

LEGISLATIVE COUNCIL

Wednesday 18 October 2006

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

The Clerk of the Parliaments offered the Prayers.

ELECTION FUNDING AMENDMENT BILL

PASSENGER TRANSPORT AMENDMENT BILL

Bills received.

Leave granted for procedural matters to be dealt with on one motion without formality.

Motion by the Hon. Tony Kelly agreed to:

That these bills be read a first time and printed, standing orders be suspended on contingent notice for remaining stages, and the second readings of the bills be set down as orders of the day for a later hour of the sitting.

Bills read a first time and ordered to be printed.

JOINT SELECT COMMITTEE ON THE THREATENED SPECIES CONSERVATION AMENDMENT (BIODIVERSITY BANKING) BILL 2006

Establishment

The PRESIDENT: I report the receipt of the following message from the Legislative Assembly:

Madam PRESIDENT

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

- (1) That a joint select committee be appointed to monitor the implementation of the Threatened Species Conservation Amendment (Biodiversity Banking) Bill 2006.
- (2) That the functions of the committee will be:
 - (a) to evaluate the objectives of the scheme as set out in the Bill;
 - (b) to draft guidelines for the two year trial period and report to the Minister;
 - (c) to oversee the operation of the scheme during the two year trial period, and
 - (d) to report to both Houses on the operation of the trial within six months of the expiration of the trial period.
- (3) That the committee consist of seven members as follows:
 - (a) the Hon Rev Dr Gordon Moyes, who shall be Chairman of the Committee;
 - (b) three shall be from the Government, being two members of the Legislative Assembly and one member of the Legislative Council, and
 - (c) two from the Opposition, being one member of the Legislative Assembly and one member of the Legislative Council, and
 - (d) one crossbench member from the Legislative Council.
- (4) That the members be nominated in writing to the Clerk of the Legislative Assembly and Clerk of the Legislative Council by the relevant party leaders and the crossbench members respectively within seven calendar days of the passing of this resolution. In the absence of any agreement concerning Legislative Council representation on the committee the matter is to be determined by that House.
- (5)
 - (a) That at any meeting of the committee four members shall constitute a quorum provided that the committee meets as a joint committee at all times.
 - (b) The Chairman or Vice-Chairman (if presiding) shall have both a deliberative vote and, in the event of an equality of votes, a casting vote.

- (6) That the Vice-Chairman of the Committee shall be elected by and from the members of the Committee.
- (7) That the committee have leave to sit during the sittings or any adjournment of either or both Houses, to adjourn from place to place, to make visits of inspection within New South Wales and have power to take evidence and send for persons, papers, records and things, and to report from time to time.
- (8) (a) That should either House stand adjourned and the committee agree to any report before the House resumes sitting, the committee have leave to send any such report, minutes of proceedings and evidence taken before it to the Clerk of each House.
 - (b) A report presented to the Clerks is:
 - (i) on presentation, and for all purposes, deemed to have been laid before the House;
 - (ii) to be printed by authority of the Clerk;
 - (iii) for all purposes, deemed to be a document published by order or under the authority of the House,
 - (iv) to be recorded in the official proceedings of the House.

The Legislative Assembly requests that the Legislative Council pass a similar resolution.

Legislative Assembly
17 October 2006

JOHN AQUILINA
Speaker

Consideration of message deferred.

GLADESVILLE HOSPITAL SITE

Production of Documents: Order

Motion by the Hon. Greg Pearce agreed to:

That, under Standing Order 52, there be laid upon the table of the House within 14 days of the date of the passing of this resolution the following documents in the possession, custody or control of the Minister for Health, the Director General of the Department of Health and the Chief Executive Officer of the Northern Sydney Central Coast Area Health Service:

- (a) all papers, correspondence, plans and reports since 1995 relating to any proposal to redevelop the site upon which Gladesville Hospital is located,
- (b) all papers, correspondence, plans and reports since 1995 relating to any proposal to value, exchange or sell the site on which Gladesville Hospital is located, and
- (c) any document which records or refers to the production of documents as a result of this order of the House.

FUNERAL INDUSTRY

Production of Documents: Order

Motion by Ms Lee Rhiannon agreed to:

That, under Standing Order 52, there be laid upon the table of the House within 14 days of the date of the passing of this resolution the report, whether in draft or final form, of the investigation by NSW Health into allegations by Mr Wayne Howell of the cremation of multiple bodies in the New South Wales funeral industry, in the possession, custody or control of the Minister for Health or NSW Health, and any document which records or refers to the production of documents as a result of this order of the House.

HUNTER AND OUTER SUBURBAN RAILCARS

Production of Documents: Order

Motion by the Hon. Greg Pearce agreed to:

That, under Standing Order 52, there be laid upon the table of the House within 14 days of the date of the passing of this resolution all documents, whether in written or electronic form, in the possession, custody or control of the government including reports or analysis, but excluding technical specifications, drawings and plans, in relation to the new Hunter Rail Cars and the "H set" trains or Outer Suburban CARS (OSCARS) referring to:

- (a) any changes, variations or modifications of any contract requirements including any non-conformances, technical non-conformances or defects and the effect of such changes on project cost and time, and

- (b) any claims for additional cost or delays, and
- (c) testing of any train sets provided by the contractor including, without limiting the foregoing, crashworthiness.

FORESTS NSW AND BORAL TIMBER

Production of Documents: Order

Motion by Mr Ian Cohen agreed to:

That, under Standing Order 52, there be laid upon the table of the House within 14 days of the date of the passing of this resolution the following documents in the possession, custody or control of the Minister for Primary Industries or Forests NSW created since 1998:

- (a) any contract, agreement or memorandum of understanding between Forests NSW and Boral Timber for the supply of timber or wood, including any document amending any such agreement,
- (b) any document referring to the terms and conditions on which Boral Timber was provided with funds under the Forest Industry Structural Adjustment Program, and any amounts so provided, and
- (c) any document which records or refers to the production of documents as a result of this order of the House.

M5 EAST TUNNEL FILTRATION

Production of Documents: Order

Motion by the Hon. Melinda Pavey agreed to:

That, under Standing Order 52, there be laid upon the table of the House within 21 days of the date of the passing of this resolution the following documents in the possession, custody or control of The Cabinet Office, the Roads And Traffic Authority (RTA), the Premier's Department, the Department of Planning, the Department of Environment and Conservation, NSW Health (including the central, northern and South-East Sydney area health services), or the responsible Ministers, created or modified since 1 June 2006 and not previously provided to the House, relating to M5 East tunnel filtration:

- (a) the 2005 audit conducted by the Department of Planning of the RTA's compliance with the approval conditions for the M5 East,
- (b) the M5 East Tunnel 'Air Quality Improvement Plan' announced in June 2006, and any investigations and/or cost benefit analysis of the redesign of the ventilation system or the provision of electrostatic precipitators or other air treatment or filtration systems,
- (c) any document regarding proposed or actual modifications to the design or operation of the M5 East ventilation system and associated conditions of approval,
- (d) any document regarding the investigation of international developments in tunnel air treatment or filtration systems,
- (e) any document which records air quality goals being exceeded within the M5 East tunnel or emission of tunnel air from the portals (portal emissions) including the time and volume of such emissions, in tunnel and portal monitoring records, traffic counts and associated traffic incidents,
- (f) any document which refers to compliance with approval conditions for the operation of the M5 East tunnel or the M5 East stack, including incidents and complaints relating to air quality, and portal emissions,
- (g) any document which refers to or shows the costs associated with advice sought from consultants and contractors in relation to air quality and filtration issues,
- (h) any document created by the Inter-Agency Working Party (IAWP) in relation to the M5 East, Cross-City and Lane Cove Tunnel projects, including the study undertaken into pollution levels inside the M5 East tunnel,
- (i) the review of the NSW Health Department 2004 study "Investigation into the possible health impact of the M5 East Motorway stack on the Turrella community" Phase 2, and any documents relating to the review including responses to concerns raised by community members and the independent review by Lane Cove Council relating to the validity of the study's conclusions and findings, and
- (j) any document which records or refers to the production of documents as a result of this order of the House.

SPIT BRIDGE WIDENING**Production of Documents: Order**

The Hon. GREG PEARCE [11.07 a.m.]: I seek the leave of the House to amend the motion of which I have given notice, in the following terms:

Delete "14 days" and insert "21 days" in lieu.

Leave granted.

Motion by the Hon. Greg Pearce agreed to:

That, under Standing Order 52, there be laid upon the table of the House within 14 days of the date of the passing of this resolution all documents, whether in written or electronic form, briefing preparation or notes and correspondence concerning the Spit Bridge widening that have passed between all or any of the following:

- (a) the member for Manly,
- (b) the Roads and Traffic Authority, and
- (c) any Minister.

PETITIONS**Mental Health Patient Detention**

Petition stating that on 22 August 2002 Kylie Fitter was found not guilty of the murder of her mother by reason of mental illness and was detained at Yasmar Juvenile Justice Centre until the Minister for Health saw fit to release her on the recommendation of the Mental Health Review Tribunal, stating that Ms Fitter's delusional state was found by psychiatrists to have lifted in 2003 and, despite the Mental Health Review Tribunal recommending four times since 2004 to successive Ministers for Health that Ms Fitter be granted conditional release, she remains incarcerated in Juniperina Juvenile Justice Centre, and requesting the Minister for Health and the Minister Assisting the Minister for Health (Mental Health) to approve and adopt the recommendation of the Mental Health Review Tribunal, received from **Reverend the Hon. Dr Gordon Moyes**.

BUSINESS OF THE HOUSE**Withdrawal of Business**

Private Members' Business Item No. 152 outside the Order of Precedence withdrawn by the Hon. Melinda Pavey.

CRIMES AMENDMENT (APPREHENDED VIOLENCE) BILL**In Committee****Clauses 1 to 5 agreed to.**

The Hon. DAVID CLARKE [11.08 a.m.], by leave: I move Opposition amendments Nos 1 to 5 in globo:

No. 1 Page 4, proposed section 562A. Insert after line 2:

interim apprehended domestic violence order does not include a police interim order.

interim apprehended personal violence order does not include a police interim order.

No. 2 Page 4, schedule 1, proposed section 562A, line 5. Insert "but not including a police interim order" after "made by a court".

No. 3 Page 4, schedule 1, proposed section 562A. Insert after line 16:

police interim order means a police interim order made under Subdivision 1 of Division 4.

No. 4 Page 4, schedule 1, proposed section 562A, line 22. Insert "(including a police interim order)" after "order".

No. 5 Page 15, schedule 1. Insert after line 1:

Subdivision 1 Police interim orders

562O Application for police interim order

- (1) A police officer of or above the rank of inspector may make a police interim order if:
 - (a) an incident occurs involving the person against whom the order is sought to be made and the person who would be protected by the order, and
 - (b) the police officer has good reason to believe an order needs to be made immediately to ensure the safety and protection of the person who would be protected by the order or to prevent substantial damage to any property of that person.
- (2) An application for a police interim order may be made:
 - (a) in person or by telephone by a police officer, or
 - (b) in person by a protected person.

562P Duration

A police interim order remains in force for 24 hours after the making of the order unless it is sooner revoked.

562Q Recording of order

- (1) A police officer who makes a police interim order is to inform the applicant of the terms of the order.
- (2) If the application for the police interim order is made in person, the police officer making the order is to complete a form of order in those terms.
- (3) If the application for the police interim order is made by telephone, the applicant is to complete a form of order in the terms so indicated unless the police officer making the order furnishes a form of order to the applicant by facsimile transmission.
- (4) The copy of a police interim order produced by transmission under subsection (3) is taken to be the original document.

562R Application of other provisions of this Part to police interim orders

- (1) Sections 562R (3), 562S, 562V, 562X (except subsection (3)), 562Y and 562Z apply to a police interim order in the same way that they apply to a telephone interim order.
- (2) For the purpose of applying the provisions referred to in subsection (1) to a police interim order:
 - (a) a reference to an authorised officer to whom an application for a telephone interim order is made is to be read as a reference to a police officer of or above the rank of inspector to whom an application for a police interim order is made, and
 - (b) a reference to an authorised officer who makes a telephone interim order is to be read as a reference to a police officer of or above the rank of inspector who makes a police interim order.
- (3) Sections 562ZE and 562ZG apply to a police interim order in the same way as they apply to other orders.

The bill establishes that telephone interim orders will be available on a 24-hour basis in circumstances where the police officer making the application believes the applicant needs immediate protection. These are valuable provisions because so many of these incidents requiring immediate action by police occur during the evening or during public holidays, when the normal means of obtaining an apprehended violence order [AVO] are not readily available. But numerous situations arise—as confirmed by the Police Association—where a police officer cannot locate a magistrate or another designated person to issue such an order: it could be two o'clock in the morning; it could be in a small country town; it could be in a situation where the issue of an AVO is urgently needed in order to avoid a serious assault or worse.

What can a police officer do if no authorised person is available to grant an application? This is the reason for the amendments proposed by the Opposition. These amendments address such situations. Whilst it has a series of parts, the bill has only one purpose: to allow a police officer of the rank of inspector or higher to authorise a police interim order in circumstances where a police officer has good reason to believe that the order

needs to be made immediately to ensure the safety and protection of a person or to prevent substantial damage to the property of that person.

Such an application may be made in person or by telephone by a police officer or in person by a protected person. It is important to note that under our amendment such a police interim order remains in force for only 24 hours, unless it is revoked at an earlier time. This is a simple and straightforward amendment but it is important. It is meant to be a measure to cover an emergency situation and it is meant to be a holding measure to give time for a normal AVO to be applied for. It is a measure that will serve to protect the vulnerable in our community, especially those in a domestic situation. And it is a measure that has the support of the Police Association. We hope it receives the support of the Government and the crossbench. The Opposition commends the amendments to the Committee.

The Hon. JOHN DELLA BOSCA (Minister for Finance, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, and Vice-President of the Executive Council) [11.22 a.m.]: The Government does not support these amendments, which are presumably a misguided attempt to ensure the availability of immediate protection for victims and avoid any waiting time at court. The Government's bill already addresses these issues by introducing the 24-hour telephone interim order scheme with authorised officers, mentioned by the honourable member in his submission to the House, while at the same time preserving the principle of the separation of powers.

The honourable member and all members of the House are well aware that the Government of New South Wales is based on the Westminster system, which provides for a separation of powers. It is an extremely important principle that should be reflected through all arms of the judiciary and law enforcement. It is right and proper that the Executive is kept independent of the judiciary, and there are very sound reasons for this. There is, of course, potential for corruption; and maintaining separation minimises this. Independence also helps keep each branch from exceeding its powers. The protection of the personal rights of the individual on either side of this argument is maintained by the system of checks and balances provided for by the notional and practical separation of powers that exists in our system.

Police are part of the Executive and act primarily as enforcers of the law. The judiciary is independent of the police and the Parliament, and it interprets and applies the law. The court brings objectivity to and detachment from situations that can be somewhat emotive. Courts can assess the needs and requirements of both parties and ensure that on the one hand protection is granted to vulnerable victims of domestic violence and, on the other hand, ensure that defendants are not subject to vexatious or malicious applications. The court has an essential role in determining whether an AVO should be made and, if so, what conditions should be attached. This aspect of the justice process is important for all parties to AVO proceedings and it reinforces the objective seriousness of domestic violence.

The notion of police using interim telephone orders, which is, in effect, a judicial function, was considered at length by the Law Reform Commission [LRC]. The LRC considered the matter and was concerned that due to a lack of availability of authorised officers some people may not be granted immediate protection. The LRC suggested that where an authorised justice could not be contacted, a police officer above the rank of inspector could grant a telephone interim order, which would be in force for 48 hours. The Apprehended Violence Legal Issues Coordinating Committee looked at this issue very carefully and rejected the recommendation. The committee concluded that at this time a far better course would be to ensure that an authorised officer was available 24 hours, seven days a week. That committee is the peak domestic violence consultation body in New South Wales, comprising many different stakeholders, including police and domestic violence advocacy groups. Providing police with the broad power to issue AVOs when authorised officers will be available on a 24-hour basis is unnecessary and therefore is not supported.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.25 a.m.]: The Democrats do not support this series of amendments. It is important to have separation of powers and it worries me that the Opposition does not seem to recognise the importance of separation. We must have a justice system under the control of the judiciary. It must not be interfered with politically or bureaucratically. If the Government has insisted on the availability of judicial officers 24 hours a day—and I believe this is a step forward—it means that the judiciary cannot be as remote as they may have been in the past. When there is a crisis they have to be available, and if that means ringing up a judge or a relevant officer in the middle of the night, so be it. In a sense, this problem of availability has theoretically been solved. Obviously there will be the odd bit of trouble with telephones or some minor technological problem once in a blue moon, but we should not have the extremely unusual situation of a

loophole to allow the bypassing of the judiciary. That is what I think these amendments do, and therefore they should be opposed.

Question—That the amendments be agreed to—put.

The Committee divided.

Ayes, 15

Mr Brown	Mr Lynn	Mr Ryan
Mr Clarke	Mr Mason-Cox	
Ms Cusack	Reverend Dr Moyes	
Mr Gallacher	Ms Parker	<i>Tellers,</i>
Miss Gardiner	Mrs Pavey	Mr Colless
Mr Gay	Mr Pearce	Mr Harwin

Noes, 23

Mr Breen	Mr Donnelly	Ms Robertson
Dr Burgmann	Ms Griffin	Mr Roozendaal
Ms Burnswoods	Ms Hale	Ms Sharpe
Mr Catanzariti	Mr Hatzistergos	Mr Tsang
Dr Chesterfield-Evans	Mr Kelly	Dr Wong
Mr Cohen	Mr Macdonald	<i>Tellers,</i>
Mr Costa	Mr Obeid	Mr Primrose
Mr Della Bosca	Ms Rhiannon	Mr West

Question resolved in the negative.

Amendments negated.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.34 a.m.]: The purpose of the Australian Democrat amendments as circulated was mentioned in the report of the Legislative Review Committee: strict liability offences should be imposed only when clearly justified and penalties should reflect the lack of any fault element. The committee noted that proposed sections 562ZJ and 562ZK create strict liability offences with heavy penalties, including imprisonment for up to two years in circumstances where individuals may conceivably inadvertently offend against those proposed sections. The committee also notes the importance of protecting children and other vulnerable persons involved in apprehended violence order proceedings. The committee refers to Parliament the question of whether providing for penalties of up to 200 penalty units or two years imprisonment for strict liability offences in proposed sections 562ZJ and 562ZK unduly trespasses upon personal rights and liberties.

After discussing this with some people in the media I found that a story in AAP recently identified a child who was the subject of a suppression order. This was not mentioned in the judgment and the Attorney General's Department released the report, which mentioned the child's name. Accordingly, AAP reported the matter and even used the child's name as a key word for the search. A "kill" message, which means to stop the story, was later put out and the story was rerun without the child's name. The story, by Katherine Danks, eventually went out on 4 October under the heading "Baby dies after mum's methadone dose: Coroner". The story was that a five-month-old infant died after his drug-dependent mother deliberately gave him methadone.

I am not sure whether suppression orders have to be mentioned in judgments, but the report was released and published and obviously there was concern that someone would go to gaol for two years. I put this to the Government, which was very concerned. The Government said there was a difference between absolute liability and strict liability and that strict liability would not necessarily be covered by an inadvertent error. It gave the case of Powers as a precedent for the difference between strict liability and absolute liability. The Government also pointed out that powerful media interests are not scared of penalties because stories are so valuable that potentially any later fine is almost irrelevant.

Although I was concerned about Parliament unduly trespassing on the discretion of courts and the fact that Parliament unreasonably removes the discretion of courts to make the penalty fit the crime—and this

seemed to be the case—the Government has made its case that we need strict deterrence for major media outlets so that they are not tempted to break the law, and then use powerful lawyers at vast expense to minimise penalties after the event. In inadvertent cases like the one I cited, the difference between absolute liability and strict liability is that the person would not be punished. As such, I do not propose to move my amendments but I wish to clarify why I will not move something I had foreshadowed.

The CHAIR: Are you moving the two amendments or just the first one as circulated?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Both my amendments actually relate to the same issue.

The CHAIR: Are you seeking to move both of them in globo?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: No, I am stating that I do not intend to move either of them. I am putting on the record why I do not intend to move them.

Schedules 1 to 3 agreed to.

Title agreed to.

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

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Orders of the Day Nos 2 to 14 postponed on motion by the Hon. John Della Bosca.

ELECTION FUNDING AMENDMENT BILL

Second Reading

The Hon. JOHN DELLA BOSCA (Minister for Finance, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, and Vice-President of the Executive Council) [11.44 a.m.]: I move:

That this bill be now read a second time.

As the remarks are somewhat lengthy, I seek leave to have them incorporated in *Hansard*.

Leave not granted.

