecuted. The Government does not have the guts to enforce its own legislation. Indeed, it ignores its own legislation. The Government's amendment was to set up a credible home building advice and advocacy centre yet it has not done so. Perhaps each bill should include an amendment at the bottom, "And if the Government does not implement the legislation within a certain amount of time the Minister shall wear a sackcloth suit and walk down the middle of town, ringing a bell as punishment for not implementing the law that the Parliament has passed". However, we all know that the Government does not proclaim legislation that is inconvenient to it. It simply says to the Governor that it knows better than the Parliament. The Government has no respect for democracy in this State.

I will continue with the points made by BARG. The Office of Fair Trading and the Home Building Service do not check references for practical work experience. This fellow claimed that he had done the right thing yet the application is made on his brother's letterhead and with his builder's licence number. He suggested his application should be granted but he was previously disqualified. That refers to licence No. 93973C. Another complaint was that the Office of Fair Trading and the Home Building Service do not thoroughly check technical competence and trade qualifications, and reference was made to licence No. 25917C. Lyn Baker, Commissioner for Fair Trading, advised the committee that was investigating the matter that 10 per cent of all licence applications in home building are checked.

What is the point of checking only 10 per cent of builders? Someone who is a crook might not be apprehended for 10 years, and that assumes that the 10 per cent is a systematic check. It does not appear that the 10 per cent relates to those builders about whom there have been complaints. It would seem reasonable to check all licences thoroughly before they are granted, considering the harm that can be caused to individuals and the effect this can have on people's life aspirations. Therefore, at least those that are the subject of a complaint should be checked. If people are ripped off such that they have complain to the Office of Fair Trading, surely the complaint should be followed up to the extent of checking the qualifications and bona fides of the people complained about. What use is the Office of Fair Trading if it does not do that?

BARG also referred to the timeliness of the investigation and the fact that it sometimes took 36 months from the time a complaint was lodged until it was finalised, and that is not to suggest that the complainant received satisfaction when it was finalised. BARG complained that disciplinary action is too lenient. There is a huge profit to be made in building if unscrupulous builders take money without doing the building work, so any fine is derisory by comparison. Therefore, the builder must be put out of business. Some people may regard that

as harsh but if the builder has ruined people's lives by failure to complete building work or has made houses inhabitable—as happens in some case—taking away the builder's licence is better than allowing him to ruin other people's lives.

The Office of Fair Trading must take strong action and follow up what these builders do in the future. At present, that does not happen. People from BARG and community members often give crossbench members files three or four inches thick containing complaints about dodgy builders. If I, just one crossbencher in this Parliament, read all those files and acted on all of those complaints I would literally do nothing else. This demonstrates the ineffectiveness of the Office of Fair Trading in an area of great importance to the people of New South Wales. I am not saying that this bill is bad but it is tinkering at the edges when there is a huge problem associated with the way the Office of Fair Trading works and with the Government's attitude to looking after the people of New South Wales.

The Hon. Dr PETER WONG [9.45 p.m.]: I support the general principles expressed in this bill. I understand the need for amendments such as the new provisions relating to extraterritorial applications, and the regulation of advertising and false billing, as explained to the House. At the same time I share the concerns raised by the Legislation Review Committee's recommended amendments to section 20. I have read the reply from the Minister to the Legislation Review Committee and I hope that this newfound power will not be used recklessly. Finally, I share the concerns expressed by many crossbench members on the efficiency and effectiveness of the Office of Fair Trading. BARG has highlighted the incompetence and insensitivity of the Office of Fair Trading and I believe that it needs urgent reform. The Government must deliver to the community the home building advocacy centre as promised and ensure that the complaints of the people of New South Wales are resolved speedily and satisfactorily.