The Election Funding Act imposes obligations on parties, candidates, individuals and organisations to disclose political donations and campaign expenditure. It is important legislation that helps ensure the transparency of the electoral process. The Act also provides for the public funding of part of the costs of candidates and political parties during election campaigns. This ensures greater fairness among the relevant candidates and parties, and reduces the need for separate fundraising activities. The Act is administered by the Election Funding Authority, which is chaired by the Electoral Commissioner. The commissioner has, on behalf of the authority, drawn to the Government's attention the need for two amendments to the Act. The first amendment relates to the provisions in the Act that require the disclosure of political donations and electoral expenditure incurred in connection with an election.

The Electoral Commissioner has highlighted a recent case that shows that the important disclosure provisions of the Act could be undermined. The problem arises because the authority has no power to require a person to provide information to the authority about the identity of another person or organisation that might have failed to disclose a political donation or electoral expenditure. In the particular case highlighted by the Electoral Commissioner, a political organisation arranged for a number of individuals and businesses to make a contribution to the cost of electoral advertising. The political organisation arranged for the advertisements to be placed in various local media. The organisation also arranged for the media agency that ran the advertisements

to bill the individuals and businesses that contributed to the advertisements directly, rather than bill the political organisation.

The individuals and businesses that paid for the advertisements were required under the Election Funding Act to disclose this expenditure, but did not do so. Neither the media agency nor the political organisation had an obligation to disclose the electoral expenditure, as they had not incurred the advertising expenditure themselves. Further, the authority had no power to require either the political organisation or the media agency to identify those individuals and businesses that had paid for the advertisements. Item [2] of the bill will amend the Act to give the authority, or an authorised officer of the authority, the power to demand from a person the name and address of another person where the authority reasonably suspects that the other person has failed to disclose political donations or electoral expenditure, as required by the Act. The power will only be able to be exercised in circumstances where the authority or authorised officer has a reasonable suspicion that the person may have information that enables the person who incurred the electoral expenditure to be identified. As the remaining remarks are lengthy and have been delivered in the other House, I seek leave to have the balance of my remarks incorporated in *Hansard*.

Leave not granted.

The Authority declined to reimburse those invoices from the Constituency Fund. This was because the Crown Solicitor advised that candidates could only claim for expenditure that they themselves incur, or for expenditure that is incurred by the party for its candidates pursuant to a formal agency arrangement. The Greens candidate in this particular case had not incurred the expenditure personally, and he did not have a formal agency arrangement with his party. In the context of the by-election, the Greens were ultimately able to obtain reimbursement from the Constituency Fund by resubmitting their claim to ensure it was made by the party and not by the candidate. This is possible because the Election Funding Act enables parties to claim on the Constituency Fund for by-elections.

This is not the case, however, for general elections. If this claim were to be made in a general election, it would be refused because the Act does not enable parties to claim directly on the Constituency Fund for general elections. As a result of the Crown Solicitor's advice, the authority will now need to also refuse those claims made in respect of invoices issued by political parties to individual candidates for expenditure incurred by the party on behalf of the candidate, unless a formal agency arrangement is in place. This is despite such claims being routinely accepted in the past. As honourable members will be aware, political parties often arrange advertising and incur other expenditure on behalf of the candidates that they endorse. I refer honourable members to the second reading speech delivered in the other place and commend the bill to the house.

The Hon. DON HARWIN [11.48 a.m.]: I lead for the Opposition on the Election Funding Amendment Bill 2006 and indicate from the outset that the Coalition will not be opposing the bill. The Election Funding Act requires certain political parties, groups, candidates and other persons who incur electoral expenditure to disclose that expenditure to the Election Funding Authority. To ensure and enforce compliance with this requirement, the Act empowers authorised members of the authority to undertake inspections and enquiries in relation to such parties, groups and candidates, and their agents. This power, however, does not extend to other persons and organisations that might have incurred electoral expenditure. It is of enormous concern that this limitation effectively undermines the Act's important disclosure provisions.

The Electoral Commissioner recently highlighted a particular case in which a political organisation organised for certain individuals and businesses to directly meet the costs of the organisation's electoral advertising. This circumvention of the Act's disclosure provisions was facilitated by the relevant media agency invoicing the individuals and businesses directly rather than the political organisation. While these persons and companies had an obligation to disclose their electoral advertising expenditure, they did not do so. The political organisation did not declare the expenditure either as it had not incurred the expenditure itself. The Election Funding Authority does not currently have the power to investigate such arrangements nor require either the political organisation or the media agency to identify the individuals and businesses involved.

The first amendment in this bill seeks to rectify this problem by extending the powers of authorised Election Funding Authority staff. The bill provides that if the authority reasonably suspects that a person or business has failed to lodge a declaration relating to electoral expenditure, appropriate members of the authority's staff may require such persons to provide certain information and produce documents in relation to the failed disclosure. The Liberals and the Nationals have always fully supported the Act's expenditure disclosure provisions and the need for rigorous compliance with such practice. The Coalition commends this

revision of the Act. The second amendment arises from legal advice received by the Electoral Commissioner questioning the basis of the ongoing practice relating to expenses incurred by head offices of political parties that benefit candidates. The issue was raised following the Macquarie Fields by-election.

The Election Funding Act 1981 enables candidates for election to the other place, if eligible, to claim payment for expenditure incurred for election campaign purposes from the Constituency Fund. Claims may only be made for such expenditure when it is incurred by the candidate or a person lawfully appointed by the candidate as his or her agent. Political parties, however, often arrange advertising and incur other expenses on behalf of the candidates they endorse. In most cases no form of lawful agency appointment exists between political parties and their candidates. Consequently, when parties incur expenditure such as printing and advertising costs on behalf of candidates it would only be possible to claim the expenditure from the Central Fund. The bill amends the Act to provide that a candidate is entitled to claim from the Constituency Fund. Item [1] of the bill will therefore amend the Act to provide that a candidate is entitled to claim from the authority campaign expenditure that has been incurred by the party for the benefit of a candidate and invoiced by the party to the candidate. This will apply regardless of whether there is a formal agency arrangement in place or whether a candidate is legally liable to the party for the expenditure.

The change is a regulation of existing practices and essentially serves to give the status quo an appropriate legislative basis. Consequently, the Coalition also supports this change. The bill provides for changes to the Election Funding Act that are essential to maintaining the strength and integrity of the legislation. They do not make any substantial changes to the current arrangements and they are really of a housekeeping and tidying up nature to ensure that there is an appropriate basis on which to fund the general elections that will be held early in the new year. Consequently, the Coalition does not oppose the bill.

Ms LEE RHIANNON [11.54 a.m.]: The second reading speech for the Election Funding Amendment Bill was delivered in the lower House last night. I became aware of the bill only this morning. I have responsibility for electoral matters for the Greens and I am very disappointed that the Government has brought the bill on with virtually no notice to members of this House. The Opposition may have known about it because of its members in the lower House but we thought we had some—

The Hon. Catherine Cusack: We did not know about it; we were just ready.

The Hon. Don Harwin: I was not even in the Chamber.

Ms LEE RHIANNON: I acknowledge those interjections. I was disappointed that when I approached the Opposition suggesting that we adjourn the debate, even for just a few hours, so that we could get our head around the bill, we did not receive co-operation. From my quick reading of the bill and listening to the Minister I thought there may have been a good chance that the Greens would have supported the bill. Often there is a need to tighten up legislation. There has been confusion about how election funding legislation operates. However, we have a real problem in the way the Government conducts business at this time of the year. It often uses the logjam approach to legislation to put pressure on members. At the end of every year a whole bank of legislation is pushed through. Not many sitting days are left so it is harder for us to give the scrutiny that we would like to all pieces of legislation. Some members—particularly those with only one member in the party—have to pass on much legislation.

Why has the Government brought this bill in so late, in October just prior to the election? Many of the changes suggested by the Electoral Commissioner have probably been in existence for a long time. It is not as though the Macquarie Fields by-election was held just last week; it was in early 2005. It was in that by-election that a number of the discrepancies dealt with by the bill became apparent. There are two problems here. The first is that we have not had sufficient time to scrutinise the bill and to contribute in an informed way.

The second—I emphasise this—is the way in which the Government conducts business at the end of the year. It dawdles along for much of the year putting off legislation and sometimes not having a full program but moving to have additional private members' statements because it has not got its act together with its program. We have more than 20 bills to deal with before the end of the year and 11 sitting days counting today. Private members' business also has to be dealt with and it would be wrong for the Government to take away that time. Members should be able to debate the many private members' issues outstanding in the little time remaining until the end of the year.

There are seven Government business days left counting today, which is not much time to deal with 20 bills. The Government should get its act together and be more organised and responsible throughout the year in bringing forward legislation in a regular way and not leaving it until the last minute. The Greens want to scrutinise electoral funding very carefully. People would be aware that we have done a great deal of work on donations and disclosure, and many areas of disclosure need to be tightened up. I imagine that not all of them are covered in the bill.

There is often an extraordinary discrepancy between the claimed donations of the candidate, the party and the donor. These amounts should be the same but there is a massive discrepancy. We have found that to get a figure that is anywhere near reliable we have to give up on the disclosures of the donors and just refer to the donation disclosures from the political parties, which are closer to reality. Many donors do not disclose.

The Greens have argued that the State Electoral Office and the Australian Electoral Commission should have more resources to investigate the discrepancy. The law is being broken when there is such a large discrepancy. But the resources are not there to investigate this matter. I sometimes wonder whether the political will is there to track down why there is such a large discrepancy. The Greens possibly would have been interested in moving amendments in this regard.

As I said, the Greens have many problems with disclosure, associated entities and fundraisers. It is unclear to what degree there should be disclosure and who has responsibility for it. These are some of the issues we have been working on. If we had had the time, we would have examined the legislation closely, and I am sure we would have proposed a number of amendments after extensive consultation. The majority parties should be aware of the growing interest in donations, and that relates to disclosure. Unless it is carried out properly, we will have no accurate idea of the donations made to various political parties. After a quick look at the bill, the Greens will support it, but it needs minor tightening up, and various loopholes and inconsistencies must be addressed. The amendments are not thorough—

Pursuant to sessional orders business interrupted.

QUESTIONS WITHOUT NOTICE

POLICE HIGHWAY PATROLS

The Hon. MICHAEL GALLACHER: My question without notice is directed to the Minister for Roads. Is the Minister aware of Acting Superintendent John Lipman's admission yesterday that highway patrol officers now only selectively patrol certain roads rather than routinely patrol every street? The Roads and Traffic Authority [RTA] commits in excess of \$10 million a year in enhanced funding to the highway patrol to increase visibility and coverage.

Given this funding commitment, has it expressed concern that the lack of blanket police patrols—the result of highway patrol officers being forced to undertake general duties—has led to a decrease in driver safety awareness? Has it expressed concern that the lack of blanket police patrols has added to community concerns about speeding and serious vehicle accidents, and has also added to the feeling of unhappiness among highway patrol officers that they are not focusing on their core responsibility of ensuring road safety?

The Hon. ERIC ROOZENDAAL: There were several questions, including one about the feelings of highway patrol officers.

The Hon. Michael Gallacher: It is very important. If they are not happy, they do not do their job well.

The Hon. ERIC ROOZENDAAL: Unfortunately the Leader of the Opposition has a habit of misrepresenting the views of the very hardworking police of this State. I will not give any response to the issues that fall outside my portfolio. Last year the road toll was the lowest since the Second World War. The Government is constantly striving to reinforce the message that speed is the number one cause of fatalities on our roads, followed by fatigue and alcohol. A number of road safety initiatives have been implemented, including the announcement of random drug testing. The RTA funds road safety initiatives with the NSW Police. The substantial reduction in the road toll since 1945 has occurred despite an increase of more than one

million vehicles on our roads, and that figure is increasing. That demonstrates this Government's serious commitment to the improvement of road safety.

Road safety is a community responsibility. The Government cannot get behind the wheel of every vehicle. That is why school children are educated about road safety before they reach driving age. They are involved in a number of program initiatives designed to encourage understanding of the dangers involved and their responsibilities when driving. Support groups have been established to encourage drivers to improve road safety. Of course, the Government is also improving roads to make them safer, identifying black spots and implementing the latest technology. The effectiveness of those strategies is demonstrated by the substantial decrease in the road toll since the Second World War.

I emphasise the important message that road safety is a community responsibility. The Government has implemented a number of initiatives. When I obtained my drivers licence some time ago, new drivers spent one year driving with P plates and were then unleashed on the roads. New drivers must now complete a three-year program involving much more education and driving logbooks. That has helped to contribute to driver understanding. Male drivers under the age of 25 unfortunately are disproportionately involved in road accidents and fatalities. It is important to recognise that this is a community responsibility. The Government works closely with NSW Police in encouraging the additional road safety measures that are implemented from time to time. There is a big commitment to using appropriate intelligence and strategies.

The notion of highway patrol vehicles patrolling every kilometre of the 17,776 kilometres of State roads is a nonsense. This is about a broad community strategy to keep the road toll down. The fact that we have substantially reduced the road toll since 1945 is a demonstration of this Government's commitment to improving road safety.

STATE BUDGET

The Hon. PETER PRIMROSE: My question without notice is addressed to the Treasurer. Can the Treasurer please update the House on the final 2005-06 budget result for New South Wales?

The Hon. MICHAEL COSTA: It is with great pride and pleasure that I update the House on the final budget result for 2005-06. We have recorded a surplus of just over \$1 billion. This is the tenth consecutive budget surplus delivered in New South Wales since 1996. It is an example that the Opposition should focus on; it is a demonstration of sound and responsible financial management. The result is \$390 million greater than the revised estimate in the 2006-07 budget. A number of factors contributed to the result, most of which relate to the State's better than expected economic performance, including the profits earned by government business enterprises and higher payroll tax receipts, which are a direct function of greater economic activity in the State.

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

The Hon. MICHAEL COSTA: Good on you, Madam President! It is about time. This is good news and that is why the Opposition is reacting this way. It has been talking down the New South Wales economy and the budget for months. I have quote after quote about the alleged dire budget circumstances facing the State. Today we can declare a surplus of more than \$1 billion. That is a great result! More importantly, our expenses came in right on target. We were able to control our expenses, which is something the Opposition could never do when it was last in government. It gave us six consecutive deficits. No wonder members opposite are so embarrassed. The Government has been able to achieve this result while cutting taxes by \$353 million.

More importantly, we maintained our triple-A credit rating in the process. Members opposite threatened that rating when they were last in government. This Government is spending more than \$10 billion a year, or \$27 million a day, on public infrastructure, yet displaying sound economic management and responsible government. This is a good day for New South Wales taxpayers. It is a bad day for the Opposition and the doomsayers opposite.

The PRESIDENT: Order! I call the Hon. Catherine Cusack to order for the first time.

The Hon. MICHAEL COSTA: Yesterday we had a former member of the Liberal Party describe them as turkeys waiting for Christmas. They even recognise they are the cheap turkeys.

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

The Hon. MICHAEL COSTA: The Iemma Government is very proud of its record on economic management. We have been able to maintain our triple-A credit rating, increase investment in essential public services, and at the same time deliver a significant surplus. The Government is committed to a charter of budget honesty. We believe that the Opposition should put its credentials on the record and sign up to the charter of budget honesty, to make sure we continue to maintain our triple-A credit rating and at the same time increase our expenditure on services. It is a good day for New South Wales, a good day for New South Wales taxpayers, but a very bad day for the Opposition.

The PRESIDENT: I welcome to the public gallery cadet journalists from Rural Press in New South Wales and Tasmania.

DROUGHT MITIGATION

The Hon. DUNCAN GAY: My question without notice is directed to the Minister for Primary Industries. Does he agree with views of farmers that politicians need to stop playing politics with the drought? Would the Minister agree that he is the worst offender, and indeed that his media releases over the last few days have offered no help but, rather, just criticism of the Federal Government? Why has the Minister's only response this week to the worsening drought been critical of the Federal Government? Why will the Minister not use the billion-dollar surplus announced today for drought mitigation? Does the Minister not think it is time he stopped playing politics? When will he take some responsibility for his position regarding the New South Wales drought?

The Hon. IAN MACDONALD: Duncan Gay the statesman! That is his little question. That is all he has to say. I have not played politics with the drought this week at all. What I have done is looked after the interests of the farming community of New South Wales.

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

The Hon. IAN MACDONALD: I have defended the interests of the farmers in New South Wales. Let me explain what has upset the Deputy Leader of the Opposition this week. Following the announcement on Monday of an enhancement of exceptional circumstances funding to 31 March 2008 in 15 areas in New South Wales, I have welcomed it. I have done so on radio and in my press release.

The Hon. Duncan Gay: No, you haven't. You've criticised it.

The Hon. IAN MACDONALD: I have not criticised it in any respect. I have pointed out an important issue that has been raised with me by a large number of farmers, many of whom probably were members of that once great National Party. They have raised with me the fact that across the whole of New South Wales, based on ABS statistics alone, there are 50,000 producers but only 3,911 of them obtain interest rate subsidies. In other words, 46,089 producers are not receiving any assistance with regard to interest rates. On Monday during a conference, Peter Costello was asked what was going to happen to farmers, following the statement by Mark Vale that interest rates should be delayed or put off because of their impact on the farming sector. I said that I support such a move. But when Peter Costello was asked the question during a press conference about interest rates and their impact on farmers, he said straight out, "But we have the interest rate subsidy component of exceptional circumstances that helps farmers."

The Hon. Melinda Pavey: And he doesn't control the Reserve Bank either!

The Hon. IAN MACDONALD: I am not arguing that. When I was asked about this, I said, "The real problem is that the interest rate subsidies that the Treasurer has raised federally only cover 3,911 of the farmers, so the other 46,089 producers in this State have no interest rate subsidy scheme to protect them if there is another interest rate rise." I believe that what I was doing was very statesmanlike. I was pointing out a problem with interest rate subsidies that the vast majority of farmers—in other words, 93 per cent—did not have available to them. I only pointed that out because we were anticipating a further interest rate increase, perhaps the fifth in the last year or so. It is anticipated before Christmas and will hit farmers at that time of year. I have been statesmanlike, and I have been active on behalf of New South Wales farmers and all the producers in this State. I call on the Deputy Leader of the Opposition, instead of asking silly questions like this, to join me in calling on the Federal Government to ensure that the interest rate subsidy component covers all New South Wales farmers.

MAROUBRA ASSAULTS

The Hon. Dr PETER WONG: My question without notice is directed to the Minister for Industrial Relations, representing the Premier. No doubt many honourable members are aware of the racially inspired attack on 13 young people in Maroubra last Friday. What investigations have been carried out and what preventative measures have the Government enacted to prevent further racial attacks.

The Hon. JOHN DELLA BOSCA: I thank the Hon. Dr Peter Wong for his very good question. I am aware, both through media reports and other means, that there was an attack on some young people in Maroubra in recent days. The Iemma Government has put in place an obvious range of preventative measures. I will leave the answer to the Minister for Police, who I am sure will provide the Hon. Dr Peter Wong with the details he has available to him at the moment, along with other information that will enable the Hon. Dr Peter Wong, on reflection, to realise that the Government is doing more than his question implies.

OBESITY

The Hon. GREG DONNELLY: My question without notice is addressed to the Minister for Health. What is the latest information on obesity and its cost impact on society?

The Hon. JOHN HATZISTERGOS: It is not an understatement to say that the New South Wales health system and, indeed, health systems across Australia are being placed under unprecedented strain. A report released today by Access Economics and commissioned by Diabetes Australia reveals the extent of that strain, which is estimated at \$21 billion as at 2005. The report vindicates recent criticisms by the Australian Medical Association of the Commonwealth's Health budget, which it describes as "a missed opportunity at a time of huge Budget surplus". Today's report by Access Economics describes the Howard Government's plan for health as "an incoherent mix of programs with no common theme". The report rebukes the Commonwealth for being "slow moving" when it comes to seizing opportunities for relieving the colossal pressure that obesity places on public hospitals.

I have previously updated the House on the New South Wales Government's leadership in putting obesity on the national agenda through our Childhood Obesity Summit, our pioneering strategy "Prevention of Obesity in Children and Young People: New South Wales Government Action Plan 2003-2007", and our record spending on obesity prevention in the 2006 budget. However, given that the prevalence of obesity—which is now afflicting 3.24 million Australians—could more than double within 20 years if current trends persist, we need more leadership from the Federal Government, rather than it posturing and pretending that renewing funding for old programs is good news.

Moreover, the report by Access Economics sheds an ironic light on John Howard's letter to the Queensland Premier dated 20 July 2006. At the Australian Health Ministers' Council in Brisbane on 27 July 2006, the health Minister participated in discussions relating to the setting up of a task force to look at the question of marketing food to young people in particular. Right at the end of the conference the Minister produced a letter from the Prime Minister, who told Australia's health Ministers that junk food advertising and its well-documented effects on children is not the concern of health Ministers. On the contrary, restricting the advertising of energy-dense, nutritionally poor products has the potential to achieve a profound change in the attitude and food choices of children and their parents. As part of a raft of measures and suitable interventions addressing obesity in the population context, it is absolutely the core business of Australia's health Ministers to discuss these issues.

Is it any wonder that for the second year running Pester Power Awards have been handed out in the Parents Jury Children's Television Food Advertising Awards to marketers of junk food? People with obesity have a higher chance of suffering type 2 diabetes, cardiovascular disease, heart disease, blood pressure, strokes and cancer. As I said, the report estimates that the total cost was \$21 billion in 2005: \$1.7 billion in lost productivity, \$873 million in health costs, \$804 million in carer costs, \$358 million in lost taxes, welfare and government payments, \$41 million in indirect costs and a massive \$17.2 billion in the disease burden to individuals. This is not something that can be solved purely on a State and Territory level; it has to be addressed across jurisdictions.

Regrettably, the Commonwealth's position seems to be one of raising the issue, showing concern that the figures are troubling and then doing nothing about resolving it. Many of the interventions that can make a difference in attitudes towards obesity, exercise and junk food require a national approach. Take the idea of food

labelling: this proposal to represent energy density of food or drink in terms of the amount of activity required to expend the energy contained in a typical serve is not achievable on a State basis. I proposed this at the health Ministers' conference and I was told by Minister Abbott that I was promoting anorexia.

MS ROSEANNE CATT QUASHED CONVICTIONS

The Hon. PETER BREEN: My question without notice is directed to the Minister for Commerce, representing the Attorney General. Is the Minister aware that a letter the Attorney General wrote to the *Blue Mountains Gazette* and published on 4 October 2006 contains false and misleading information regarding a decision by the Court of Criminal Appeal to quash six of eight convictions obtained by the Director of Public Prosecutions against Roseanne Catt? How can the Attorney General say the Court of Criminal Appeal ordered a retrial when paragraph 234 of the court's judgment said it is for the Director of Public Prosecutions and not the court to determine whether a new trial should take place? How can the Attorney General say that Roseanne Catt has not been vindicated or not found to be the victim of a conspiracy when paragraph 40 of the court's judgment says the evidence which is now available could support her submission that she was the object of a conspiracy between Detective Sergeant Thomas and Barry Catt? When will the Minister recognise that Roseanne Catt has been wrongly convicted by fraudulent police evidence and that a fraudulent claim of \$89,000 has been paid by the Victims Compensation Fund?

The Hon. JOHN DELLA BOSCA: It is a tribute to the Hon. Peter Breen that he is always very consistent about these matters. I am not aware of the Attorney General's letter to the *Blue Mountains Gazette*. The honourable member is probably asking me about my level of awareness of the facts in this matter, but it seems to me to steer dangerously close to asking me for a legal opinion. Notwithstanding all of that, I am sure the Attorney General will be happy to provide a full and adequate answer in the fullness of time.

PRIVATELY FINANCED PROJECTS CONTRACT SUMMARIES

The Hon. GREG PEARCE: My question is directed to the Minister for Health. Is the Minister aware that the Carr-Iemma Labor Government, working with government guidelines for privately financed projects, requires that agencies submit a contract summary to the Auditor General within 30 days of the contract becoming effective and that the audited contract summary be tabled in Parliament within a further 90 days? Is the Minister aware that a contract for Newcastle Community Health Centre was signed on 6 September 2005 and that more than a year later the contract has not been tabled in Parliament or produced to the public? Is this simply a matter of the Minister's incompetence or is it a concerted attempt by the Government to avoid public scrutiny and transparency?

The Hon. JOHN HATZISTERGOS: I am not sure the factual basis that prefaced that question is accurate, but I will get some advice and come back on it.

SOUTH-WEST STATE INFRASTRUCTURE

The Hon. EDDIE OBEID: My question is directed to the Minister for Roads. Would the Minister provide the House with the latest information on efforts to improve infrastructure in the State's south-west?

The Hon. ERIC ROOZENDAAL: I thank the honourable member for his question and commend him for his interest in this important matter. The Iemma Labor Government is making real progress in delivering substantial local infrastructure projects that are making an enormous difference to rural and regional communities.

The PRESIDENT: Order! I call the Hon. Charlie Lynn to order for the first time.

The Hon. ERIC ROOZENDAAL: The New South Wales Government, in collaboration with the Federal and Victorian governments, has delivered the Euston-Robinvale Bridge connection, greatly improving freight and public travel between New South Wales and Victoria.

The Hon. Catherine Cusack: We can't hear you.

The Hon. ERIC ROOZENDAAL: If the honourable member remained silent, she would be able to hear me. The completion of this new Murray River crossing was celebrated earlier this month with local communities and the member for Murray-Darling, Peter Black, who has worked hard to see the new crossing

built. Peter Black is an absolute toiler for his electorate. On behalf of New South Wales, my ministerial colleague the Hon. Tony Kelly officially opened the crossing in his capacity as the Acting Minister for Roads, and Minister for Rural Affairs.

The new bridge over the Murray River is significantly less vulnerable to flooding and will improve safety and reliability for the crossing. Overall, the project includes a high standard road alignment on the approaches to the main bridge and the replacement of two approach bridges in the New South Wales floodplain. The jointly funded \$51 million bridge is an excellent example of the positive outcomes that can be achieved with good co-operation between governments. The New South Wales Government is proud to have contributed \$21 million to that funding.

As I mentioned, the project will significantly improve freight and produce movements across the border. Strategically located to link the Murray Valley Highway in Victoria to the Sturt Highway in New South Wales, it is the primary economic link from Sunraysia and south-western New South Wales to the ports of Geelong and Melbourne. This is about improving trade routes and stimulating the regional economies of New South Wales and Victoria. The new river crossing and approach roads will increase road safety and reduce travel time and transport operating costs.

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

The Hon. ERIC ROOZENDAAL: It has eliminated old narrow bridges, rough surfaces and restricted travel lanes, benefiting not only local communities but also interstate travellers and freight businesses.

The PRESIDENT: Order! I call the Hon. Catherine Cusack to order for the second time.

The Hon. ERIC ROOZENDAAL: In addition to the main structure over the Murray, this project also includes two new northern approach bridges crossing the New South Wales floodplain, further improving safety and reliability for the crossing. It also provides a separate pathway for pedestrians and cyclists on the main bridge and a substantially increased clearance for river craft to pass beneath, removing the need for an opening span.

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

The Hon. ERIC ROOZENDAAL: The design of the bridge also delivers a number of environmental benefits, including reduced noise pollution and energy consumption for vehicles avoiding the rough surface and stop signals associated with the old bridge, as well as installing silt traps to reduce sediment run-off into the Murray.

SUPPLEMAX TESTOSTERONE ADVERTISEMENTS

The Hon. ROBERT BROWN: My question is addressed to the Minister for Health. Is the Minister aware of newspaper advertisements by a company called Supplemax advising men over 40 that they might need testosterone supplements?

[Interruption]

Madam President, this is a serious question.

The PRESIDENT: Order! I will not continue with question time until the hilarity and giggling emanating from the Opposition benches ceases. The Hon. Robert Brown has the call.

The Hon. ROBERT BROWN: Do these advertisements state, "A brand new daily treatment program could revolutionise life for the thousands suffering health problems associated with low levels of the male hormone, testosterone"? Do the advertisements offer consultation and diagnosis by telephone? Does testosterone, in fact, feed potential prostate cancer, especially in men over 40, who are entering the dangerous age zone for prostate cancer? If so, could testosterone supplements be dangerous for men at risk? Will the Minister investigate the accuracy and medical credibility of these advertisements, with a view to having them withdrawn?

The Hon. JOHN HATZISTERGOS: The last part of the question seeks an opinion. I have said on many occasions that I am particularly well qualified to give opinions about many different issues but I am actually not a doctor so I do not have the capacity to comment or give anecdotal advice on the accuracy or otherwise of the substance of what the honourable member is asking me. The first part of the question, which related to an advertisement or promotion of a product, is more appropriately a matter for the Minister for Fair Trading and I will refer it to her for an answer.

DEPARTMENT OF JUVENILE JUSTICE ABORIGINAL YOUTH OFFICERS

The Hon. CATHERINE CUSACK: My question without notice is directed to the Minister for Justice. Given the high proportion of Aboriginal youth in custody or under community-based supervision orders being administered by the Department of Juvenile Justice, is the department seeking to employ more Aboriginal youth officers? If so, is there a shortage of suitable candidates? Has the Department of Juvenile Justice encountered problems whereby a strict application of criminal record checks have prevented the employment of potentially outstanding Aboriginal staff who could otherwise serve as positive role models for young Aboriginal offenders? Does the department have a special Aboriginal employment policy to address this problem and, if so, will the Minister outline it to the House?

The Hon. TONY KELLY: The Department of Juvenile Justice is one of the leading employers of Aboriginal and Torres Strait Islander staff in New South Wales, only surpassed by the Department of Community Services. Nearly 10 per cent of all Department of Juvenile Justice employees are Aboriginal people. This is one of the highest levels in the New South Wales public service and is testament to the good work of Department of Juvenile Justice managers, who actively encourage, support and value the very specific skills that Aboriginal people bring. As pointed out by the Hon. Catherine Cusack, on average about 45 per cent of detainees in juvenile justice centres are Aboriginal, so the skills of Aboriginal people are certainly needed.

The department has lifted the number of Aboriginal staff through its Aboriginal and Torres Strait Islander Recruitment and Retention Strategy 2006-2010. When dealing with criminal records checks the Department of Juvenile Justice operates in strict compliance with the *New South Wales Government Personnel Handbook*, which clearly sets out how New South Wales government departments apply criminal record checks. It does not provide any special considerations relating to race. Section 2-15.4 outlines the factors to consider in determining cases as follows:

The main factors to be taken into account in determining individual cases are:

1. The nature of offence(s)

Any decision on employment should have regard to the relationship of the offence(s) to the particular position for which the applicant is being considered.

2. The number of offences

An accumulation of individual minor offences may be sufficient to warrant rejection. The question to be decided is whether or not the offences establish a pattern of behaviour which renders the applicant unsuitable for employment.

3. The severity of the punishments

The severity of the punishment imposed may be taken into account.

4. The age at which offences are committed

The age at which offences are committed can be an important factor. Certain offences committed during youth may be viewed in an entirely different light to the same offences committed by a person of mature years.

The handbook goes on to state that consideration should be given to any mitigating or extenuating circumstances that might be revealed in relation to the offence committed. These might include provocation, effect of alcohol, peer group pressure at the time of the offence and the circumstance in which the offence was committed. The handbook also draws attention to the relevance of general character since the offence or offences were committed. The department makes no apology for applying stringent standards in considering whether to accept persons with criminal convictions of any kind into employment. I reiterate that the department is attempting to increase the number of Aboriginal and Torres Strait Islander people in its employment because of the significant factor that 45 per cent of detainees are of Aboriginal descent.

WORKCOVER AND MOTOR ACCIDENTS SCHEMES MODIFICATION PROPOSALS

The Hon. AMANDA FAZIO: My question is directed to the Minister for Commerce. Can the Minister inform the House about proposals to modify the WorkCover Scheme and the Motor Accidents Scheme?

The Hon. JOHN DELLA BOSCA: Members may be aware of a campaign to make the WorkCover Scheme and the Motor Accidents Scheme more litigious. It has been launched by four organisations representing lawyers and is a campaign about which the New South Wales Opposition, until recently, has been silent. The proposals are not in the interests of New South Wales employers, the New South Wales economy, injured workers or motorists. Rather, they are driven by the desire of lawyers to earn more fees. Let me remind honourable members about the current WorkCover Scheme. In just 12 months the Iemma Government has twice increased impairment benefits to injured workers, including a 10 per cent across-the-board rise from 1 January. We have also introduced an apprentice incentive scheme and reduced premiums to business by 20 per cent.

How could we afford to increase benefits and cut premiums? We could do so because we have saved over \$1.6 billion in legal costs. Injured workers are getting immediate medical treatment and assistance to return to work. Most now get payments within seven days without the need for years of debilitating legal delays and argument. PricewaterhouseCoopers has calculated that the proposals apparently supported by the spineless New South Wales Opposition would return the scheme to deficit unless workers compensation premiums were doubled.

I remind the House that yesterday in discussing these proposals the Hon. Robyn Parker made an interjection about the New South Wales workers compensation scheme, a scheme that is delivering a \$560 million reduction in premiums to New South Wales businesses and benefit increases to injured workers. She interjected, "Injured workers are worse off," an interjection that is not only demonstrably wrong but also reveals that the Debnam Opposition is too spineless to stand up to a lobby group looking for higher fees. And it has form. In the early 1990s the Coalition nearly bankrupted the scheme when it caved in to almost identical demands. Its policy shift created a \$3.2 billion deficit. In opposition the Coalition played no part in rescuing the scheme, abandoning business and abandoning workers. Now the Coalition is at it again, risking the prosperity of thousands of New South Wales businesses, and risking payments and immediate medical care to thousands of injured workers.

Let us also examine the success of the New South Wales green slip scheme. Under the previous Greiner scheme, insurers made profits of up to 55 per cent in one year. Premiums paid by New South Wales motorists were rising uncontrollably. Under our scheme, premiums have fallen by \$200 in real terms—\$200 back in the pocket of the average motorist. More of the premium goes to the seriously injured, and we are introducing historic new benefits for children and the catastrophically injured. For the first time in the State's history, we have a scheme that can offer no-fault coverage—something that was never available before.

But what if we implemented the proposals apparently supported by the New South Wales Opposition for the green slip scheme? Taylor Fry calculates that the average green slip would rise by \$100. The New South Wales Opposition is supporting proposals that would return us to systems focused not on care for those who are injured, not on health outcomes for workers or motorists, but on systems driven by costly and unproductive litigation. It would increase the price of green slips and double workers compensation premiums, with the associated loss of employment and business opportunities. It is further evidence of the risks posed to the New South Wales economy by the spineless Debnam Opposition.

SENTINEL EVENTS REVIEW COMMITTEE REPORT

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: My question is directed to the Minister for Health. On 6 June 2006 I asked the Minister about the release date of the 2005 Sentinel Events Review Committee report on deaths of people within the mental health system in New South Wales. He acknowledged that the 2004 report was not released until December 2005 but said that the 2005 report was likely to be released in August or September this year. It has not yet appeared. When will this report become available and will the Minister give a commitment that this committee will continue to function and produce its report in an unbiased and transparent manner?

The Hon. JOHN HATZISTERGOS: I reject entirely the implications in the question, particularly the last part of it, which somehow insinuates that the report will be contaminated by some involvement, presumably

on my part or that of the Department of Health. The Sentinel Events Review Committee is an independent ministerial committee that was granted special privilege under section 23 of the Health Administration Act. I have no control over the content of the report. The committee is chaired by Professor Peter Baume, was reappointed by me in September 2005, and is currently still working on its third report.

As I said, I have no control over the content of the report. I also have no control over the timing of the report or its receipt by the Government. At this stage I have not seen it, I do not know what is in it and I await its receipt. When it is received it will be responded to in the same way as the 2004 report was responded to, and it will be released, together with the response. That is the way things work. On the last occasion the honourable member asked me a question about this matter he asked for a time and I indicated that I needed to get some advice on that but my understanding was that it would be later this year, around August or September. I said the report had to be received and then it would be responded to, but it would be some time later this year. That was the best estimate I could provide in response to the honourable member's question. I reiterate that I have no control over the report's content. I have not received it. When it is received it will be responded to.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I ask the Minister a supplementary question. How long is it likely to be between the time he receives the report and the release of the response? What will be the time lag?

The Hon. JOHN HATZISTERGOS: Once again the honourable member is trying to pin me to a time limit. I do not have control over the content of the report or the timing of it, but in deference to the honourable member's position I will arrange for a copy to be sent to his home.

PACIFIC HIGHWAY UPGRADE AND AUSLINK FUNDING

The Hon. MELINDA PAVEY: My question without notice is directed to the Minister for Roads. Is the Minister aware that the Federal Government, under the Auslink Agreement, transferred \$296.5 million for the 2005-06 financial year and \$1043.9 million for this financial year for the upgrade of the Pacific Highway? How much of that money, from both financial years, has been spent so far by his department on the Pacific Highway upgrade?

The Hon. ERIC ROOZENDAAL: The Pacific Highway is one of the biggest infrastructure projects undertaken in this country. The Pacific Highway is a 677-kilometre stretch of road from Hexham to the Queensland border. Over the past 10 years the New South Wales Government has funded \$1.66 billion, more than double the Federal Government's \$660 million. Under the \$2.3 billion allocation to build dual carriageways, 45 projects have now opened to traffic and motorists benefit from 233 kilometres of four-lane dual carriageway. The upgrades have sliced more than an hour off the journey from Hexham to the Queensland border for cars, and one hour and 20 minutes off the time for heavy vehicles. This is a considerable benefit to the New South Wales economy.

The Hon. Melinda Pavey: The Minister should take the question on notice if he does not have an answer.

The Hon. ERIC ROOZENDAAL: The honourable member should really listen before yelling out. A major planning milestone in the multi-billion-dollar Pacific Highway upgrade was reached when the final preferred routes for the remaining sections of the highway at Tintenbar to Ewingsdale and Wells Crossing to Iluka were determined. When it comes to the Pacific Highway, people are sick and tired of politicians fighting; communities want certainty. It is expected. I am disappointed by the constant political point scoring by the Opposition in regard to this matter, when it really should commit to working with the Government to resolve the issue. The entire 677 kilometres of the Pacific Highway is now either completed, is under construction, or has had a preferred route identified. I will work co-operatively with my Federal Government counterpart on funding so that we can get on with the job of bringing the Pacific Highway dual carriageway to motorway standard.

The Hon. Melinda Pavey: Point of order: I appreciate the Minister's comments and the preamble to the question I asked but, in the two minutes remaining, I would really like an answer to my question about how much of the money provided by the Federal Government has been spent on the Pacific Highway.

The PRESIDENT: Order! Perhaps if the member did not interject continually she would get to hear the answer. The Minister has the call.

The Hon. ERIC ROOZENDAAL: I would have thought the honourable member would have learnt from the comments of Steve Pringle about the disarray—

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

The Hon. ERIC ROOZENDAAL: I would have thought that what Steve Pringle did yesterday would have taught honourable member opposite a lesson: to sit there quietly and listen rather than act like a rabble. It is not enough that they lost Dubbo, it is not enough that they lost Pittwater—

The Hon. Don Harwin: Point of order: The Minister has been emboldened by your previous ruling and is now being completely irrelevant as opposed to just giving an extensive preamble that has nothing to do with the question.

The PRESIDENT: Order! I remind the Minister of the constant ruling of President Johnson that interjections are disorderly and should be ignored. I remind the Minister also that his answer must be relevant.

The Hon. ERIC ROOZENDAAL: I have been called a lot of things but rarely "emboldened". More than 10 per cent of the New South Wales roads budget will be spent on projects to upgrade the Pacific Highway. A total of \$360 million in 2006-07 has been allocated for construction, planning and maintenance work on the highway. As I said earlier, it has been the largest single construction program in New South Wales for the past 40 years. Some key funding commitments for construction in 2006-07 are \$100 million for Brunswick Heads to Yelgun; \$75 million for the commencement of the Bonville Bypass; \$40 million for the start of sections two and three between Karuah and Bulahdelah; \$20 million for planning and preconstruction earthworks on the Ballina Bypass; \$10 million for completion of Karuah to Bulahdelah, section one; and \$10 million for completion of Bundacree Creek to Possum Brush, near Nabad.

The Hon. MELINDA PAVEY: I ask a supplementary question of the Minister: How much of the money that has been transferred from the Commonwealth Government to the Roads and Traffic Authority has been spent?

The Hon. ERIC ROOZENDAAL: Key funding commitments for planning in 2006-07 are: \$6 million for Bulahdelah Bypass; \$4 million for Sapphire to Woolgoolga; \$3.5 million for Tintenbar to Ewingsdale; \$3 million for Coopernook to Moorland; \$2.5 million for Banora Point; \$2.5 million for Coffs Harbour Bypass; \$2.5 million for Kempsey to Eungai; \$2 million for Oxley Highway to Kempsey; more than \$12 million to continue planning for Moorland to Herons Creek, Macksville to Urunga, Woolgoolga to Wells Crossing, Wells Crossing to Harwood and Woodburn to Ballina. The planning process involves extensive community consultation and preliminary field investigations to contribute to concept design and environmental assessment.

The Hon. Melinda Pavey: How much have you spent?

The Hon. ERIC ROOZENDAAL: This all costs money. The honourable member does not understand her own question. The multi-million dollar funding commitment in the 2006-07 State Budget forms part of the new three-year, \$1.3 billion State-Federal Pacific Highway Program. The 2006-07 roads budget includes \$60 million out of the additional \$320 million pledged over the next three years by the New South Wales and Australian governments to Pacific Highway upgrade projects.

FOOD SAFETY

The Hon. HENRY TSANG: My question is directed to the Minister for Primary Industries. Will the Minister inform the House about what the State Government is doing to crack down on unsafe food businesses in New South Wales?

The Hon. IAN MACDONALD: As the House knows, the State Government showed it was serious about food safety when it established the New South Wales Food Authority in April 2004. The Food Authority has been at the forefront of our efforts to make sure New South Wales consumers continue to get safe and correctly labelled food. I can report that over the past 12 months a record number of businesses have been fined or prosecuted by the authority for misleading consumers or selling unsafe food. I am pleased to report to the House that the Food Authority has been very active over the past 12 months in cracking down on unscrupulous and unsafe food businesses right across the State. Our position is clear: we will not tolerate rogue businesses that

rip off consumers through misleading or deceptive descriptions of food or those that put consumers at risk by providing unsafe food.