The Hon. HENRY TSANG (Parliamentary Secretary) [9.47 p.m.], in reply: I thank honourable members for their contributions to the debate on this important bill. The comments and concerns raised by the Hon. Charlie Lynn at the start of this debate have been noted. I point out that the Hon. Charlie Lynn seemed somewhat obsessed with Mr Leach. Without going into the monotonous detail that the Hon. Charlie Lynn did, for the sake of the House I would just say that the Hon. Charlie Lynn is well aware that on 8 December 2003 a Licensing Court magistrate dismissed the complaint against Mr Leach. On 1 November 2004 the Licensing Court made a costs order in favour of Mr Leach and the matter is now finalised.

However, the Licensing Court magistrate did find that the majority of the grounds on which Fair Trading based its action had been established. He found that Mr Leach had been careless as to his legal position and his supervision of his licence, but the magistrate ruled that this was not sufficient to establish that Mr Leach was not a fit and proper person to hold a licence. Upon the complaint being dismissed, the Commissioner for Fair Trading immediately lifted the suspension. The Fair Trading Act is the principal statute that protects New South Wales consumers from deceptive and dishonest commercial conduct. The amendments contained in this bill will increase the level of protection provided to the consumers of New South Wales. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

ADJOURNMENT

The Hon. HENRY TSANG (Parliamentary Secretary) [9.50 p.m.]: I move:

That this House do now adjourn.

COUNCILLOR LEWIS HERMAN AND MRS CECILE HERMAN

The Hon. AMANDA FAZIO [9.50 p.m.]: This evening I pay tribute to the life and work of a couple who contributed greatly to the area of Ashfield and to many community organisations. I am speaking about Councillor Lewis Herman, OAM, and his wife and former mayoress, Cecile Golda Herman, OAM, who both sadly passed away recently. Lew Herman passed away on 30 June 2006, and his wife and life partner, Cecile, passed away on 10 September 2006. Lew Herman was born in Summer Hill in 1929, the eldest son of Lewis and Hannah Herman. His father, a staunch member of the Australian Labor Party [ALP] and Trades Hall Council with a passionate commitment to Labor's social and industrial agenda, wanted the best education for his son and

sent him to De La Salle College. The family commitment to social justice was shared by Lew's brother, Vic Herman, who is a life member of the ALP.

When Lew turned 15 his father gave him an apprenticeship in the family company, Keepshape Uniform Headwear of Lewisham, which specialised in making uniform caps for police, army, ambulance and airline staff. The company also made caps for Jewish clergy pro bono because the Hermans worshipped at the Great Synagogue in Elizabeth Street. Cecile was born in 1928 in Canterbury and excelled as a tennis player, playing at the State level. She had the opportunity to practise because her family had a court at home. She continued to play tennis until 2004. From the time that Lew and Cecile married they made a great team, supporting each other in their endeavours and in public life. I know that I speak for many people in the ALP when I say that we always thought of Lew and Cecile together.

In 1971 Lew Herman, at the behest of Bill Peters, the Secretary of the Felt Hatters Union and later the Ashfield mayor, was elected as a Labor representative on Ashfield council, beginning an association with the council that lasted for more than 35 years. He served as Mayor from 1976 to 1991 and then for one year from September 1995 to 1996. He was the longest-serving councillor on Ashfield council and the longest-serving mayor in Ashfield's history. His greatest coup was negotiating the construction of Ashfield Mall against formidable opposition. Consolidating council land, he delivered not only the mall but also a town hall at no cost to the council. In 1974, as a foundation member, he hosted the newly formed Ethnic Communities Council's inaugural meeting in Ashfield, the suburb described by Al Grassby, the then Minister for Ethnic Affairs, as the "multicultural heart of Australia". Lew also supported the establishment of Haberfield as a conservation area in 1982.

Cecile worked in the family business from 1978 onwards, and was a very active mayoress of Ashfield, working tirelessly to raise more than \$95,000 for the community and supporting many local organisations. Cecile served on the board of the Exodus Foundation, was the chair of the Ashfield Benevolent Society, worked for Meals on Wheels and was a patron of the Ashfield Lantern Club. She also initiated a Kosher Christmas Ball. On 26 January 1982 Lew was awarded an Order of Australia for service to migrant welfare and to local government. He was patron of the local Polish Club and the Scottish Polish Association; and having helped settle thousands of Poles in Ashfield, he was awarded the Order of Polonia Restituta by the Polish President in 1984 and the Scottish-Celtic Order of D'Urr in 1990.