I inform the House that fines and costs totalling \$183,300 have been handed out to businesses that misled consumers or sold unsafe food as part of a State Government crackdown on dodgy operators. While consumers can be confident most food businesses are doing the right thing, the State Government will continue to target those who rip off consumers or endanger public safety through unsafe food. The New South Wales Food Authority has continued to spearhead the State Government's on-going commitment to crack down on these unscrupulous businesses. As a result, dodgy operators have been forced to pay \$109,000 in fines plus costs to the Food Authority over the past 12 months for a range of offences, predominately for misleading consumers about the origin of their food and other food substitution rorts.

Our position is clear. Consumers have a right to know what they are buying and where their food comes from, and we will make sure our truth in labelling laws are followed. The Food Authority has taken evidence for a further nine prosecutions for a range of offences from illegal use of the preservative sulphur dioxide in fresh mince, to fish and meat substitution and labelling breaches. I note the recent case of two Sydney butchers who have been ordered to pay more than \$2,000 for illegally using a preservative to disguise old and sub-standard meat at a butchery in western Sydney. A routine inspection revealed sulphur dioxide had been illegally added to mince meat. Sulphur dioxide is used to turn old or sub-standard meat an appealing bright red and some unscrupulous retailers use it to disguise poor quality or old product. Not only is this practice ripping off consumers who have been duped into buying old and substandard mince, but it can also be highly dangerous for people who are allergic to sulphur dioxide because they have no way of knowing it is present in meat products.

Chief Industrial Magistrate Hart imposed a \$2,000 fine for four offences relating to the illegal use of sulphur dioxide and awarded costs—which are substantial. Separately, the manager of the butchery was also fined \$2,000 and ordered to pay costs for illegally adding sulphur dioxide to fresh mince. Food Authority inspectors routinely test for sulphur dioxide whenever they walk into a butcher shop and those who are doing the wrong thing will be caught.

I am pleased to report, though, that we have seen this unscrupulous practice drop from a disturbing 58 per cent a month several years ago to just 2 per cent. I am sure the House will agree that this is a great result. In addition, I can report that the Food Authority has issued 135 penalty notices worth \$74,000 to businesses that failed to comply with the Food Act. Penalty notices are another tool available to the Food Authority to make sure food businesses do not try to rip off consumers or sell unsafe food. More serious breaches, however, will continue to be dealt with by the courts. I am pleased to say that our ongoing surveillance shows that the industry and most food businesses do the right thing, but the rogue operators who think they can get away with misleading consumers should think again.

The Food Authority will continue to mount food safety operations similar to the joint campaign on black market fishing it recently conducted with the Department of Primary Industries. Once again, I stress that overwhelmingly the industry and the majority of food businesses in this State are doing the right thing, and they are to be congratulated.

GROUNDWATER USE IN MINING

The PRESIDENT: I call Mr Ian Cohen.

The Hon. Michael Costa: Where are my sunglasses!

Mr IAN COHEN: As Treasurer, the Hon. Michael Costa might be able to buy style; for others style comes naturally. My question is directed to the Minister for Natural Resources. How is groundwater intercepted and used by mining operations managed under the Water Management Act 2000?

The Hon. IAN MACDONALD: In many ways. We would have to deal with specific examples. I will take the question on notice and give the honourable member a full reply.

NELSON BAY ROADWORKS

The Hon. ROBYN PARKER: My question is directed to the Minister for Roads. Why has it taken six years for work to commence on the six-kilometre dual carriageway extension on Nelson Bay Road at Bobs

Farm? Six years ago the Government committed to an extension of this road. Why is only 1.5 kilometres being worked on in view of the high accident rate, including a death on this road a week ago?

The Hon. ERIC ROOZENDAAL: I will take the question on notice and provide a specific answer. Obviously, all road fatalities need to be carefully reviewed, and that is the job of the coroner. I do not want to make any comment about the fatality mentioned but I remind the House and the public that the major causes of fatalities in this State are speed, alcohol and fatigue.

RURAL FIRE SERVICES FUNDING

The Hon. TONY CATANZARITI: Can the Minister for Emergency Services update members on funding for Rural Fire Service brigades ahead of this summer's fire season?

The Hon. TONY KELLY: I thank the honourable member for his question and commend him for his continued interest in the New South Wales Rural Fire Service. Rural fire brigades around New South Wales will share more than \$168 million in funding this year, as our volunteer firefighters head into what is shaping as a severe bushfire season. Rural Fire Service brigades around the State are this week receiving their 2006-07 funding allocations from the record bushfire budget. I should take a moment to remind members that this year's budget—the Rural Fire Fighting Fund—represents an increase of \$27.9 million, or 20 per cent, over last year's previous record funding. I thank the Treasurer very much for this.

[Interruption]

The Coalition continues to carp on about Rural Fire Service funding.

[Interruption]

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

The Hon. TONY KELLY: Funding has increased by a massive 231 per cent since the Coalition was in power, since the allocation of 1994-95. This Government has now invested unprecedented funding in the Rural Fire Service, more than \$1.2 billion over 12 years. Coalition members do not want to hear the good news.

The Hon. Michael Gallacher: You will not answer the question.

The Hon. TONY KELLY: The question was asked by a Government member. If the Leader of the Opposition wants to ask me a question about the Sky Crane, I will happily answer that question as well. Based on available evidence, South Eastern Australia is facing one of its most critical fire seasons in recent times. We saw the first serious fires of the season in September in areas including the Hawkesbury, North Baulkham Hills, Newcastle, Wollondilly and the Shoalhaven. The ongoing drought, the early onset of warm weather and the expectation of more extreme fire days all add weight to the proposition that the season ahead will be challenging. So the \$168 million record budget is good news for our volunteer firefighters. It will help ensure that they have high-quality bushfire tankers, upgraded stations and fire control centres, personal safety equipment, training and the operational support they need for their vital work.

Ensuring that our volunteer firefighters are well equipped and safe as they work to protect the community will, as always, be the highest priority this summer. This year's Rural Fire Fighting Fund includes: \$34.1 million for 260 new or refurbished bushfire tankers; \$51.7 million in brigades equipment, maintenance and operating costs; and \$10 million to build and upgrade brigade stations and fire control centres. This includes the first instalment of \$1.8 million towards the cost of a new fire control centre in the Illawarra to co-ordinate bushfire emergency operations in the Wollongong, Shellharbour and Kiama fire districts. The new facility will be built near the Albion Park Rail Airport. Following strong representations by the member for Kiama—he took me to Robertson where I viewed the Rural Fire Service shed first-hand—members of the Robertson Rural Fire Service brigade will receive a brand new station, at a cost of \$100,000.

A new fire control centre and training centre also will be developed at Orange, providing a base for volunteer firefighters to hone and develop their fire fighting and emergency management skills. This year's budget includes the first \$500,000 towards the \$2 million cost of the complex, which is being built in a partnership with Orange City Council, led by a very good mayor, John Davis. The Government has given a

commitment to support the Rural Fire Service and we have backed that commitment with record levels of funding. *[Time expired.]*

POVERTY AND UNEMPLOYMENT

Ms SYLVIA HALE: Is the Minister for Industrial Relations aware of the Premier's speech earlier today to mark Anti-Poverty Week when he said that his Government is committed to working against poverty, social exclusion and unemployment? Is the Minister also aware that unemployment in New South Wales is at 5.5 per cent, higher than the national average? What is the Government doing to assist young people and older unemployed people from communities where poverty is entrenched to undertake apprenticeships and employment within the State Government and within State-owned utilities and services?

The Hon. JOHN DELLA BOSCA: It seems that the honourable member is trying to cover the field in her question. Maybe the Greens are taking a new universalist approach to politics. Part of her question endorses the false, John Howard view of the New South Wales economy. The other part of her question would allow me to speak about some of the initiatives that the New South Wales Government has taken recently in relation to apprenticeships. The most immediately valuable one is our announcement that we will not be collecting workers compensation premiums from employers on that part of the payroll represented by apprenticeships. That is a very important incentive to employers to employ more apprentices. Indeed, objective estimates of the increased number of apprentices as a result of the initiative are about 1,000 next year: that is, more than 1,000 apprentices every year as a result of a Lemma Government initiative taken in the last few weeks.

The second initiative—and the honourable member should be aware of this, but perhaps she is not—is that State-owned corporations in New South Wales are among the most significant employers of apprentices in this State and, indeed, in the country. EnergyAustralia employs apprentices in areas of greatest skill shortages, such as the higher end of the mechanical and electrical trades. A number of other New South Wales energy corporations are among the major employers of apprentices anywhere in the nation. Of course, water utilities are also major employers of apprentices, and the Government is reviewing ways in which those efforts can be bolstered. There is evidence of the market's failure to address skills shortages in areas such as stonemasonry. For two years in a row, my stone yard at Alexandria—I should say the Department of Commerce's stone yard, or the people's stone yard—

[Interruption]

Yes, the People's Republic of New South Wales' stone yard! For two years in a row apprentices at the stone yard have been awarded the Apprentice of the Year. One of the winners is a young woman who initially obtained a first-class honours degree in fine arts from Sydney University. Having achieved that excellent academic result, she went into the practical area of stonemasonry and subsequently won that award.

[Interruption]

I do not know whether she is working on a headstone for the Australian Democrats, but she is an outstanding craftswoman and a tribute to her gender and her trade.

I suggest that if honourable members have further questions, they place them on notice.

NEWCASTLE COMMUNITY HEALTH CENTRE CONTRACT

The Hon. JOHN HATZISTERGOS: The Hon. Greg Pearce asked me a question earlier about the Newcastle privately financed project. I am advised that the contract summary for the health centre was placed on public exhibition in accordance with the Working With Government Guidelines. I told the honourable member that he was wrong. He can find a copy of the contract summary by simply clicking on the New South Wales Government's e-tendering web site. I suggest that he visit the web site, which says that, to view a contract summary, the reader should click a button and the summary will appear. The honourable member should get someone else to write these questions and not embarrass himself.

Questions without notice concluded.

UNPROCLAIMED LEGISLATION

The Hon. Eric Roozendaal tabled a list detailing all legislation unproclaimed 90 days after assent as at 17 October 2006.

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

BUSINESS OF THE HOUSE

Postponement of Business

Committee Reports Orders of the Day Nos 1 to 29 postponed on motion by the Hon. Peter Primrose.

ELECTION FUNDING AMENDMENT BILL

Second Reading

Debate resumed from an earlier hour.

Ms LEE RHIANNON [2.31 p.m.]: Normally at 2.30 p.m. on Wednesdays the House deals with committee reports. However, the Government Whip has just moved, and the House has agreed, to postpone them. We had not had warning that that would happen. I believe that the reason it has happened is to rush this bill through the Parliament. I am not sure why the Government is doing that; we have had to consider the bill so quickly. I want to place that on record because a number of concerning incidents have occurred in the way the bill has been dealt with in both the lower House and the upper House.

The crossbenchers were briefed on the bill only yesterday, and the Legislative Review Committee has not had an opportunity to analyse it. The bill was introduced in the Legislative Assembly only yesterday. The Government and the Coalition joined together to suspend standing orders to introduce the bill, then the Government shut down the debate before most, or perhaps all, of the Independents could speak to it. This is of considerable concern, particularly given that the bill is about making the democratic process work more efficiently and increasing transparency in terms of disclosure. Why has debate been shut down on such an important issue? It is a contempt of democracy that the bill is being swept through the Parliament without sufficient time for analysis and consultation.

The Hon. Duncan Gay: Debate isn't being shut down.

Ms LEE RHIANNON: I acknowledge the interjection by the member Mr Duncan Gay. I have just outlined how the bill was shut down in the Legislative Assembly. Indeed, I understand that even some of his colleagues' acknowledged that and saw it as a problem. If the member did not listen to his colleagues' concerns, that is unfortunate. I thought he would have been aware of them and would have been concerned about the matter. But, given his interjection, it does not sound as though he was.

The Greens support the amendment regarding the Electoral Funding Authority. However, I wish to place on record that, because the bill has been rushed through the Parliament, I am suspicious about what the Government is doing and why it is doing it. As I have said, the Greens have long campaigned for greater disclosure of political donations and greater transparency in election funding. The amendment gives increased powers to the Electoral Funding Authority to enable it to investigate failure to disclose electoral expenditure. Specifically, the amendment gives the authority the power to demand from a third party the contact details of people who have contributed money, if the authority reasonably suspects that they have failed to disclose political donations or electoral expenditure.

I understand that this power will be able to be exercised only in circumstances where the authority has a reasonable suspicion that the person may have information that will identify the person who incurred the electoral expenditure. This is a very important amendment. I have just received information from Mr Alex McTaggart, the member for Pittwater, who was unable to make a speech last night because the bill was rushed through the Legislative Assembly and debate was stopped. The member for Pittwater has done the sums in relation to the recent Pittwater by-election. The Liberals spent \$370,000 on that campaign, of which more than

\$160,000 comprised donations. He says that tens of thousands of dollars were donated by developers and real estate agents—most of whom were not even from north of Sydney Harbour.

Importantly, there was also a donation of \$18,166 that was omitted from the State Electoral Office [SEO] return. Although I understand that this was later picked up by SEO officers. The bill would address situations, like in the Pittwater by-election, where donations are made and not disclosed or are sheeted back to an individual or organisation. The Greens support this amendment, but—

The Hon. Duncan Gay: Did he declare his help from the Labor Party?

Ms LEE RHIANNON: Yes, he did declare everything. And you know you have not got anything on him. If you want to come in here and defend the Liberals—

The Hon. Duncan Gay: You know he is supported by the Labor Party, through the back door. If you want to bring in this stuff, you've got to have something to back it up.

Ms LEE RHIANNON: Would you like to get any more on the record? What the member Mr Duncan Gay has just shown is how close he is to the Liberals. We have often heard him in this place really go on—

The Hon. Duncan Gay: Headline: "Leader of The Nationals close to the Liberals"!

Ms LEE RHIANNON: Yes, precisely. These are the people who complain about the Greens just because of a few preference decisions, yet they are so disloyal and so dishonest to their electorates. Time and again The Nationals in this place simply deliver for the Liberals, at both the State and Federal level. Yet when they are out in the regional areas of New South Wales they run the line, "You have to elect us. We'll go in there. We'll stand up to the Liberals. We'll deliver for country people." But they do not; they sell out time and again!

The Hon. Duncan Gay: Is selling out asking to get a declaration that the Labor Party has helped two Independents?

Ms LEE RHIANNON: No, I did not say that.

The Hon. Duncan Gay: You just want to cover up, don't you, because you're that close to the Labor Party that it doesn't matter?

Ms LEE RHIANNON: Would you like to get more on the record, Mr Duncan Gay?

The Hon. Duncan Gay: That'll do; it's more than enough. That's all we need.

Ms LEE RHIANNON: Again, the Liberals have been caught out. Mr McTaggart has done his returns. The Liberals would have trawled through his returns looking for something, just as they trawled through ours, and they are left wanting. So they go back to their old rhetoric. The Greens support this amendment, but we would like to see it tightened up even more to resemble a proactive disclosure regime. The bill allows the Electoral Funding Authority to demand names and addresses from a third party where there is suspicion that a person has failed to disclose political donations or electoral expenditure. How will the Electoral Funding Authority become suspicious? Will it be given more staff to identify areas of suspicion? Why not take this one step further and require proactive disclosure by third parties of all political donations made to them by individuals?

The bill has some measures that are reasonable but it could have gone so much further. We are on the eve of the next State election, and we have known for the past four years how donations played out at the last election. But this is the best that the Government has come up with. At a recent estimates hearing I questioned Premier Iemma about reforming the State Electoral Office and the whole system of disclosure. Answering my question, the Premier boasted how New South Wales had pioneered the disclosure of donations, which is obviously the case, but he went on to say that the current system is "excellent". That underlines just how out of touch the Premier is with the current system of disclosure in New South Wales, which is like so many laws that were once good but have been left floundering.

We see this with planning laws that have been changed and watered down over the years, and with freedom of information, which is languishing because it has not been kept up to date. There was a similar

problem with the disclosure law: it started off as good law but the Government failed to keep abreast of the times. Queensland and Western Australia require political parties to report annually all gifts and other income of more than \$1,500. In contrast, New South Wales requires parties to report the donations they receive only every four years, after the State election, and they need to disclose only donations they spent on the State election, not those used in Federal or local government elections.

The public was once able to discover from the Australian Electoral Commission [AEC] the amount of money—\$1,500 or more—given to all registered political parties in each State and Territory every year. As we know, this was drastically changed. Consider the AEC data on the New South Wales Australian Labor Party [ALP] for the years between the 1999 and 2003 State elections. The New South Wales ALP reported to the New South Wales State Electoral Office that it received a little over \$6 million in donations for the 2003 election during this period. However, looking just at the contributions from unions, corporations and individuals, reported by the New South Wales ALP to the AEC during those four years, the amount is more than \$22.5 million. That means that \$16.5 million of political donations would be hidden from public scrutiny for this four-year period if we did not have access to the information sent to the Federal AEC.

How can Premier Iemma claim that the New South Wales system is excellent? Now we cannot even rely on the AEC to find out who is bankrolling political parties' slush funds because the Howard Government changed the disclosure threshold at the end of June 2006—with total support from its colleagues The Nationals—hiding most donors' names. The new threshold jumped from \$1,500 to more than \$10,000. Since the limit is linked to the consumer price index, the threshold increased less than a week after the law was passed and it is now \$10,300—and it will obviously increase over time. Every year more and more money will be hidden from us.

Magnifying the problem, donations up to \$10,300 can be made to each of the Federal, State and Territory divisions of a political party as well as to front organisations. Donors can give more than \$100,000 to one political party without public scrutiny. That is the nub of the absolute crime that is happening in this country: all that money flooding into political parties. When it comes in during the midst of an election, people do not know where the influence is coming from—but the influence is most definitely there. The public has the right to know who is giving vast amounts of money to political parties. Access is power, and donations give individuals and companies access to politicians. We see this clearly when we look at some of the comments made by the leaders of a number of corporations. John Thorpe of the Australian Hotels Association has been very clear on how he sees donations play out. In an interview on *Stateline* in 2004 Mr Thorpe said, "Democracy isn't cheap." He went on to say:

Everybody's involved with assisting political parties because at this stage we need to keep these people in place to have the democracy we have today.

He continued:

Look, what helps is this—you attend as an observer as I did, at the ALP national conference. Yes, it cost money. But we did get interviews with ministers, we did get interviews with staffers, and that does help us in our policies and our regulations.

It could not be much clearer than that. The property industry also provides a massive flow of donations to the major political parties. The managing director of Australand, Brendan Crotty, described the company's political donations as "part and parcel of doing business".

Clearly, we urgently need more transparency, and small steps are taken in this bill. We very much hope there is nothing hidden. It is a great pity the Government did not introduce the bill much earlier so we could have had a more considered debate and had time to put forward some amendments that would bring the form of disclosure into the twenty-first century. Obviously this issue will be ongoing and we will revisit it many times, but the problem voters have going into the next election is to assess where the money is coming from.

To assist the whole process of transparency and to have a more informed public, the Greens have established a major donations research project. I would urge members to look at our web site, www.democracy4sale.org, where very easily, with a couple of clicks, members can find out what companies have donated, what unions have donated and how much they have given to the various political parties.

The Hon. Melinda Pavey: And individuals?

Ms LEE RHIANNON: Yes. We are in the process of updating the web site. I am glad to hear that interjection because we have got also a new section on members of Parliament and how much they give. There are some very interesting trends there and one can imagine where they are coming from. I look forward to this whole issue being debated inside and outside Parliament.

Reverend the Hon. FRED NILE [2.46 p.m.]: The Christian Democratic Party supports the Election Funding Amendment Bill, which is a very straightforward and simple bill, even though the Greens seem to feel there is some conspiracy in connection with it. The bill makes two simple amendments. It provides that in cases where a person has failed to disclose political donations or electoral expenditure in accordance with the Act, the Electoral Funding Authority may require a third party to provide information to the authority if it reasonably suspects that the third party has information which may assist the authority to identify the person who failed to make a disclosure.

Second, the bill provides that a candidate is entitled to claim from the Constituency Fund campaign expenditure that has been incurred by the party for the benefit of a candidate, and invoiced by the party to the candidate, which is quite often normal procedure by a number of parties that print how-to-vote leaflets on behalf of the candidate and then invoice the candidate for those or a proportion of them. The reason for the legislation is that the Electoral Commissioner reported that he had a problem in regard to a particular candidate where the authority had no power to require third parties to provide information to the authority about the identity of a person who might have failed to disclose that he or she had made political donations or had otherwise incurred expenditure.