On 1 January 2001 Lew and Cecile each received a Centenary Medal, Lew for long service to the Ashfield community as a councillor and volunteer, and Cecile for long service to the needy in the Ashfield area through Meals on Wheels. On 11 June 2001 Cecile was awarded an Order of Australia for service to the community, particularly through the Ashfield Benevolent Society and Ashfield Meals on Wheels. Lew was very proud when Cecile received her award from the Governor at Government House. I was pleased to represent the Premier at that investiture. Although Jewish, Lew initiated an annual interfaith celebration of all religious leaders and a ministers' fraternal dinner. He also created a prayer and community centre for a local Muslim group. He was a member of the New South Wales Building Services Commission, Sydney Electricity Board and the regional waste management board and a commissioner on the New South Wales Prices Commission. He also helped to establish the successful Light to Life anti-drug campaign, working with churches, schools and police.

Lew Herman was also a member of the New South Wales ALP Review Tribunal from the late 1970s until he passed away, and was well regarded by those who served with him. Serving on the New South Wales review tribunal is a privilege that is extended to few members of the ALP. One must be well regarded across all groupings within the party and well respected for one's judgment to serve in that position. The community involvement of Lew and Cecile was legendary. They were both made life members of the Autistic Association, and in February 2004 Ashfield council announced that two parks, to be named Lewis Herman Park and Cecile Herman Park would be established in Ashfield. This is very fitting because it will commemorate the great contribution they made to Ashfield, their generosity of spirit and their dedication to the local community. Lew and Cecile were highly regarded by all those who knew them and they will be greatly missed. Lew and Cecile are survived by their children Sharon and David and their partners Joe and Debbie, and their adored grandchildren Emma, Nathan, Breanna and Aaron. On behalf of all the residents of Ashfield municipality I must say that, regardless of political persuasion, Lew and Cecile Herman were held in the highest regard by all the people of Ashfield and their contribution, their good humour and their life-long commitment to the local community will be remembered forever.

PUBLIC DENTAL HEALTH SERVICES

The Hon. JENNIFER GARDINER [9.55 p.m.]: This evening I shall address the House about the shocking waiting list for public dental care. The Opposition believes that between 215,000 and 250,000 people are waiting on the Government's secret waiting list for public dental care in New South Wales. Those figures are so terrible they are almost unbelievable. Many hundreds of children, who are included in those figures, are waiting for general anaesthetic, for example, for dental treatment at the appropriate clinic at Westmead Hospital. The growing acceptance in the medical fraternity that oral health is linked to general health and wellbeing, and in some cases can be a contributing cause of death, has received some attention in medical journals. In 1999 the New South Wales Chief Dental Officer said:

Of growing interest is the evidence suggesting a direct relationship between oral health and diseases such as cardiovascular disease and diabetes.

The New South Wales branch of the Australian Dental Association said of the Carr-Iemma Government's failure to address this issue:

Time is running out—chronic under-funding has resulted in a system rapidly losing the capacity, infrastructure and staff to deliver critical dental services.

It further reported that public dental treatment, particularly for adults, is limited to emergency care and severe pain relief; that tooth decay is increasing in children for the first time in two decades; and that the demand for dental visits between 2000 and 2010 is projected to increase by about 30 per cent for eligible persons in relation to public services and 22 per cent for those seeking attention in the private sector. A report by the Oral Health Workforce Group indicated that there are only seven public sector dentists per 100,000 eligible population in New South Wales, compared with the OECD average of 56. In New South Wales there are a number of barriers to the recruitment and retention of dentists in the public sector, including the need for a dramatic improvement in pay and conditions.