As we know, the reporting system is very thorough. The origin of all donations is to be reported and, where a donation is over a certain amount, the name and address must be listed and returned to the Electoral Commissioner. If a person wishes to give a donation and remain anonymous, under the legislation the commissioner has the power to confiscate that donation: there is no provision for anonymous donations that conceal the name of the donor. It would be interesting to know which party was involved in the recent case mentioned. There was some thought it may have been the Greens. Maybe that is why they are a bit sensitive about this bill. There must be transparency with all donations and their sources.

The Hon. Duncan Gay: It would be a shock to actually see them get it right. I had a look at their web page when they said they were going to disclose all the politicians' perks and I was disappointed to see how badly I was doing.

Reverend the Hon. FRED NILE: Yes. Unfortunately, it appears that special funds have been set up for use by political parties as a siphon for donations. Individuals make a donation to a trust fund, which then makes the donation to the candidate or to the party and shows the name of the fund. That goes against the principle of the law because it conceals the name of the original donor to the fund. However, some political parties are using this method. It is important that there be transparency, especially for the so-called Independents. A few weeks ago they held meetings. Indeed, the media called that the formation of an Independents Party. How can Independents form an Independents party?

Obviously, they are forming some organisation, which raises questions about how the Electoral Commissioner can keep track of donations by individual candidates who are in this particular grouping and whether this method could be used to conceal donations or whether any of those Independent candidates so-called have been backed by any other political party. It could be one of the major parties, even a minor party such as the Greens. It is important to promote complete transparency.

In the main we can ascertain where political donations come from. However, I am concerned where donations from a certain organisation or political party are given in return for that party adopting policies that are promoted by the organisation. I refer to donations from the Eros Foundation to the Australian Democrats, which have a strong policy of supporting liberalisation of censorship laws that provide for sale of products by that particular organisation. I have no evidence that this has affected the policy of the Australian Democrats because their policies are libertarian, but it raises concerns when there seems to be a close link between the organisation making the donation and the policies being promoted by the party, particularly in the Australian Capital Territory or at the Federal level. It is important to have transparency and the commissioner, through these two amendments, is seeking to have the power to ensure transparency. In the future other loopholes may become obvious and the legislation may require further amendment. We support the bill.

Ms SYLVIA HALE [2.53 p.m.]: It was not my intention to speak on the bill because I knew that my colleague Ms Lee Rhiannon would do a more than adequate job but the brazen way this bill has been brought on for debate and the way in which debate was stifled—

The Hon. Tony Kelly: Point of order: I am reluctant to defend Ms Lee Rhiannon but the comment made by Ms Sylvia Hale is a slur and a reflection on Ms Lee Rhiannon.

The DEPUTY-PRESIDENT (The Hon. Christine Robertson): Order! There is no point of order.

Ms SYLVIA HALE: I knew my colleague would do a good job, and indeed she did, but what has provoked me into speaking was the outrageous way in which this bill has been brought on without any forewarning, either this morning when it was down the bottom of the list of bills and suddenly it was catapulted to the top, and then this afternoon when debate on committee reports was sidelined in order for the bill to be passed. Rather than allow that to happen I thought the appropriate thing would be to spend the time that might otherwise have been devoted to committee reports to read out the list of all donors to the Labor Party and the Liberal Party.

The Hon. Charlie Lynn: Point of order: If the member has nothing to say, she should say it.

The DEPUTY-PRESIDENT (The Hon. Christine Robertson): Order! The Hon. Sylvia Hale may continue.

Ms SYLVIA HALE: It is worth observing that it is not only the Greens that are concerned about the extent of donations to political parties and the way they subvert the political process. I note comments of a former member of the Liberal Party, who so dramatically scrunched up his membership ticket yesterday. Mr Williams has now achieved preselection and Mr Pringle, according to this morning's *Sydney Morning Herald*:

... also quoted Mr Williams, a Baulkham Hills councillor, as telling Saturday's preselection meeting that a developer, HomeWorld, would be funding his campaign to the tune of \$100,000.

Mr Pringle went on to add:

"Not only has the party surged to the right, now it's for sale to the highest bidder."

I suggest it has been for sale to the highest bidder for many years, as has been the Labor Party. If one needs evidence of that, one need only look at the extent of donations made to the Labor Party over a very long period. The figures I quote are taken from the *democracyforsale* web site, to which my colleague Lee Rhiannon referred. Over the four years ending 30 June 2005 unions donated \$9,228,585 to the Australian Labor Party; the property industry donated \$6,308,216; finance companies donated \$1,640,516; and the hotels and clubs industry donated \$2,400,383. Those figures show in some ways how cheaply bought our political system is.

The Hon. Melinda Pavey: What did they buy?

Ms SYLVIA HALE: They buy access to Ministers and regulations that pretend to outlaw smoking in hotels and clubs but in fact permit it to continue. They buy the subversion and the corruption of the political process. I turn now to what comprised the donations from the property industry. Abigroup is at the top of the list, which goes from A to Z. Abigroup donated \$3,300, \$2,750, \$13,636, \$5,000, and another \$5,000. Then Adco Constructions—

The Hon. Don Harwin: Point of order: On her own admission, the honourable member is reading from a publication, albeit one in electronic form on the web. I draw your attention to Standing Order 91 (4), which relates to the rules of debate:

A member may read reasonable lengths of extracts from books, newspapers, publications or documents.

I have allowed the Hon. Sylvia Hale read what I think is a reasonable length from the publication but I think she has now gone well beyond what is reasonable. I ask you to direct her not to continue her remarks in that vein, and to draw her back to the leave of the bill, in particular the two sections that are being amended and the two new provisions in the amending bill.

The Hon. Dr Arthur Chesterfield-Evans: To the point of order: People have given speeches four hours long in this House without anyone batting an eye. Perhaps they batted an eye, or put an eye to sleep perhaps, but the fact of the matter is that Ms Sylvia Hale has been going on for not more than five minutes on this list. It is a very lengthy list. It demonstrates the nefarious behaviour of the major political parties and how they take money from just about anybody and corrupt the political process—as if their gerrymander is not enough! Ms Sylvia Hale ought to be able to read this whole list, or at least incorporate it in *Hansard* if she wishes. If the Opposition Whip wishes to suggest she incorporate it in *Hansard*, he may do so. Otherwise, I think it is perfectly justified. If she concludes in less than four hours then, frankly, in the traditions of this House, she is perfectly within her rights.

The Hon. Duncan Gay: To the point of order: The honourable member quite clearly indicated that she was going to go through the list from A to Z. This is a publicly available list. The ruling of this House was made not only to allow time to be devoted to more important matters of State, but also with a view to not wasting State resources. We know that the Democrat is happy to waste State resources on any stupid thing, but surely not when we have a document that is publicly available and easily accessible. That is why that particular ruling was made and the Opposition Whip is quite correct in his request that you ask the honourable member to stop right now.

Ms SYLVIA HALE: To the point of order: I think I had got so far as to read five entries. They all concerned just one group, Abigroup. I indicated that it was a very extensive list that demonstrates how wide-ranging is the list of donations or the web of corruption that pervades this State. I will accede to the wishes of the House and abbreviate the number of references to this document, but I would subsequently seek the approval of the House to table this document and have it incorporated in *Hansard*.

The Hon. Greg Donnelly: To the point of order: It is clear from the ruling alluded to by the Deputy Leader of the Opposition that Parliament has looked at this issue before and dealt with it. I refer to a publication of the House entitled "President's Rulings—Forty Ninth Parliament" that deals with the select rulings of Presidents relating to the rules of debate. I draw your attention to a ruling of President Johnson which states:

It is a waste of the Parliamentary funds that Members should quote extensively from material which is readily available in the Parliamentary Library.

It goes on to state that Standing Order 77 should not be abused. That ruling was delivered on 10 August 1989.

The DEPUTY-PRESIDENT (The Hon. Christine Robertson): Order! Before ruling on the point of order I refer members to Standing Order 91 (5), which states:

When an objection is taken to the reading of a list of names of individuals or organisations who have made representations in relation to the matter the subject of debate, without distinguishing the comments or views of those individuals or organisations, the member must confine their remarks to:

- (a) a statement of the comments or views of those individuals or organisations, and
- (b) the number of individuals or organisations making similar representations.

There is some petition connotation here, however, members should read only reasonable lengths of extracts from documents. The member is reading a very long list of names—

The Hon. Don Harwin: Standing Order 91 (4).

The DEPUTY-PRESIDENT (The Hon. Christine Robertson): Order! I have read Standing Order 91 (4) and am now relating it to Standing Order 91 (5). I uphold the point of order and ask Ms Sylvia Hale to continue but remind her that she must not read the list of names.

Ms SYLVIA HALE: It is interesting how sensitive people become when attention is drawn—

The DEPUTY-PRESIDENT (The Hon. Christine Robertson): Order! I remind Ms Sylvia Hale that I have ruled on the matter.

The Hon. Duncan Gay: Madam Deputy-President, I take offence at those comments and ask the member to withdraw them.

The Hon. Dr Arthur Chesterfield-Evans: To the point of order—

The DEPUTY-PRESIDENT (The Hon. Christine Robertson): Order! I am not sure there is a point of order before the Chair.

The Hon. Dr Arthur Chesterfield-Evans: I would suggest that there is no point of order. If a member of the Opposition finds the comments offensive, that is simply a matter of record and simple fact. It is ridiculous to suggest that it would have to be withdrawn. That they are taking offence at her comments is perhaps why she is making them. She is saying that what they are doing is outrageous.

The DEPUTY-PRESIDENT (The Hon. Christine Robertson): Order! Although there has been a request that comments be withdrawn, I ask Ms Sylvia Hale to continue but in doing so she should confine her remarks to the subject of the bill.

Ms SYLVIA HALE: I might comment on the considerable time we have spent digressing on points of order in this House. I notice how sensitive the Opposition is to the remarks, although members of the Government seem less concerned. Perhaps they are just prepared to tough it out. They know how much they receive and how common it is, and they also know of the widespread community knowledge of the money that changes hands between those seeking to wield influence and those able to act accordingly. I note that the Government, in its attempt to ram through this legislation, has in effect provoked a delay, an unnecessary delay, but it has brought that on itself entirely by its actions, both in cutting off debate on this bill in the lower House and then trying to proceed with it today.

I note that, as has been pointed out, the information on the democracyforsale web site is available on the web. I am also conscious of how widely it is consulted these days by people from right across the political spectrum. It is unfortunate that in my reading of the list I only got to talk about Abigroup when there are many other major contributors, such as the Walker Corporation, which managed—

The Hon. Greg Donnelly: Point of order: Ms Sylvia Hale is clearly flouting your ruling. She in fact read into *Hansard* the name of another organisation. You ruled on this issue, very clearly and unambiguously. She is flouting your ruling and she should be pulled into line.

The Hon. Dr Arthur Chesterfield-Evans: To the point of order: Ms Sylvia Hale said she would read from A to Z, and she got as far as Abigroup. The letter A appears fairly early in the alphabet. She then mentioned one other name, specifically the Walker Corporation, and the Hon. Greg Donnelly is taking points of order that she is reading too much from the list.

The DEPUTY-PRESIDENT (The Hon. Christine Robertson): Order! I uphold the point of order. I call Ms Sylvia Hale to order for the first time. The member has been warned several times during her speech that she has contravened standing orders.

Ms SYLVIA HALE: Madam Deputy-President, could you clarify something for me? Whilst I acknowledge that I cannot read into the record the contents of this very lengthy list of donors to political parties, am I able indeed to refer to some of the information that is simply contained in that list? If that is out of order I would like you to inform me of that, in which case anyone who refers to any information that is obtained from any source would presumably be out of order when they try to use that information to debate any topic within this House.

The DEPUTY-PRESIDENT (The Hon. Christine Robertson): Order! It is out of order for the member to read from the list of names. Under Standing Order 91 comments or views of individuals or organisations in relation to this specific issue are within order. The member is attempting, in an underhand way, to include the list in her speech. I understand what the member is attempting to do, and I uphold the point of order. The member is endeavouring to include the list in her speech by other means. I have ruled on the point and further explanation is redundant.

Ms SYLVIA HALE: I am sorry, Madam Deputy-President. I am totally confused.

The DEPUTY-PRESIDENT (The Hon. Christine Robertson): Order! Excuse me, Ms Sylvia Hale. Are you dissenting from the Chair's ruling?

Ms SYLVIA HALE: No, I am not; I am asking for some clarity. I do not understand what you have said. I did not understand what you meant to say.

The DEPUTY-PRESIDENT (The Hon. Christine Robertson): Order! I have ruled that the member not read from the list. The point of order taken by the Hon. Greg Donnelly was that the member was attempting to have the list included in her speech. I have nothing further to add; I have ruled on that matter.

Ms SYLVIA HALE: Madam Deputy-President, I am not about to read out the list; I am merely about to quote from that list the occasional significant point. It is not an attempt to read out the entire contents of the 50 or 60-odd pages I have here; it is merely to draw attention to one or two of the more significant contributions.

The DEPUTY-PRESIDENT (The Hon. Christine Robertson): Order! Ms Sylvia Hale should continue her contribution and stop canvassing my ruling.

Ms SYLVIA HALE: I refer now to Walker Corporation. In the year 2003-04 it donated \$140,000 to the New South Wales branch of the Australian Labor Party. It is one of the more significant donors but there are plenty of others that are obviously very large. For example, one's eye drops upon the most recent beneficiary of the Lower Hunter Regional Plan, Hardie Holdings. In 2001-02 it donated \$100,000. There has been a consistent record of donations by Hardie Holdings—at least six donations from 2001 to 2005. The former consultant to Hardie Holdings was former Premier Neville Wran. However, he is no longer performing that task. It has been taken over by that admirable gentleman Graham Richardson.

The Hon. Dr Arthur Chesterfield-Evans: Who likes a tippie.

Ms SYLVIA HALE: Who likes a tippie. We know that Graham Richardson has his own problems with Swiss bank accounts and whatever, but I do not think it is appropriate to digress in that direction at the moment. But I think that the indication—

The DEPUTY-PRESIDENT (The Hon. Christine Robertson): Order! The member has diverted from the subject matter of the bill, and I ask her to return to it.

Ms SYLVIA HALE: I think the point has been made. The point that needs to be made is, first, that the whole electoral process in this State is corrupted by the secrecy that surrounds political donations. Democracy is also corrupted when procedures are adopted by this Parliament whose sole purpose is to guillotine any discussion. That was the substance of my complaint. It is not so much about the bill itself. In the little time that we have had to examine the bill it seems that it may be acceptable. But how does one know if not given sufficient time and the ability to consult with other groups to understand or to be reassured about the full implications? Indeed, one assumes the worst because that is what one has come to expect of the legislation that is passed in this House. One must expect the worst. It is ridiculous to make any other assumption. As I said, this debate, which has probably been prolonged in a way that may not have been for the ultimate good of the House, has been brought about by the Government's determination to push the bill through. Every suspicion one ever had about electoral funding and the influence of external parties on the procedures and decisions of this House is immediately raised. It is unfortunate that the entire contents of the [www.democracyforsale](http://www.democracyforsale.com) site cannot be incorporated into *Hansard* but I am sure that many members are familiar with the web site and can pore over it avidly. I think it has made a significant contribution to the quality of political debate within this State.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [3.18 p.m.]: Often in this House we have to support bills that do not go anywhere near far enough but are a step in the right direction, and this bill is that. I suppose a glass that is quarter full is better than one completely empty. On that basis one supports what one has. Public election funding is money from the taxpayer to fund elections. This was supposed to introduce some equity in electoral funding and lessen the influence of donors. However, the donors are just giving larger and larger amounts: public funding is still a drop in the bucket. Those who pander to the big end of town still reap immense benefits from doing that. Those of us who take very little money from the big end town and try to manage with public funding are immensely disadvantaged by the existing system. The large parties have an immense advantage because of their level of donor funding—indeed, perhaps a decisive advantage in many marginal seat campaigns. If that were not enough, the binary system, which immensely favours large political parties, and the gerrymander of single-seat electorates mean that the major parties almost invariably get a higher percentage of seats than they get of the votes. The lazy media rolls all the votes in to show the two-party preferred situation as if there are only two possibilities, which under the gerrymandered system is the situation in practice.

Given that situation, the parties take immense joy in incumbency and abuse it to hell, perhaps to the same extent that they abuse electoral funding. Today's newspaper reports that the State Government has spent

more than \$6 million of taxpayers' money on a series of advertisements, spinning its virtues just six months out from the next election. If one were to graph government spending on advertising against the electoral cycle, one would see a massive spike. What a surprise! I have proposed legislation that would limit spending on advertising in the year before an election to the amount spent immediately after the election. Of course, that proposal went nowhere. That type of legislation provides the opportunity to show restraint, but the Government was not interested.

I have also attempted to introduce transparency in government advertising. It should be scrutinised by a parliamentary committee so that if it is being undertaken for the good of the people of New South Wales—it might be a road safety campaign, a do-more-exercise campaign or a smoke less campaign—people will agree that it is a worthwhile and appropriate expenditure of taxpayers' money, and if it is a self-congratulatory campaign it will not be approved. That could be done through the State Electoral Office or some other neutral body. It could even be done by a respectable, transparent public service body, and the expenditure could be publicly discussed. As it is, the Government simply spends what it likes. Joe Hildebrand reported in the *Daily Telegraph*:

The Coalition will now introduce legislation giving the Auditor-General the power to review all government ads and force the Labor Party to pay for that which is deemed political.

The Coalition claims recent campaigns, based around slogans like "Let's get NSW moving" and "A new direction for NSW", are party propaganda and should be paid for by the ALP.

The \$6 million-plus figure only accounts for placing the ads—it does not cover the cost of getting them made.

The Government forked out almost \$900,000 for the "A new direction for NSW" campaign and almost as much for the "Let's get NSW moving" ads.

The recent TV blitz urging people to join the police service—the Government has pledged 750 new recruits—cost more than \$900,000.

More than \$720,000 was spent on spruiking the new CityRail timetable.

By far the biggest slice went to the "Water for Life" campaign, with more than \$2 million spent outlining the Government's water plan.

By contrast a modest \$227,000 was spent publicising the new state infrastructure plan, and \$382,000 on ads urging the Federal Government to give NSW its fair share of GST revenue.

The cost of placing the ads came to \$6,009,141—the production costs have not been released.

It has also emerged that the Government spent more than \$350,000 mounting its High Court challenge to the federal workplace laws.

The ad splurge has prompted claims the Government is misusing public funds.

What a surprise! Of course, the Australian Labor Party is throwing stones at the Howard Government, and that is not unreasonable. The Howard Government has spent \$1 billion on political advertising. It has also spent \$13.5 million on flying the Prime Minister and his entourage around the world over the past nine years. Last year it spent \$115 million on private recruitment agencies, \$10 million on media monitoring and \$89,000 on massages for public servants. Of course, that does not relate to advertising.

This Government spends a huge amount on spin doctoring. I have asked for the expenditure figures, but it has been extremely difficult to get them. To its credit, the Opposition has asked many of these questions during estimates committee hearings, but the answers it has received do not relate to finances. They simply refer to the Premier's circular about what is supposedly honourable behaviour. They also do not mention quantities. I have been to public rallies at which I have made statements and sometimes the only media person there was a representative of Rehome, a taxpayer-funded media monitoring service. The information it collects is not available to all honourable members; we cannot go to the library and request that information despite the fact that it has been paid for by the taxpayers. We cannot use it to see what the electorate wants and what are the issues. No, it is produced for the advantage of the Executive. It is effectively a public subsidy for the Labor Party and it is protected by Cabinet solidarity and kept up at Governor Macquarie Tower so that the Labor Party can have the jump on everyone else involved in political process and squeeze the maximum amount out of its incumbency.

Electoral allowances for lower House members are regularly increased so that they can keep the propaganda flowing to their constituents and, as a result, anyone trying to take seats from them is disadvantaged. Members

of the upper House are elected by a percentage of voters in the State and some of us see the State as our electorate and the people of New South Wales and their interests as the focus of our efforts. However, our allowances are not increased. Perhaps that is because of the Government's contempt for the upper House. It parachutes in hacks who are loyal to the party rather than require them to be elected in their own right. It does not want or need them to have any money. As a result, it is happy to put the money into lower House seats to suit the gerrymander.

This issue is not addressed by the bill, but it is extremely important for election funding and the results of elections in New South Wales. When I say that this bill addresses only a small part of what it should address, that is what I mean. I do not have all the figures, and I believe that they are not available. I note that the Opposition has tried to obtain them in estimates committee hearings but it has not succeeded. All it has received is a bunch of Premier's memoranda.

The bill, as far as it goes, amends the provisions of the Electoral Funding Act. It will require the disclosure of political donations and electoral spending incurred in connection with an election. The Electoral Funding Authority has highlighted a recent case that shows the important disclosure provisions of the legislation could be undermined. The authority has no power to require a person to provide information to it about the identity of another person or organisation that may have failed to disclose a political donation or electorate expenditure.