Typically, graduates in the private sector commence on salaries equal to or higher than salaries earned by senior clinicians working in the New South Wales public sector. There is also a differential of about \$16,000 between Queensland and New South Wales for first-year dental officers. The shortage of dentists is particularly bad in rural New South Wales, including coastal areas, as well as in Western Sydney. Public dental service providers have long been unhappy with how funding for public dental services in this State has been administered through the local area health services—or, should I say, not administered at all—with the Australian Dental Association arguing that this system results in a lack of transparency as to how funds are allocated. I have spoken previously in the House about how I believe Mr Iemma changed the area health service boundaries simply to make it much harder for people who are interested to track down that funding.

The Association for the Promotion of Oral Health also argues that there is little or no consistency between area health services with regard to investment in dental infrastructure, with each area defining different priorities. The New South Wales Liberals and Nationals, on coming to government next year, intend to improve the situation drastically. We believe that good dental health is fundamental to the enjoyment of life, vital to general good health, and significantly contributes to self-confidence and wellbeing. In government we will implement a comprehensive plan to dramatically cut dental waiting lists, attract and build expertise within the public system and provide better education on dental health.

We believe that the people of this State deserve world-class dental health services, and an urgent injection of funding is needed. More dental and parodontal clinicians must be attracted to the public service. We will provide better pay and conditions and more opportunities for professional development. Special attention for rural and regional areas will be delivered. Urgent action is needed—not more talk and more spin. The Coalition will deliver that action come 24 March next year.

CITIZENSHIP

The Hon. Dr PETER WONG [10.00 p.m.]: For the past week politicians and the media have immersed us in commentaries about Australian citizenship. I believe citizenship is a critically important matter that needs to be earnestly debated in the community at large. It should not be manipulated for political gain or through partisan pronouncements that result in fractionalisation and greater disunity within our community. I suspect that this reaction or overreaction to the Australian values debate has more to do with the climate of extremism and hate that has gripped the world. Making sense of this will ultimately include resolving some key

issues of fundamental importance. The focus should be on open and honest exchange rather than accommodation or divisiveness for political gain.

What is it to be an Australian and what is it that we share as Australians? In the Australian context and given its history of migration, I would have thought that a commitment to Australia's democratic pluralism, open society and cultural diversity would have been at the forefront of this debate, along with our traditional values of mateship and a fair go for all. You cannot strip migrants of their symbolic attachments to their country of origin, nor can you simply introduce a citizenship test and expect to mould people into loyal Australians. Citizenship is not about this; it is above all an assertion of loyalty to one's new country and its people. Having said that, I am not for one moment suggesting that people who have decided to live in Australia and take out Australian citizenship should not be adequately versed in the English language or, for that matter, have at least a basic understanding of Australian history, its customs and laws. An understanding of the English language would, of course, assist a migrant to better integrate within society, and I support any measures that help to facilitate this. What I denounce is the fuelling of populist policies.

Last week the Federal Opposition leader was pumping the airwaves in an attempt to outshine his more astute Liberal counterpart by demanding that migrants and tourists pledge allegiance to Australian values. His demand that foreign tourists sign a declaration embracing Australian values is completely impractical and a major blunder on his behalf. After all, I fail to see how a signature on a piece of paper will in anyway strengthen national security. I believe Kim Beazley's latest grab for ascendancy in the opinion polls and his attempt to be seen as equally strong as John Howard are both naive and stupid. His own party disapproves of this ill-conceived policy and has even been accused by the Government of fanning the racist fires. You know you are in trouble when a conservative government Minister labels you as xenophobic. As blundering Kim plods along, the Government has unveiled its own values policy. With the oracle himself warning that Australia's cultural diversity must not come at the expense of its national identity I would have thought that this would have been a more sensible policy approach by a Federal Opposition leader.