In his second reading speech—which he gave only last night—the Minister cited a specific case in which a political group organised for a number of individuals and businesses to make a contribution to the cost of electoral advertising. He stated:

The political organisation arranged for the advertisements to be placed in various local media. The organisation also arranged for the media agency, which ran the advertisements, to bill the individuals and businesses that contributed to the advertisements directly, rather than billing the political organisation. The individuals and businesses that paid for the advertisements were required under the Election Funding Act to disclose this expenditure, but did not do so.

Neither the media agency nor the political organisation had an obligation to disclose the electoral expenditure, as they had not incurred the advertising expenditure themselves. Further, the authority had no power to require either the political organisation or the media agency to identify those individuals and businesses that had paid for the advertisements.

This provision is a positive step towards improving transparency in the funding of political campaigns. Australian Democrats Senator Andrew Murray has campaigned about this issue federally. I congratulate the Government for taking this initiative. I give credit where it is due and I criticise where criticism is warranted. Interestingly, Treasury will be available to cost the election promises made by both the Government and the Opposition.

Prior to the 2003 election, I asked the Government to cost the promises made by the smaller parties. We are to have a huge taxpayer-funded scheme to cost Opposition policies and, of course, if they do not add up, the Government will use that information to slur the Opposition in yet another abuse of incumbency. I said that if that system is to be established then the minor parties' policies should also be costed, but I was told that that would be too expensive.

I said, "If there are ideas that you want to poo-poo, surely it is a good investment of taxpayers' money to have those ideas costed. If they are ridiculous ideas that are not cost-effective, presumably—if Treasury does its work in a good, public servant, neutral way—those promises will look ridiculous. If, however, they are good, well-costed and innovative ideas that are from left field, and they show possibilities other than the two tired old parties taking their orders from the big end of town, surely the citizens and taxpayers of New South Wales are entitled to have those ideas costed. They are also entitled to have a ballpark figure costing of the promises of the Democrats, who had made a serious attempt to get comprehensive policies in many areas. I think some of the other smaller parties would also be trying to get a comprehensive overview of New South Wales policies, because we take our role in this Parliament seriously. But the Government was too busy using taxpayers' funds to further its own cause.

With regard to the world's greatest scam, the GST, the Howard Government spent endless amounts of money on advertisements showing that the Australian tax system was broke. The GST research was highly funded by Treasury, which costed it all out, but there was no public release of the figures relating to the various taxation options to enable the public to debate them. Indeed, the only game in town was the option the Government chose. The costing and design of that option was entirely taxpayer funded, and anyone who sought any information to counter Treasury's immense input of taxpayer funds to look at what the Government wanted

to do was not able to get it. I believe that gave the incumbents a huge advantage in the election. Indeed, it basically amounted to an abuse of incumbency by the Liberals at the Federal level. Presumably I will have this debate about the costing of minor parties' electoral promises with the Government shortly, and I hope that this time the Government will have a better attitude than it had under Treasurer Egan. The spin is extremely important and effectively amounts to electoral funding.

Schedule 1 [2] inserts in the Act provisions to enable the authority or staff members in its employ to demand the name and address of a third person where they reasonably suspect that the other person has failed to disclose political donations or electoral expenditure, as required by the Act. It might be noted that the Freedom Foundation, a Victorian-based foundation that receives donations that are then funnelled straight to the Liberal Party, effectively implements a system of hiding political donations to the Liberal Party. I believe that collection agencies that allow secret donations should be subject to the same declaration standards as those that apply to any other electoral donation given directly. The second reading speech refers to the power to investigate donations as follows:

The power will be able to be exercised only in circumstances where the authority or authorised officer has a reasonable suspicion that the person may have information, which enables the person who incurred the electoral expenditure to be identified.

Schedule 1 [1] amends provisions of the Act to provide for public funding of election campaigns. Candidates are entitled to make claims for reimbursement of electoral expenditure from the Constituency Fund. Parties, on the other hand, are entitled to make claims on the central fund for expenditure they incur. Item [1] inserts provisions to ensure that a candidate is entitled to claim from the authority campaign expenditure that has been incurred by the party for the benefit of a candidate and invoiced by the party to the candidate. This will apply regardless of whether there is a formal agency arrangement in place, or whether the candidate is legally liable to the party for the expenditure.

In the past, candidates have been able to claim from the Constituency Fund amounts that have been invoiced to them by political parties, in circumstances where the party incurs expenditure on behalf of the candidate. Recently the authority sought legal advice from the Crown Solicitor about the Macquarie Fields by-election. In that by-election the Greens candidate submitted invoices received from the Greens for electoral expenditure incurred by the party on behalf of the candidate. However, the authority declined to reimburse those invoices from the Constituency Fund because the Crown Solicitor advised that candidates could only claim for expenditure that they themselves incur, or for expenditure that is incurred by the party for its candidates pursuant to a formal agency arrangement.

The Greens candidate had not incurred the expenditure personally, and he did not have a formal agency arrangement with his party. In the context of the by-election, the Greens were ultimately able to obtain reimbursement from the Constituency Fund by resubmitting their claim to ensure it was made by the party and not by the candidate. This is possible because the Election Funding Act enables parties to claim on the Constituency Fund for by-elections. However, that is not the case for general elections. If this claim were to be made in a general election, it would be refused because the Act does not enable parties to claim directly on the Constituency Fund for general elections. The Crown Solicitor has advised that the authority will now need to also refuse claims made in respect of invoices issued by political parties to individual candidates for expenditure incurred by the party on behalf of the candidate, unless a formal agency arrangement is in place. This is despite such claims having been routinely accepted in the past.

It all looks very much like a case of "choke off the funds to small parties". There was a huge fuss about Malcolm Jones, who resigned from this House because he was virtually certain to be censured for his use of databases and paper to get his party going. Here we have literally millions of dollars spent on advertising by the incumbents, yet for a few dollars spent on photocopying or accessing databases Malcolm Jones was hounded out of this place and vilified. I had no particular interest in supporting Malcolm Jones. I did not agree with his politics. I note that he came to this place on a preferential system of prearranged preference dominos that pushed him in. I had no time for the way he got here, and I had no time for his politics, but I acknowledge that as an individual the amount of taxpayers' money he took to further his party's cause was absolutely trivial compared with what the Government spends routinely virtually every day. I believe that point needs to be made. Indeed, this week former Premier Carr himself conceded that he saw more of Harry Triguboff, the property developer from Meriton, than he saw of members of his Cabinet.

There is also a good deal of discrimination against Independents. Only \$200 can be donated to an Independent, yet donations of \$5,000 can be made to major parties. That is because in many electorates the Independent is competing head to head with the major parties. The local business people, who may want to help

a friend, are disadvantaged immensely, as is the Independent, who is trying to break the hegemony of the two major parties in this State. One would think the major parties have enough of a gerrymander already without also giving themselves a huge advantage with regard to electoral funding.

The Hon. Duncan Gay: You get double the staff we get.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: We do more with them, too. Independents are also not allowed to endorse a party. The lower House Independents are specifically denied the right to help smaller parties in the upper House on the basis that they are trying to break the hegemony of the two major parties. Effectively that means that the major parties are rigging the whole electoral system to further their own cause. However, that is not in any way addressed in the bill.

With regard to transparency in the way elections are run, when I suggested in this House that in local government elections candidates who are members of political parties should have their party membership stated on the ballot papers, the Deputy Leader of the Opposition said this would infringe a candidate's civil right to privacy. It is outrageous to suggest that people do not have the right to know what political party they are voting for. Candidates may pretend to be Independents when they are in fact members of major parties—half of them getting experience so they can become members of this place; to climb their way up the party ladder—and the poor old voters are not even informed of that.

Yet millions of dollars of advertising expenditure paid for by the taxpayer propagandises them daily as advertisements are watched and surveyed by taxpayer-funded schemes favouring the incumbent parties. To those who say that this does not influence behaviour, I relate the story of how, many years ago when I started the anti-tobacco campaigns, I joined the Liberal Party—foolishly enough. I pointed out to the membership that tobacco was immensely harmful; it was killing 19,000 people a year and it was costing the Australian economy more than \$2 billion—it now costs about \$6.5 billion. An old chap in the Liberal Party said to me, "Yes, but you may not know they gave our party \$30,000 last year." I said, "\$30,000! Tobacco is costing the Australian economy over \$2 billion". The old guy said, "Yes, sonny, but that's our \$30,000". I said, "\$30,000 to the Liberal Party is more important than \$2 billion to the Australian economy and all those deaths, is it? The going price for the Liberal Party is \$30,000, is it?" He said, "You won't get far with an attitude like that, sonny."

I confess I did not get very far in the Liberal Party. I walked out the door! And of all the things I have done in my life, certainly that is not something I regret. I joined the Australian Democrats because it was the only political party at that time that did not dirty its hands with taking tobacco money. The wimpy, pathetic major parties that we have to put up with in this House with their hegemony and their appalling attitude are still taking money from the pubs and clubs and are still to this day doing nothing about tobacco. Throughout New South Wales \$450 million worth of building programs have commenced to create so-called outdoor areas, which are actually indoor areas, to get around the smoking legislation—which, coincidentally, is still not law 55 years after smoking was shown to cause lung cancer. That is the sort of influence that is bought by political donations to wimpy, major political parties who will not do the right thing by the people of New South Wales. And the bill does not address that matter either.

Reverend the Hon. Fred Nile is having another bash at the poor Democrats and the Eros Foundation, which is pro-sex and very much against the position taken by Reverend the Hon. Fred Nile on such matters. He criticised the Democrats for taking some money from the Eros Foundation. It should be noted that Internet censorship was brought in by some particularly foolish legislation introduced by Brian Harradine. The Democrats managed to have that bill sent off to a committee. The Hon. Doug Moppett commented that there was a suggestion in the legislation that Internet providers in New South Wales should be asked to censor pornographic material. It turned out that less than 1 per cent of porn in Australia is hosted on Australian sites. Of course, because of the prohibitive amount of time it would take to do so, it is not possible for Internet site hosts to monitor the content of all the material on their sites. The Hon. Doug Moppett said that banning porn on Australian Internet sites would be like shutting the window after the wall had blown down. That comment was made by a National Party member who took a sensible and rational look at the situation.

Interestingly, when Internet providing was a growing industry it was said that Australia could do very well with regard to porn on the Internet—I understand that something like half the information stored by Internet providers is, in fact, porn—because although everyone says how awful porn is, a fairly large percentage of people look at it and it is relatively easy to store in a computer's memory. Because of subsidies from that type of material Internet hosting would have been quite a growth industry. But that entire industry was lost to

Australia and went to America, which, although a more prudish country than Australia, has a growing information technology industry because of its willingness to tolerate pornographic material.

We may feel jolly that our pornographic material is hosted overseas and not in Australia, but the fact of the matter is that such prudery was not good for the development of the information technology industry in Australia. That fact is probably not known to Reverend the Hon. Fred Nile, who does not follow the economics of the information technology industry. The Eros Foundation also favoured the regulation of pornographic outlets in the Australian Capital Territory. Indeed, the payment of the registration of such outlets would pay for the policing of the material.

When one looks at the difference between what is generally known as soft porn—which is consenting adults having sex—as opposed to porn which involves far more brutal and dubious types of unauthorised activities, it can be seen that revenue gained from the registration of porn outlets and the authorisation of soft porn would pay for the policing of hard-core porn. The attempts to ban such content totally has resulted in a far better outcome in the medium term for those who are concerned about the nastier types of porn. The very well thought out position of the Eros Foundation and the position of the Democrats were not inconsistent. That such slurs are thrown at the Democrats about such a small amount of money just shows the absurdity of the position of the Christian Democrats.

But to return to the more central issue: Election funding—indeed, the entire electoral system in New South Wales and federally—is significantly skewed towards the major parties, particularly the incumbents. That problem should be addressed far better than it is in the bill. Although the bill does not go nearly as far as it should, we support the changes and improvements that it makes.

The Hon. Dr PETER WONG [3.46 p.m.]: I had not intended to speak on this bill, as the way it has been introduced is really an affront to the standards of democracy. How on earth a bill on this important issue—indeed any issue for that matter—can be brought into both Houses of this Parliament in such an unseemly manner is beyond me. Until yesterday, for all intents and purposes, the bill did not exist; the text of it was made available to members only yesterday. That is an affront to the ideals of democracy. A further affront to democracy was the way the major parties tried to stop Ms Sylvia Hale from speaking in detail on the matter. I am sure that part of the reason for that is that both major parties do not want the details to be recorded in *Hansard* for all to see.

The Hon. Duncan Gay: It is a public document, for crying out loud.

The Hon. Dr PETER WONG: I know, but it is *Hansard* and that is totally different, is it not?

[*Interruption*]

The Hon. Charlie Lynn tries to interrupt all the time. He did not interrupt the Hon. Dr Arthur Chesterfield-Evans because he knows he is not getting the point. He wants to be so rude and that is why nobody likes him. He should have more manners. I wonder how much money the major parties received from Union Carbide over the years? Certainly, it would explain why no-one in any government agency has sought to make Union Carbide clean up Sydney Harbour or pay compensation to the poisoned fishermen.

I will stop my speech here, because I am sure that, as the Government intends to rush 30 new unseen bills through this place in the remaining days before the election, we will have many more opportunities to speak about such things. No doubt many of the bills will present many opportunities for the major parties to issue press releases. But I doubt that this bill will be one of them. However, for those who read such things, I advise that the relevant website address is www.democracy4sale.org.

The Hon. ROBERT BROWN [3.49 p.m.]: I will be succinct and brief. The Shooters Party supports the bill.

The Hon. ERIC ROOZENDAAL (Minister for Roads) [3.49 p.m.], in reply: I thank honourable members for their contributions to the debate, although some were more illuminating than others. There are a number of issues to which I would like to respond. With respect to some of the criticism from the crossbench, there was a full crossbench briefing on Tuesday on the bill. Some issues were raised in debate about whether the Election Funding Authority was resourced sufficiently to ensure compliance with the obligations of candidates, parties and donors to disclose political donations and electoral expenditure. The Government recently increased

the budget of the State Electoral Office following a review by the Council on the Cost and Quality of Government.

Furthermore, the proposed amendment to the power of the authority will enable the authority to improve its ability to identify persons or organisations that may have failed to comply with the disclosure obligations under the Election Funding Act. The Government considers that these measures will enable the Election Funding Authority to continue to perform its function to the high standard that the community expects. The Greens, of course, love to build the conspiracy theory.

Ms Lee Rhiannon: What is the conspiracy theory, Minister? Spell it out.

The Hon. ERIC ROOZENDAAL: I am about to come to that. There is always a certain amount of community concern about political fundraising and the operation of political parties, and quite rightly. Fundraising needs to be done in a transparent way. I have said things previously in the House about political fundraising.

Ms Lee Rhiannon: You spoke about donations before, Minister, in your inaugural speech. You were quite good.

The Hon. ERIC ROOZENDAAL: Damned by faint praise, I believe is the expression. There is always community discomfort about the relationship between corporate fundraising, political fundraising and the operation of political parties, which is why it needs to be transparent. That is why as an increased level of transparency the operation requires disclosure by the political parties receiving funds as well as the donors .

The problem pointed out by some members is that not all donors are aware they have a responsibility to declare; and some do not. It is then the responsibility of the Election Funding Authority to chase them up, which it does. All parties are audited—this was not mentioned—by the Election Funding Authority to ensure that they comply with declarations with respect to donations. The authority has strong power in that auditing process. This is done so that all political donations are put onto the public record.

It was a stunt for Ms Sylvia Hale to read out political donations. Anyone can go onto the Internet; they do not have to go on to the *democracy4sale* web site. They can go to the site of the Electoral Funding Authority, where the information is provided for each year, for each political party, and for each donor. People can cross-reference the information if they are prepared to do the work. It is accessible on the Internet 24 hours a day, 365 days a year. It suits some people to make out that the information is hidden and disguised, but that is untrue.

However, those who cast aspersions should be sure they are free of guilt. The Greens do not necessarily have a clean record on political donations. I recall a recent case where some of the Greens were involved in what I believe was an attempt to set up a covert and illegal scheme to conceal some of their funds. I think it involved the Rainforest Information Centre. I have looked at some of the donations the Greens have received, because it is important. There has been criticism by some people that unions give money to political parties. The Greens have certainly received some union funds. Avant Garde cards, a nice moneymaking business, gave \$178,000 of support to the Greens.

Ms Lee Rhiannon: It is all on our web site, unlike the Labor Party, which does not disclose donations.

The Hon. Jon Jenkins: What about the Wilderness Society and the World Wildlife Fund, which print how-to-vote cards?

Ms Lee Rhiannon: They certainly do not do it for us. They might do it for the Labor Party.

The Hon. ERIC ROOZENDAAL: That is why we do not rely on honesty from political parties. That is why there is an authority to oversee all political parties and to independently audit all donations. There are assertions and conspiracy theories and everybody gets touchy about where their funds come from. Most parliamentarians contribute to political parties as well. I have been a proud contributor all of my life to the Labor Party and certainly since I have been a member. I notice that the Hon. Ian Cohen has contributed over \$14,000 and Ms Lee Rhiannon has given around \$11,000 to the Greens.

The Hon. Melinda Pavey: Lee has given less than Ian?

The Hon. ERIC ROOZENDAAL: I do not know how they work it out; I am only making the observation. I notice that Ms Sylvia Hale has only given \$4,200. Where is the equity in this? Ms Lee Rhiannon

wants to talk about conspiracies. I have received advice as to why this may be the case. It appears that the Greens are allowed to use premises at 19 Eve Street, Erskineville, which are apparently owned by the Hon. Sylvia Hale. I am advised that she charges them no rent. I am not sure how it works, but there does not seem to be any disclosure of this cosy arrangement. Are the Greens paying rent at 19 Eve Street, Erskineville?

Ms Lee Rhiannon: You know we pay rent because you have done this before.

The Hon. ERIC ROOZENDAAL: I have never talked about Eve Street. I would like to hear an explanation of why the Hon. Sylvia Hale only pays \$4,200. There is definitely a bit of a deal and a wink happening there. Then there is the contribution the Greens received from Australian Ethical Investment Limited. They received a fair bit of money from them. Perhaps Ms Lee Rhiannon will enlighten us as to exactly how much that is.

The Hon. Charlie Lynn: Where do they get their money from?

The Hon. ERIC ROOZENDAAL: That is a good question. It comes from good ethical companies like Macquarie Office Trust, Citigroup, Alliance Centre—who have a whole lot of corporate headquarters and buildings. The Greens invest in commercial developments but I see no record of them knocking back those contributions. The Greens need to be honest when they try to build up this great conspiracy about political funding. I would prefer to see total public funding of all political parties and not have to do any of the corporate fundraising, but I think the community would have a different position. I understand it does not want to wear the cost of political parties. That is a personal view; it is certainly not the Government's position. For the benefit of the Hon. Dr Arthur Chesterfield-Evans, I have carefully looked through the bill for references to the pornography industry and the sex workers industry and I could not find any.

The Hon. Don Harwin: That was in response to a comment by a member prior to your entering the debate.

The Hon. ERIC ROOZENDAAL: I thought we must have slipped in a paragraph that I had missed. I will let that go. The Election Funding Amendment Bill 2006 makes two amendments to the Election Funding Act that have been recommended by the Election Funding Authority. That is an important point to make: it is the authority that has made these recommendations. The first amendment improves the powers of the authority so that it may obtain information in certain circumstances about persons or organisations that may have failed to disclose political donations or electoral expenditure as required under the Act.

The second amendment ensures that a candidate may continue to make a claim from the Constituency Fund for electoral expenditure incurred by a party on behalf of that candidate. In the course of debate in the other House the Opposition asserted that there is a great discrepancy between the disclosure obligations that apply to members of New South Wales Parliament and those that apply to local councillors. I am advised that the disclosure obligations of the Election Funding Act apply equally in relation to local council elections and State Government elections. This can be found at section 328 of the Local Government Act.

If any honourable member is concerned about a particular disclosure issue in relation to a local government election, I suggest he or she approach the Election Funding Authority formally about the issue. If there is any need for reform of disclosure obligations at the local government level, I reiterate that the Government believes that political donations are best scrutinised by co-ordinated action at a Commonwealth level in relation to all three levels of government. As members of this House will be aware, the Government raised this issue with the Prime Minister in 2002. The Prime Minister rejected the Government's proposal to put the issue on the Council of Australian Governments' agenda. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

GREENS PARTY MEMBER CONTRIBUTIONS

Personal Explanation

Ms SYLVIA HALE, by leave: I wish to make a personal explanation. I believe that in the preceding debate—which, unfortunately, I did not hear in its entirety—Minister Roozendaal made reference to donations

or contributions by members of the Greens to the Greens party and wondered why there was a difference of scale to the extent that Mr Ian Cohen was said to have donated \$14,000 and Ms Lee Rhiannon \$11,000, while I donated \$4,200. I point out that the Greens members of Parliament are tithed. At one stage the tithe was 10 per cent and it is now 12.5 per cent of our gross salary. The difference in the contributions merely reflects the length of service by members of the party. It is a simple statement of fact that Mr Ian Cohen has been a member of this House, for example, for eight years longer than I have and for four years longer than Ms Lee Rhiannon. That accounts for the difference in the scale of the contributions.