On many occasions in this place I have mentioned the benefits of multiculturalism in Australia. I believe that multiculturalism is a policy that has produced a viable, progressive, vibrant and inclusive democratic society that has seen Australia excel on a global scale at many levels. This was only possible because we allowed loyal and contributing Australians of many different racial, religious and ethnocultural groups to retain and promulgate their best qualities in the Australian context. Many migrants to have come to this country may not be as fluent in the English language as we might expect, but are nevertheless unreservedly proud and, in many cases, successful Australians. Citizenship is a critically important issue to any country, but the issue needs to be discussed openly and honestly. Fuelling populist ideas cannot be allowed to diminish the importance of this debate in Australia.

JAMES HARDIE AND ASBESTOS-RELATED DISEASES LIABILITY

The Hon. PETER PRIMROSE [10.05 p.m.]: This morning unions and members of the community joined victims of asbestos diseases and their families in a protest outside the James Hardie annual shareholders meeting. They were there because almost two years after the damning findings of the Jackson special inquiry were handed down, there is still no guarantee of full compensation for Hardie's victims. In response to public outrage over Hardie's behaviour, company chair, Meredith Hellicar, pledged the current board to funding a full compensation package that will commit the company over the next 40 years. In response to this commitment, those of us campaigning with Hardie's victims have asked Ms Hellicar to demonstrate her commitment to victim compensation by appointing a representative to the board from among Hardie's victims. This is not an unreasonable demand.

That is the position put to the meeting of Hardie's shareholders this morning by Paul Bastian, who is the State Secretary of the Australian Manufacturing Workers Union [AMWU] and well known as one of the key union leaders supporting Hardie's victims. The current directors have manifestly failed to deliver on Hardie's compensation responsibilities. Yet they felt quite comfortable in asking the same meeting of shareholders this morning to endorse an improved package for themselves that would mean a shameful increase of almost 70 per cent in their own board fees and options. Almost every single member of the current board presided over what has become the biggest corporate scandal in Australia's history. As a result of these decisions by its board, James Hardie's international reputation is in tatters.

Installing a representative of Hardie's own victims is the best possible way to ensure that the interests of those victims remain squarely in the board's focus. It is the only way to ensure that future Hardie's boards will

understand their responsibility to their victims, allowing the company to move on from this appalling chapter in its history. Appointing a representative of victims to the board would demonstrate a genuine recognition by Hardies of its corporate responsibility to victims and the community. Corporate responsibility, or corporate governance, is a crucial issue in this debacle. The only way to ensure that what Hardies did can never happen again is to campaign for corporate law reform by the Federal Government.

Unions in particular know that it has become a regular practice by corporations to put in place "asset protection schemes", which result in their employees, or in this case victims and potential victims, being unable to access assets and resources of a company in the event that the company enters administration or liquidation. In New South Wales, the AMWU is campaigning for the introduction of reforms to Federal corporation laws that would stop companies restructuring as a means of avoiding their statutory and other financial responsibilities. Many thousands of lives have been damaged forever by Hardies, including widows and widowers, children and grandchildren, brothers and sisters, as well as friends and workmates of those who have been exposed to Hardie's poisons. Yet still no end is in sight. It is time that the Federal Government ensured that this can never happen again by immediately responding to the call by unions such as the AMWU for corporate law reform.

However, there has been at least one positive outcome from this saga: the New South Wales State Government's funding of the Asbestos Diseases Research Institute at Concord Hospital. The institute includes on its board representatives of the Asbestos Diseases Foundation of Australia and the unions who wrote the original submission for funding. The objective is to create a centre of excellence in research, diagnosis and treatment that will lead to the multidisciplinary treatment of mesothelioma and provide a national resource. It will be a source of world's best practice and information to hospitals and health practitioners around the country and internationally. I congratulate the Minister for Industrial Relations on initiating the funding for this project. I renew the call for Hardies to appoint a representative of its victims to its board and to reject the proposal to increase fees and options to board members until full compensation is guaranteed to all Hardie's victims.

WAKOOL SHIRE FORUM

The Hon. RICK COLLESS [10.10 p.m.]: The Wakool shire in the southern Riverina area comprises some 7,500 square kilometres and was founded in 1906. The border of Wakool shire follows the Murray River from Barham downstream to Goodnight, approximately northwards to a point above the Murrumbidgee River beyond Balranald, returning generally in a south, south-easterly direction to the Murray River upstream from Barham. The shire is interlaced by some important rivers, the Wakool, Niemur and Edward rivers, and the mighty Murrumbidgee River. In addition, numerous creeks and backwaters run into those rivers. In desperation and with a sense of frustration, a public forum was called in Barham, last Friday week, which could result in a statewide alliance of country people working to educate city people and members of the New South Wales Government on the problems being created by its legislation.

The forum attracted a large crowd who voted to set up an Internet site and engage in a publicity campaign to explain to Sydneysiders the potential impact of recent Government legislation. The web site would also include a public forum where people could exchange views on rural issues. The meeting passed three important motions: that market value based compensation be applied when government policies reduced property rights; that fact, sound science and practical history form the basis of any proposed change; and that such policies be open to possible legal challenge. Inspired by the recent Government concession that the draft code of practice for private native forests was not acceptable in its present form, speakers explored not only that issue but also the impact of river regulation and native vegetation laws on country communities, and the problems resulting from shrinking rural populations.

Speakers explored the history of water trading and the impact of drought, proposed increases in bulk water prices and the growing demand from some sections of the community for increased environmental flows in rivers. It was agreed that water was the most important issue faced by communities along the rivers and that Australia was not short of water but that only about 5 per cent of our rainfall was captured. The rest was allowed to run out to sea, which is happening as I speak. Even though we are in the midst of one of the State's worst droughts the river Murray is flowing along to be eventually lost in evaporation and environmental flows. Disbelief was expressed that the Government has capitulated to pressure from environmental extremists to stop building dams. Speakers referred to the frustration faced by farmers affected by native vegetation legislation. Because of an ill-conceived definition of a "forest", many farmers are now prevented from clearing woody weeds on their properties.

Photos were produced to show that the Government condoned broad scale clearing to establish coalmines, yet the energy sector that burned the coal was the biggest contributor to greenhouse gases. A grazier from Hay said he had had enough of overregulation and demanded that country people be given equal time and weight to the city-based green groups who appeared to have so much influence on government policy. He went on to say that legislation was mooted that would ban farming on his property because of the old man saltbush that grew there. A forester from Mildura with 40 years experience said that by his calculations almost half of the river red gums on Yanga Station, recently purchased as a national park, would not have been available for harvest under the recent proposed code of practice for private native forestry because of the restrictions on basal stem area. He said more of it would have been excluded because of the required drainage buffers.

Timber Communities of Australia's Faye Ashwin urged the gathering to continue to put pressure on the Government. Only about 10 per cent of the 1,600 submissions had come from green groups. Ms Ashwin said a firm of public relations consultants had been engaged to put the rural predicament to the city media. Finally, the issue of rural health was closely linked to declining rural populations according to Max Jones, Chief Executive Officer of the Murray Plains Division of General Practice. He said mental health services were of particular concern because, although mental health affects an estimated one in five people in the State, services declined as populations diminished. Summing up the meeting Ciaran Keogh, General Manager of Wakool Shire, said that although many people had been fighting small local battles it was time to unite and get a message to city voters. He suggested the establishment of a forum for country people for country issues. I congratulate the communities of Wakool shire for having the courage to take a stand and for fighting— *[Time expired.]*

NRMA PURCHASE OF THRIFTY AUSTRALIA

RAIL SERVICE CLOSURES AND ROAD FREIGHT

Ms LEE RHIANNON [10.15 p.m.]: The NRMA has announced with some flourish that it bought Thrifty Australia from Mitsubishi Australia in a joint venture with Thrifty's Managing Director, John Walker, in a deal it says is worth \$30 million. The NRMA's media release boasted that the deal was good for members. The major beneficiaries of this deal are its organisers. How it benefits members is still to be explained. Thrifty lost \$22 million for Mitsubishi, which was desperate to spit out this lemon. How is this outfit suddenly worth \$30 million to NRMA members, who will fork out \$15 each for the deal? This is a smelly deal that has at its centre an NRMA director who happened to be appointed to replace the now bankrupt Ross Turnbull. His other role is as special counsel at law firm Thomson Playford, Mitsubishi's lawyers, which handled the sale and in the process earned fat fees. So it was a sweet deal for Thrifty's managing director, John Walker.