In relation to the Greens rental of 19-21 Eve Street, Erskineville, it is true that I own those premises and anyone who cares to look at the register of pecuniary interest declarations can establish that fact. It is also true that the Greens pay tax on commercial rent, which is fully accounted for and in respect of which goods and services tax is paid to the Federal Government. To suggest that no rent is paid is absolutely false. I challenge the Minister to inform the House of the basis for the unfounded assertion. It has no basis in fact whatsoever.

BAIL AMENDMENT (LIFETIME PAROLE) BILL

Second Reading

The Hon. ERIC ROOZENDAAL (Minister for Roads) [4.05 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 purpose of the *Bail Amendment (Lifetime Parole) Bill* is to amend the *Bail Act 1978* to provide for a presumption against bail for people who are on life parole and who are charged with a further offence carrying a penalty of imprisonment.

This is a targeted amendment that will apply to a small group of prisoners who have had a life sentence imposed upon them but who have been released on parole for the rest of their life. To be on parole for life a prisoner must have been sentenced to imprisonment for life before the introduction of the so-called truth in sentencing reforms, which commenced in 1989, and have had their life sentence redetermined under the transitional provisions.

This category of person is quite unlike any other group in society. The community might reasonably expect that lifetime parolees, following release from prison, should make every effort not to come into contact with the criminal justice system again.

I will now outline the provisions of the bill.

The amendments to the *Bail Act* are contained in Schedule 1 to the bill. Item [1] inserts proposed new section 8E into the *Bail Act*.

The new section imposes a presumption against bail on any person who is accused of an offence for which a penalty of imprisonment may be imposed and who is serving a sentence of imprisonment for life and is on release on parole.

The new section applies to persons who have been released on parole after having had non-parole periods determined by the Supreme Court under the *Crimes (Sentencing Procedure) Act 1999*, which applies to life sentences imposed during a particular period.

Item [2] amends section 9 to make it clear that the presumption in favour of bail does not apply to people to whom proposed new section 8E applies.

Item [3] amends section 9D to make it clear that the presumption against bail under that section will still apply to people to whom proposed new section 8E applies who are accused of serious personal violence offences.

Item [4] amends section 32 to make it clear that the criteria for determining bail apply to people to whom proposed new section 8E applies.

Item [5] amends section 38 of the Act to require the reasons for granting bail to people to whom proposed new section 8E applies to be recorded immediately.

Item [6] inserts part 17 into schedule 1 of the *Bail Act* so that the changes made by this bill apply to a person who is accused of committing an offence before the bill commences if a person is charged with the offence on or after that commencement.

This bill is a measured response to ensure that if life parolees come before the courts again they will bear the burden of convincing the court that bail should be granted.

I commend the bill to the House.

The Hon. CHARLIE LYNN [4.05 p.m.]: The purpose of the Bail Amendment (Lifetime Parole) Bill is to amend the Bail Act 1978 to provide for a presumption against bail for people who are on life parole and who are charged with a further offence carrying a penalty of imprisonment. The Minister has advised that this is a targeted amendment that will apply to a small group of prisoners who have had a life sentence imposed upon them but who have been released on parole for the rest of their lives.

To be on parole for life, a prisoner must have been sentenced to imprisonment for life before the introduction of the acclaimed truth in sentencing reforms introduced by the Greiner Coalition Government in 1989. Honourable members will recall that the administration of the prison system was totally dysfunctional after more than a decade of Labor government. In fact, the system was so corrupt that the Minister for Corrective Services let many prisoners out on early release just so he could get a bed for himself as a guest of Her Majesty at Berrima.

The bill should be titled the Bail Amendment (*Daily Telegraph* Lifetime Parole) bill because it is a reaction to the campaign conducted by that newspaper against the parole conditions applied to the notorious convicted child killer and paedophile John Lewthwaite, who was allowed to roam the community without any sort of supervision at his leisure and perverted pleasure. It brings no credit to the Government that this is a reactive bill designed to get this outrageous case off the front pages of the *Daily Telegraph*. It has nothing to do with protecting the community or respecting the rights of Lewthwaite's victims; it is simply about media management. It begs the question that if such a notorious paedophile as John Lewthwaite can be on parole without supervision, what does that say about the other estimated 2,400 paedophiles on the register in New South Wales. It is enough to send a shiver up the spine of every parent in this State.

It is not as if the Government has not had time to formulate proper legislation to protect the community from these predators or to give victims of crime a sense of justice. At the Australian Labor Party [ALP] annual conference in 1993-94 the current Minister for Police was just a political spiv searching for some sort of relevance. When he addressed the conference in regard to prisoner applications to release John Lewthwaite he declared, "Should John Lewthwaite be released? Not on my watch." This is on the public record of the ALP conference. The current Minister for Police, Carl Scully himself, was captured on television.

Well, we all know about the Minister for Police! It did happen on his watch, but, as we have since discovered, the only constant on his watch is his mirror. He likes the image he sees more than anything else in life, but as the polling showed when they were trawling through the second eleven to seek a replacement for Bob Carr, the public saw it as a false image. It was so bad that even Carl Scully's chief factional backer, the Hon Eddie Obeid, had to recognize the dilemma and go for Iemma. This caused Carl to snarl a bit but he can draw some satisfaction from the fact that he did have a lot of support here in the Opposition, because we all wanted him as Premier.

This Government has form when it comes to paedophilia. If the Attorney General applied as much zeal to the protection of the community as he did to the protection of paedophiles when he tried to introduce retrospective legislation by introducing a bill to lower the age of consent at the start of this parliamentary term—a bill that was not canvassed with the public during the last election campaign—the public might feel that their children are better protected.

This Attorney General has surely passed his use-by date. He is obviously tired, dazed and confused. Just yesterday he introduced the Crimes (Forensic Procedures) Amendment Bill 2006 for the second time. It had been introduced on 28 September and second read by Labor member Paul McLeay on the same day. It is clear that the lights are on in the Attorney General's mind but there is nobody home. It is time he came clean with his electorate in the Blue Mountains and paid them a visit from his city pad to let them know that he is not going to run again at the next election. Retirement will be good for him, though, as he might then have the time to visit the Blue Mountains occasionally!

This bill would not be before the House if it were not for the persistent scrutiny applied by the shadow Minister for Corrective Services, Andrew Humpherson. He has pursued this issue relentlessly in the other place and has been highly critical of the Parole Authority, which he has exposed as a retirement home for Labor hacks. Faye Lo Po', John Whelan and other mates are only there because of their Labor connections. They will continue to dance to the tune of their political masters here in Macquarie Street. Never mind the victims; never mind the community; just do as the old lefties in the Labor Party say.

The Parole Authority is too important to be an instrument of faceless Labor hacks from the trade union movement—people whose first loyalty is to a political party rather than to the wider community. The authority

should be independent and its prime responsibility in assessing applications for parole should be the protection of the community from the likelihood of the criminal re-offending if left to roam the streets without supervision. The Government has a poor record in regard to introducing laws designed to protect the community. The bill that went through this House last night was first introduced as a private member's bill by the shadow Attorney General, Andrew Tink, earlier this year. He had been on this case of double jeopardy for the past seven years but the Government scoffed at the bill because it would upset its lefties and their supporters in the Greens and its sycophantic Independents in the other House.

This bill proved the Government has no limits to hypocrisy as it used its numbers to vote against Andrew Tink's bill and then reintroduced it under its own name the very next week. The community and future victims of crime can thank Andrew Tink—the architect of the bill and the finest legal brain in this Parliament—for getting this long-overdue legislation approved.

The Hon. Eric Roozendaal: He is leaving, the finest legal brain in the Parliament.

The Hon. CHARLIE LYNN: But he is being replaced by an even finer legal brain, as you well know. It will be a source of concern for you. A great man is coming in to replace him.

The Hon. Eric Roozendaal: Who!

The Hon. CHARLIE LYNN: You will find out soon enough how good he is when you see our policies in this area. John Lewthwaite is a notorious criminal who was convicted of a crime that shocked the nation—one that the parents and family of the poor defenceless young girl he murdered will never recover from. Since his release he has been free to roam the streets of Sydney and commit further offences at Wanda Beach. Even then, if it were not for the persistent scrutiny of the shadow Minister for Corrective Services and the exposure provided by the *Daily Telegraph*, this bill would not be before this House. For this reason Government members in this Chamber should hang their heads in shame. As I said, the Opposition will obviously not oppose the bill.

The Hon. ERIC ROOZENDAAL (Minister for Roads) [4.14 p.m.], in reply: I thank the honourable member for his contribution and I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

CRIMES (FORENSIC PROCEDURES) AMENDMENT BILL

Second Reading

The Hon. ERIC ROOZENDAAL (Minister for Roads) [4.15 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 not granted.

I refer honourable members to the second reading speech delivered by the Minister in the other place.

The Hon. DAVID CLARKE [4.16 p.m.]: The development in recent years of DNA technology and advances in forensic science techniques generally have been of great benefit in the fight against crime. These advances have greatly assisted in establishing the guilt or innocence of crime suspects. Only last night this House passed legislation making changes to the rule against double jeopardy that, together with DNA technology, will greatly assist this process. It would not be overstating the position to say that advances in DNA technology have had a pivotal effect in expanding our approach to crime detection.

The Coalition parties are and always have been very supportive of encouraging the development of forensic science technology. Indeed, it was the Federal Government that took probably the major initiative in

this field when in 2001 it established the national DNA database to allow inter-jurisdictional testing and correlation of DNA evidence. This was indeed a pioneering step in this field. The Federal Government is currently amending its DNA database legislation in line with reviews by the Standing Committee of Attorneys-General.

The Crimes (Forensic Procedure) Amendment Bill is part of the process of the continuing development of the use of DNA technology in the detection of crime. It has the support of the Opposition. It amends parts of the Crimes (Forensic Procedures) Act 2000 to allow New South Wales to participate in the national program, and it authorises the conduct of forensic procedures on persons who have previously been convicted of serious indictable offences in circumstances in which they are subsequently charged with the commission of an indictable offence.

The bill also amends the Law Enforcement (Powers and Responsibilities) Act 2002 so as to ensure that time spent in carrying out forensic procedures does not form part of any investigation period during which a person may be detained under that Act. As I have said, the Opposition supports the bill but, as the shadow Attorney General, Chris Hartcher, has stated in the other place, the Opposition believes that its provisions should be widened so as to allow for the testing of any person charged with an indictable offence. We see this as being consistent with the collection of fingerprint samples from people who are charged with offences.

Apart from the matters already raised, the bill makes a number of diverse amendments and clarifications to the law in respect of the proper conduct of forensic procedures and investigations. Whilst I do not propose to go through them exhaustively, some noteworthy provisions authorise a non-intimate forensic procedure or an intimate forensic procedure to be carried out on an untested former offender with the offender's consent or on the order of a senior police officer or a court. One provision prescribes the records to be kept by a senior police officer who orders that a forensic procedure be carried out. The regimes for forensic procedures on children in detention and forensic procedures on child volunteers are also set out. In respect of those of Aboriginal or Torres Strait Islander status, it is provided that a person has merely to identify as such a person and does not have to demonstrate that he or she is actually an Aboriginal or Torres Strait Islander in order to gain the protections available to such persons contained in the Crimes (Forensic Procedures) Act.

Further guidance is provided to magistrates about what they have regard to when determining whether to make an order for the carrying out of a forensic procedure. There is further clarification about what a person must do to comply with a order to destroy forensic material. An important amendment clarifies that a suspect from whom a forensic sample has been obtained is entitled to be given a copy of the DNA profile derived from the sample and a statement about whether a match has been found between that DNA profile and any other DNA profile on the State's DNA database system. Importantly, this amendment also makes it clear that it is not necessary to supply the suspect with anything while it would be a source of embarrassment to a victim of any offence. All in all, this is important legislation which, together with the Commonwealth legislation, will help the fight against crime.

Ms LEE RHIANNON [4.21 p.m.]: The Greens will not oppose this bill, but we have a number of serious concerns that we would like to put on the record. The bill makes a number of minor amendments to the Crimes (Forensic Procedures) Act and a more significant amendment to allow for DNA backcapture. The bill also clears the way for New South Wales to participate in the National Criminal Investigation DNA Database (NCIDD). It also amends the Law Enforcement (Powers and Responsibilities) Act to ensure that time spent carrying out forensic procedures does not form part of any investigation period during which a person may be detained under that Act.

Once again, this is another piece of legislation that has been rushed through this place. The Minister responsible said that that was not the case with the electoral bill. However, it is unsatisfactory to get a briefing on Tuesday and not see the bill until the next day. It is very hard to give a considered response and it is virtually impossible to move amendments. This is another example of the Government's management of this House. The crossbenchers were briefed on this bill only yesterday and it appeared on the notice paper this morning. We would have drafted amendments if there had been sufficient time to do so.

This is a very complex bill that makes 109 amendments to the Crimes (Forensic Procedures) Act 2000. The Greens believe that Act is an important piece of legislation with major implications for civil liberties, privacy and prisoner's rights. It is abominable that the Government is not giving members more notice to consider this important piece of legislation.

The Greens have serious concerns about the impact of DNA capture on civil rights and we have consistently raised concerns about the Act. We believe that forcing DNA tests on a person without their consent trespasses on a person's right to physical integrity. In the short time that DNA testing has been around, many of our concerns have surfaced.

DNA testing can play an important role in solving crimes in New South Wales. However, this forensic procedure must be carefully balanced against civil liberties. DNA is not a perfect crime-solution tool. DNA is no more remarkable than fingerprinting when it was introduced and it should not be used as an excuse to infringe on privacy and civil rights.

Many members of this Parliament seem to think that DNA is the magic silver bullet that will solve crimes in New South Wales. Just add water and—voilà!—the guilty person appears. That appears to be the approach of some members. The Greens believe where too much weight is put on DNA testing there is serious potential for miscarriages of justice. The testing technology for DNA can be fallible and DNA is very transportable and therefore liable to be planted at crime scenes. Clearly that should be addressed.

The legislation makes a number of specific amendments to the Crimes (Forensic Procedures) Amendment Bill, many of which the Greens support. I understand that a number of the changes contained in this bill came from recommendations from a statutory review of the Act conducted on behalf of the Attorney General's Department by Professor Mark Findlay. I have not had the time to go through each of these amendments, but understand that many of the amendments extend protections and offer safeguards. I have consulted with the Law Society of New South Wales about the bill and understand that it has a number of concerns but supports this bill overall. I have also consulted with the New South Wales Bar Association and I understand that it also supports this bill.

The Greens support amendments that require that informed consent be obtained from child volunteers before a forensic procedure may be carried out and clarify the Act so that only children serving a sentence of imprisonment for a serious indictable offence are subject to a compulsory order to provide a DNA sample, ruling out the possibility of a child on a control order being subjected to a DNA sample. The Greens strongly object to children and young people being subjected to DNA testing. We also support amendments that classify buccal swabs as an intimate forensic procedure where the person is subject to a compulsory order for testing and amendments that require police to no longer reject a claim that a person identifies as Aboriginal or Torres Strait Islander.

I will raise some specific concerns and ask that the Minister respond to them. New section 7A provides for DNA backcapture, which is the conduct of forensic procedures on people who have been previously convicted of serious indictable offences and who are subsequently charged with the commission of an indictable offence. Proposed section 75B allows for a non-intimate forensic procedure without the former offender's consent on the order of a senior police officer. Proposed section 75C allows for an intimate forensic procedure without the former offender's consent on the order of a court. The Greens have serious concerns about DNA backcapture. We do not think that it strikes the right balance between protecting the community and civil rights. This seems like a backdoor way for the Government to get more people on the DNA database. There is no requirement that DNA testing be justified to prove or disprove the commission of the alleged offence.

What happens when a former offender is charged, but is subsequently found not guilty? Why should that person have to provide a DNA sample before being found guilty? The Greens believe that it should be the conviction not the charging of a person that triggers the operation of proposed section 7A. We are also concerned that this section is retrospective and will apply to people who have committed offences and served their time in gaol under a different understanding of their requirements to give DNA. The Greens believe that it is a matter of good policy and good sense that laws do not apply retrospectively.

The Greens also have concerns about DNA testing not being included in time allowed for detaining suspects. The bill amends the Law Enforcement (Powers and Responsibilities) Act to ensure that time spent carrying out forensic procedures does not form part of any investigation period during which a person may be detained under that Act. The Greens believe that carrying out a forensic procedure and related application process should fall within the normal course of a police investigation. Section 115 of the Law Enforcement (Powers and Responsibilities) Act provides that the investigation period begins when a person is arrested and is limited to a maximum period of four hours unless extended by warrant. Section 117 lists certain times to be disregarded in calculating the investigation period. The Greens believe that DNA testing time should not fall

within times that are to be disregarded in calculating the investigation period. DNA should not be used as an excuse to drag out the time police can detain a person.

The New South Wales Law Society Criminal Committee has raised similar concerns. It advises that "excluding this period of time from the investigation period enables the police to detain a person for a far lengthier period". The Greens have spoken on similar legislation in the House. The inception of broad-based DNA testing, including a centralised DNA database, represents potentially revolutionary changes to law enforcement in New South Wales. DNA testing in due course may well change law enforcement in the same way that law enforcement was altered by the introduction of fingerprinting. Unfortunately, the momentous changes that DNA testing involves have not been accompanied by a commensurate level of public debate and scrutiny.

Those comments were true when I made them when this legislation was introduced and they remain true today. That level of debate still has not occurred. The Government is not being honest with the public about the need for checks and balances with this legislation. In due course the proposed scheme for DNA testing will exert considerable influence over the exercise of justice in this State. We are disappointed that the Government—but we are not surprised that the Opposition—has not come up with a commitment to providing those checks and balances. The Greens will continue to watch very closely the developments regarding DNA testing.

The Hon. ERIC ROOZENDAAL (Minister for Roads) [4.30 p.m.], in reply: I thank honourable members for their contributions to this debate. The DNA testing regime is merely an extension of the existing policy regarding persons who have served their sentences prior to 2001. The conviction for the old serious indictable offence, rather than the fresh charge, gives rise to the duty to provide DNA. That is an important point. After 2001 anyone who has been convicted is required to supply DNA. It simply fills the gap for people who were convicted prior to 2001. The argument about waiting until they are convicted of the later offence before DNA can be taken is not at all persuasive.

With regard to time, the policy has always been that technical investigation steps are not included. The detention time under the Law Enforcement Act, for example, the time to make and dispose of any application for a search warrant, and the full list of time out is provided in section 117 of the Law Enforcement (Powers and Responsibilities) Act. The bill will allow us to participate in a national database, which is very important. The DNA backcapture is certainly seen as providing the appropriate balance between encouraging rehabilitation of offenders and ensuring community safety. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

FAIR TRADING AMENDMENT (MOTOR VEHICLE INSURANCE AND REPAIR INDUSTRIES) BILL

Second Reading

The Hon. ERIC ROOZENDAAL (Minister for Roads) [4.33 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.

Honourable members would be aware that there has been longstanding tension between smash repairers and insurers. This is inherent in the relationship between the two industries—insurers want to minimise repair expenses and maximise profitability, and repairers want to maximise their work and revenue. What both industries have in common is an interest in providing a good service to the consumer. Industry trends have put added pressure on the relationship. The ratio of repair shops to the number of vehicles in Australia is high compared with similar economies around the world. There has also been a reduction in the number of accidents, possibly due to improvements in technology and drier weather.

In the last 15 years there has also been an increasing use of network repairer schemes by insurers. Repairers within those schemes are often promoted to carry out repairs on damaged vehicles insured by the insurer. In July 2003 the Insurance Australia Group, the insurer with the largest share of the vehicle market in Australia, further developed its network repairer scheme by introducing

an Internet tendering system for repair work. From the point of view of the insurer, Internet tendering means that pictures of a vehicle, plus an assessment of the work needed to be done, can be posted on a secure web site. NRMA Insurance introduced such a system in New South Wales last July. Web-based repair management, or WRM, provides a forum where repairers compete for repairs by providing on-line quotes.

There have been general concerns about the outcomes of the changing insurer-repairer relationship, including the transparency of network repairer arrangements, the transfer of network repair status when the repair business is sold, repair methods, responsibility for repair warranties, payment terms, and the fairness of on-line tendering systems. The concerns raised in the disputes have been national in scope, given the national operation of the insurers involved, and have also related to market power issues, particularly as the insurance market is dominated by four major insurers—the Insurance Australia Group, which includes NRMA Insurance, Promina, which includes AAMI, Suncorp-GIO, and Allianz. Accordingly, the concerns were examined by the Australian Competition and Consumer Commission in 2003 and, more recently, by the Productivity Commission in 2005.

Disputes between repairers and insurers are in nobody's interest. They waste time and resources and prevent the formation of efficient business relationships that are built on trust and co-operation. Tensions between the industries spill over and, most tellingly, can have an impact on consumers and the wider community. In New South Wales, there was particular concern about NRMA Insurance's introduction of its web-based repair management system, which involved Internet tendering for work by smash repairers. Through negotiations which I mediated and the work of an independent expert I commissioned, we were able to bring important changes to the web-based repair management system—work which resulted in an undertaking that web-based quoting systems will be used only for non-structural damage.