Walker will be remembered as the general manager of the failed Liverpool Council appointed by former Liverpool Mayor, Mark Latham. With Walker behind the wheel, Thrifty lost more than \$6 million during the past three years, yet he is the only Thrifty manger involved in this management buyout, which he promoted. Under Walker's stewardship, Thrifty lost money because it failed to control expenses and manage its fleet, achieving only a 7 per cent revenue increase despite a 48 per cent increase in fleet size. The secret deal is that NRMA is parting with \$10 million of members' funds to buy 75 per cent of Thrifty and it has entered into an additional unsecured loan commitment of \$5 million. It is a sweet deal for Walker, because 25 per cent of the company cost him a mere \$200,000. However, it is not a thrifty deal for NRMA members. In fact, they appear to have paid over the top for a lemon. But there is more.

NRMA has agreed to an option to buy Walker's shares after only one year at an agreed valuation, with an absolute minimum of \$2 million! Who did the valuation? Members have not been told. So far that has accounted for \$17 million, but members are not told what they are getting for the other \$13 million NRMA is boasting the deal is worth. The reference check on Walker was conducted personally by Tony Stuart, NRMA's chief executive officer and now also a director of Thrifty. It is not clear from the NRMA press release that, having pushed the deal through, he and the NRMA directors on the Thrifty board will be paid directors' fees to sit on Thrifty's board. It is a fair assumption that Stuart and the NRMA board members will receive directors' fees. NRMA's long-suffering members are entitled to know just how much these directors will personally gain in the shape of Thrifty board fees from the deal they voted for while wearing their other hat, that of NRMA board members.

Nobody on the NRMA board of management has any experience in running a vehicle rental business. However, the new Thrifty board includes NRMA President, Alan Evans, and the recently recruited NRMA director, Kyle Loades. Walker, who did so well presiding over Thrifty's losses, has been rewarded with the title of managing director. David Wakely, the NRMA project manager appointed to see this deal through, quit the

company before the deal was finalised. The NRMA board approved the thrifty deal with only one dissenting voice, that of Richard Talbot, who raised concerns about the ongoing losses and requested to see financial information, in particular a balance sheet. I understand that he was denied that information, along with a lot of other financial information about how the NRMA is spending its money, that is provided to other board members. The NRMA director whose law firm acted in this deal in what looks like a blatant conflict of interest is Gary Punch. It is time that NRMA stopped squandering members' money in arrangements like this Thrifty deal.

I also note that the Lachlan Regional Transport Committee is critical of the ideological approach taken by the NRMA because it refuses to acknowledge that a major underlying cause of road problems is the demise of the rail system, both in this State and nationally. The systematic closure of what is left of New South Wales' network was started in the early 1980s. The Lachlan Regional Transport Committee has done a great deal of work in this area and it is an important voice for rail services. The justification that has been used for this shutdown is based on an economic argument. The process was made easier when in 1996 the State Government corporatised all rail services. Since then the situation has continued to deteriorate. That has been achieved by imposing access charges, flag-fall fees, train length charges and unreasonable path booking arrangements. Added to these impositions is poor maintenance. As a result we have a tragic situation wherein more and more freight is being moved by road, causing more dangerous travelling conditions. Meanwhile, rail services are being tragically run down.

[Time for debate expired.]

Motion agreed to.

The House adjourned at 10.20 p.m. until Wednesday 20 September 2006 at 11.00 a.m.