Repairers were also concerned that insurers could use their network repairer arrangements to prevent consumers from exercising their choice of a repairer. I have been actively facilitating negotiations between IAG-NRMA Insurance and the Motor Traders Association [MTA]. These negotiations have resulted in the following achievements: IAG agreeing to suspend penalties imposed on repairers for the practice of lowballing, or underquoting to obtain a competitive advantage at the tendering stage in the Internet quoting system; the insurer working with the MTA in the development of a new process to prevent lowballing that both parties agree is fair and transparent; and, from 1 May 2006, NRMA Insurance agreeing to offer its customers, at no additional cost, the freedom to choose a repairer.

Other undertakings were also given by NRMA Insurance. The insurer agreed that terms such as "non-accredited" will no longer be used when describing licensed repairers outside of the insurance network of repairers; web-based repair management will be used only for superficial or non-structural damage; NRMA Insurance performance measurement systems will be based on quality, not just price; repairers who have opted out of the NRMA Insurance Preferred Repairer Network will be given a fair and without prejudice opportunity to rejoin the network; the process and qualification guidelines for a preferred repairer will be fair, transparent and widely available. Furthermore, the Motor Vehicle Repair Industry Authority within the Office of Fair Trading, which is responsible for the licensing of repairers, has been monitoring the quality of repairs by investigating any complaints it has received about the quality of insurance repair work.

Under the Motor Vehicle Repairs Act 1980, disciplinary action may be taken against repairers if work is "below the usual trade standard". All parties concerned have come a long way in the last 12 months. It has taken a lot of hard work from repairers, insurers and members of this House to achieve this solution. As the Chief Executive Officer of the Motor Traders Association said on ABC Radio yesterday morning, this solution is, "a victory for both of us [repairers and insurers] and it is a victory for the consumer—I think everybody has won out of this situation".

I will now refer to the aims of the Government's legislative strategy. The dispute between insurers and smash repairers in recent years has now highlighted the need to put rules into place that ensure a fair deal for consumers and a sustainable industry for both repairers and insurers. The best way this can be done is by making the voluntary national Motor Vehicle Insurance and Repair Industry Code, released on 1 June 2006, enforceable under New South Wales legislation. The code is a result of the Productivity Commission's report on smash repairers and insurers and covers the key issues identified in that report.

The code includes a transparent and independent external dispute resolution mechanism, the requirement for full disclosure in preferred smash repairer arrangements, retention of preferred smash repair status upon the sale of a business, the requirement for full disclosure in quoting for work and payment, standards for the allocation of responsibility for repair warranties, standards for payment terms, and requirements for up-front disclosure on whether insurance policies provide choice of repairer.

The New South Wales Government has always stressed the importance of a negotiated outcome to the dispute between repairers and insurers. In this regard it must be stressed that the national voluntary code was developed by national insurer and repairer representatives and has been publicly supported by them. The administration and monitoring of the code at a national level will be by the Code Administration Committee, which consists of three appointees of the Insurance Council of Australia and three appointees of the Motor Trades Association of Australia. Any problems with the provisions of the code should be picked up through the review mechanisms that are built into the code.

There is to be an internal review of the code 12 months after its commencement on 1 September 2006. There is also provision for an external review of the operation of the code every three years from the commencement of the code. Furthermore, adoption of the national code ensures national consistency in the standards adopted and avoids the confusion that could arise from having different rules applied in New South Wales, particularly if the code is mandated at national level some time in the future. The New South Wales Government believes that the code needs to be mandated to ensure that the standards it puts into place can be enforced.

I will now briefly outline how the Government's legislation will work. It is intended to provide for fair, timely and transparent conduct between insurers and repairers so that consumers are not unduly inconvenienced or unfairly treated due to the business practices in, or disputes between, the insurance and repair industries. The Fair Trading Amendment (Motor Vehicle Insurance and Repair Industry) Bill 2006 will amend the Fair Trading Act 1987 so that the regulations may declare a mandatory code to regulate the relationship between insurers and motor vehicle repairers.

So that stakeholders can better understand the Government's intentions, I have also circulated a draft Fair Trading Amendment (Motor Vehicle Insurance and Repair Industry) Regulation 2006, which will make an industry code between repairers and insurers published in the New South Wales *Government Gazette* a declared code for the purpose of the Fair Trading Act. It is proposed to publish the national Motor Vehicle Insurance and Repair Industry Code in the *Gazette*, which, in tandem with the proposed legislation, will make it mandatory. The draft regulation essentially applies "interpretation provisions" to the national code so that all references in that code to voluntary application, signatories, and other incidental matters, do not apply.

However, I will now turn back to the provisions of the bill. It provides that the enforcement and remedies provisions of the Fair Trading Act will be triggered if a dispute has not been resolved by dispute resolution procedures specified under the code or if the insurer or repairer refuses to take part in those procedures. So that there is an understanding of the detailed dispute resolution mechanisms already in the Motor Vehicle Insurance and Repair Industry Code, I will briefly outline these procedures now. There are essentially three tiers of disputes identified in the national Motor Vehicle Insurance and Repair Industry Code. The first tier of disputes are those relating to the amount to be paid for repairs, and differences of opinion about the repair method which do not lead to a belief that the safety, structural integrity, presentation or utility of the vehicle will be compromised. These disputes need to be settled through individual negotiation between the parties.

The second tier of disputes relate to disputes about the repair and paint method in circumstances in which there is a belief that the safety, structural integrity, presentation or utility of the vehicle will be compromised and cannot be resolved through the standards established in clauses 1 to 7 of the code, and to disputes which arise prior to the completion of repairs, other than those already mentioned. These disputes are handled through direct dispute resolution between the parties to facilitate a speedy resolution. The aim is to minimise inconvenience to consumers whose vehicles are being repaired. Under this mechanism the repairer may lodge a complaint with the insurer's complaint contact.

The insurer needs to make a determination in two business days. If the repairer disagrees with the determination, the code provides that the dispute is settled at this stage by the repairer retaining the right to refuse to carry out the repair and the insurer may transfer the vehicle to another repairer. The insurer reports annually to the Code Administration Committee about the number, nature and outcome of these disputes. In order to ensure that consumers are not inconvenienced, it is not intended that a second tier code dispute will trigger access to enforcement mechanisms under the Fair Trading Act. Furthermore, the code provides for the elevation of certain second-tier disputes to the other dispute resolution mechanisms available under the code. It is these dispute resolution processes that need to be attempted prior to action under the Fair Trading Act being possible.

The third tier of disputes relates to disputes about alleged non-compliance with clauses 4 to 9 of the code and disputes about contractual arrangements. Clauses 4 to 9 of the code deal with matters such as insurers and repairers relations; network smash repair schemes; the estimate, repair and authorisation process; repair warranties; payment terms; and disclosure obligations. Also, some of the disputes identified in the second tier, which arise prior to the completion of repairs, may be dealt with under this tier once the vehicle has been repaired. These third-tier disputes must first go through an internal dispute resolution mechanism established by insurers. There must be acknowledgement of the complaint within five business days and conclusion of internal dispute resolution within a further 10 days—15 days in total—unless both parties agree. If the repairer disagrees with the outcome of the internal dispute resolution, they can elevate the complaint to external dispute resolution.

Under external dispute resolution, the applicant lodges a notice of dispute with the Code Administration Committee or its nominee and with the respondent. The parties then have the opportunity to agree on a mediator within two business days. If not, the Code Administration Committee is requested to appoint a mediator within two business days. The parties should then try and resolve the dispute within 15 business days unless agreed to by both parties. If resolution is not reached, the mediator provides a written statement setting out the parties to the dispute, an outline of the dispute and a list of unresolved issues. The mediator has to advise the Code Administration Committee in writing of whether mediation was successful or not. The parties share equally in costs of mediation and pay their own costs for attending mediation. They must mediate in good faith.

In order to prevent the dispute resolution processes in the code from being needlessly bypassed, insurers or repairers will be able to use the enforcement mechanisms in the Fair Trading Act only if they are not the party refusing to take part in the dispute resolution procedure under the code. The dispute about the breach of the code will also have to satisfy a public interest test applied by the Minister and the Director General of Commerce. The existence of a public interest test is a standard consideration when deciding whether to commit government resources to enforcement action and will be a means of ensuring that vexatious complaints, for example, are not needlessly acted upon.

It is proposed that enforcement of the code will be through a range of existing civil, rather than criminal, measures in the Fair Trading Act. These include court orders to restrain the carrying on of a business, orders to disclose information or publish corrective advertising, orders to compensate for damage, show cause action by the Commissioner for Fair Trading to cease trading, and civil action for damages. The Office of Fair Trading may apply for certain types of court orders on behalf of wronged parties. Significant matters, such as the misleading and deceptive conduct and unconscionable conduct provisions of the Fair Trading Act, are also enforced using civil, rather than criminal, measures.

The Office of Fair Trading has, for example, taken action in the Supreme Court to obtain injunctions and other orders under section 65 of the Fair Trading Act to deal with breaches of the Fair Trading Act. The orders that can be sought under section 65 can be very broad as well as quite specific in terms of the conduct being restrained or the actions the respondent is required to undertake. If there is a subsequent breach of the orders, action can be taken in the Supreme Court for contempt. Fair Trading has taken contempt proceedings in many cases, and several respondents have been given custodial sentences. Bona fide traders are usually very careful to comply with Supreme Court orders, but the contempt action is available if necessary.

The Office of Fair Trading has also frequently used section 73A of the Fair Trading Act, which permits the Commissioner for Fair Trading to accept written undertakings from a trader that has engaged in conduct in breach of the Fair Trading Act. This provision is very broad and has been used when the trader has shown a willingness to take action to ensure a cessation of the conduct of concern and future compliance. Usually the terms of the undertakings are negotiated. The provision and acceptance of the undertakings is intended to avoid the need for court proceedings. This is a benefit to the trader and the regulator. However, the undertakings can be enforced through the Supreme Court if the trader does not fully comply.

In bringing forward legislation to mandate the code, which has been nationally agreed to by repairers and insurers, the Government has demonstrated that it is serious about ensuring that there are enforceable rules to produce a fair result for repairers, insurers and, ultimately, consumers. While the provisions of the code and the bill before the House mainly mention ways of promoting transparent, informed, effective and co-operative relationships between smash repairers and insurance companies, there are also some provisions in the code which directly mention policy holders. These include clause 4.2 (f) of the code, which requires that insurers not knowingly ask claimants to drive unsafe motor vehicles for the purposes of obtaining alternative estimates. Also, clause 9 of the code includes specific disclosure obligations by an insurer to a policy holder. These relate to matters such as choice of repairer. It is important that a consumer whose insurer provides choice of repairer will, accordingly, be allowed to exercise that choice without being treated unfairly or inconvenienced. Not delivering what is advertised could be interpreted as being misleading or misrepresenting the truth. This can be dealt with under the Fair Trading Act.

Relationships between insurers and repairers can ultimately have an impact on consumers. Proposed section 60W provides a context for considering the mandatory code provisions. They are there to provide for fair, timely and transparent conduct between insurers and repairers so that consumers with damaged motor vehicles are not unduly inconvenienced or unfairly treated as a result of the business practices in or dispute between the insurance and repair industries. This might include unreasonable delays in awaiting assessment and authorisation of repairs, the ability to select a repairer where a policy provides for this, without being subject to pressure selling from insurers or repairers preventing insurers from processing a customer claim.

It is acknowledged that a small portion of the smash repair industry needs cleaning up. This code will contribute to ensuring that the few bad apples do not spoil the reputation of the entire industry. Proposed section 60W, in establishing an interpretative context, provides protection in addition to existing mechanisms that consumers with complaints about insurance matters can access. These include remedies under the Fair Trading Act in relation to misleading conduct, and remedies under the national General Insurance Code of Practice. The code also provides important protections for repairers in relation to what they can expect from insurers. From the outset of this dispute, one of the key concerns raised has been the use of quoting systems that do not allow repairers to adequately identify damage to a vehicle through digital images posted on a secure Internet site.

Clause 6.1 of the code covers fair and transparent process for competitive quoting and requires that sufficient information be provided by insurers to allow repairers to quote. If a breach of clause 6.1 should occur, the Act can be examined in the context of the consumer objective and the issues outlined in the principles of the code. Importantly, this includes the mutual responsibility of repairers and insurers to ensure that the safety, structural integrity, presentation and utility of the vehicle are restored. Effectively, licensed repairers have a legal obligation under the Motor Vehicle Repairs Act 1980 to carry out repairs to usual trade standards. Additionally, section 20 of the Insurance Act 1902 provides that in disputes about materials or method of repair, the onus is on the insurer to prove proper use of materials and that repairs are properly carried out. While not seeking to stifle business development on the part of repairers or insurers, quoting systems must ensure that adequate information is provided on which to provide a quote. The quoting system must be fair and transparent.

One final matter which was raised with me during consultation on this bill has been the jurisdiction of the Fair Trading Act. Legislation to clarify the jurisdiction of the Fair Trading Act is currently in the other place. The Fair Trading Amendment Bill 2006 will clarify that the Fair Trading Act extends to conduct by a person of the State, conduct outside the State that affects a consumer in the State, conduct in connection with goods or services supplied in the State, representations made in the State, and conduct that results in loss or damage in the State.

This dispute has been in nobody's interests. Many repairers have fought a long and hard battle with insurers. Sadly, some have not survived. The bill supports the small business owners and operators who, to a large extent, rely on the co-operation of insurers for survival. It provides the basis for a fair resolution for all parties concerned. On 4 September 2006 the NRMA Motoring Services wrote me a letter that said that the bill will have a "positive impact on motorists, as a result of its focus on the overall improvement in repair quality and the reduced likelihood of motorists becoming embroiled in disputes between insurers and repairers". The bill marks a new era of co-operation between insurers and repairers.

The Motor Traders Association has said that it will "work with them [IAG] and other insurers to make sure the systems work to everyone's benefit". Yesterday the Insurance Council of Australia issued a release stating that its members "are entering this new era with an open mind and with a view to ensuring the best outcome for consumers". The release further states, "Importantly, the code ensures consumers have access to quality vehicle repairs at a reasonable price in a reasonable timeframe". The bill provides for a fairer marketplace for repairers and insurers. It sets a pathway to resolve disputes. There are penalties for those who breach the code, and the bill will ultimately provide a good outcome for consumers. I thank the honourable member for Bankstown for leading the charge to protect the interests of repairers in this debate. I thank also the honourable member for Blacktown and the Staysafe Committee, and the honourable member for Northern Tablelands for their important contributions. I commend the bill to the House.

The Hon. CHARLIE LYNN [4.34 p.m.]: The Opposition supports the Fair Trading Amendment (Motor Vehicle Insurance and Repair Industries) Bill, the object of which is to amend the Fair Trading Act 1987, which is the principal Act, to require compliance with an industry code of conduct for motor vehicle insurers and repairers. Representatives of the insurance and smash repair industries have been developing a voluntary code of conduct, particularly in connection with network repairer schemes under which a number of repairers are promoted under a scheme operated by an insurer to carry out repairs on damaged motor vehicles insured by that insurer. The bill will enable the declaration by the regulations of such a code as the applicable industry code, and provide for its enforcement. The bill is intended to provide for fair, timely and transparent conduct between insurers and repairers so that consumers with damaged motor vehicles are not unduly inconvenienced or unfairly treated as a result of the business practices in, or disputes between, the insurance and repair industries.

The House would be aware of the considerable angst that has existed for some time within the smash repair industry leading up to the presentation of the bill, particularly regarding the issue of web-based quoting and the non-accreditation of a number of smash repairers by some leading insurers in Australia. The web-based quoting proposal led to a strong and vigorous campaign, particularly by the smash repair industry. It appeared to be a one-sided contest, with smash repairers broadly represented by small family organisations and small businesses taking on the might of the insurance companies. The resolution that resulted was a mandatory code of conduct, which is the centrepiece of the bill.

The Insurance Council of Australia has raised a few concerns with the shadow Minister for Fair Trading, and I should put them on record. The Motor Traders Association also raised some concerns. The main concern of the Insurance Council of Australia relates to issues of extraterritoriality especially when read in conjunction with the legislation that has just been passed in this House, the Fair Trading Amendment Bill, particularly section 5A, which gives the Department of Fair Trading, in general terms, the ability to go outside the borders of New South Wales in certain instances and under certain conditions.

The Insurance Council of Australia has stated that it believes that a company registered in New South Wales, or which has its principal place of business in New South Wales, may be held accountable outside New South Wales—the council has had legal advice to that effect—but that repairers may not be similarly accountable. The council says there is a very real risk that the New South Wales code will apply extensively outside New South Wales to all repairs authorised by insurers who either have their head office in New South Wales or are registered in New South Wales as a corporate entity, even though there may be no New South Wales consumer or New South Wales-registered motor vehicle connection. The council believes that the code would not similarly apply to the repairers who repair those vehicles unless they do have an appropriate connection with the State. The council noted that this raises serious policy issues—including the appropriateness of a government regulating outside its own borders, uncertainty and compliance costs—and critically creates a real disincentive for insurers to register and/or operate their businesses in New South Wales. The Insurance Council outlined a number of impacts that would arise from the extraterritoriality problems, including impacts on customers. On that issue the council says:

Unless it is clear when the Code is to apply, consumers outside NSW will be uncertain about whether their repair will be conducted in accordance with the Code. For a NSW resident who has their vehicle repaired outside NSW, the attached legal advice—

which council sent to the shadow Minister—

relies on a subsequent loss occurring in order to attract the NSW Code—making it unclear if the Bill would apply. A simple test such as registration of the vehicle seems, in the absence of specific provision in the Bill, unlikely to be enough.

The council noted that one of the impacts is on insurers, and stated:

The NSW Parliament would, in effect, be mandating extensive rules for many insurers outside of NSW, where the particular conduct does not affect a NSW resident or a NSW repairer.

Not all insurers would be treated equally; those based in NSW would feel the impact the hardest. In the absence of some other connection to NSW, an insurer with its head office in, and that is registered in, Victoria is not likely to be affected in this way.

The council noted that this could make business less attractive in New South Wales for insurers to operate in New South Wales. These are real concerns that the Insurance Council of Australia raised. It has proposed a number of solutions to settle the extraterritoriality problems, and says that the objectives of the legislation would be better achieved by amending the bill by adopting one or both of the following options, as set out in a letter to the shadow Minister dated 15 September 2006:

- (1) to bind only those repairers and insurers who enter into repair contracts with each other that are, or ought properly be, governed by the laws of NSW; or
- (2) limiting the application of proposed Part 5E [of the Fair Trading Amendment Bill] to motor vehicles that are registered in NSW. Since NSW residents are likely to have NSW-registered cars, this is a simple way that all of the customers, the insurers and the repairers are able to identify that the NSW code applies.

The Insurance Council believes that such amendments would make all parties more certain about the code's application to the particular repair, would meet the Minister's intention to ensure New South Wales consumers have the benefit of it and would remove the impediments to doing business in New South Wales.

The Opposition accepts the advice received from the Minister's office that there are some problems with the second proposal in that for a small number of people coming to the State, for example, if they arrive

with a Queensland numberplate, there is a hiatus between when they arrive and when they must register the car in New South Wales—that is, within about three months. However, the second option seems to be a workable option and we are confident the problem can be resolved. We understand that the Minister's office intends to address this extraterritoriality problem in the regulations. We regret to say that we have not seen the regulations, so at this stage we do not know what will be in them. We suppose that an element of trust will have to pertain in relation to this matter.

We have seen a lot of bills come through this House in recent times where the details will be in the regulations to be made at some further time down the track, and that concerns us. At least in that regard there is provision for the bill and the code to be reviewed in 12 months time. The shadow Minister for Fair Trading gave an undertaking that the Coalition would undertake that review when we are in government and that we will look at the regulations as part of the review. We ask the Minister to deal with the territorial matters in his reply because they are of concern to the Insurance Council of Australia, which has taken advice from senior counsel.

The Motor Traders Association has concerns and wants confirmation that the code will prevent insurers from flexing their muscles in the manner they have previously. The association particularly wants confirmation that there will be no bullying or badgering if a consumer indicates a choice of repairer and that the claim will be processed properly, efficiently and quickly. The Motor Traders Association wants an assurance that in a third-party claim when the driver is not at fault and relies on the at-fault party insurers to settle a claim, consumers will be protected in the same way as if they were relying on settlements by their own insurers. The association also wants an assurance that insurance companies will not inconvenience a consumer by cash settling the claim simply because the consumer exercises his or her right to choose the repairer. We hope that the Minister will deal with those matters in his reply.

The matter has been resolved but the proof of the pudding will be in the eating. Whether this scheme will work efficiently will depend on good faith between insurers and smash repairers. It appears there has been significant consultation during the preparation of the bill and, again, we give credit to the Minister for her involvement in the process. We hope it will all come together and a review in 12 months will show whether it is working. But, in the short term, we will hear from one side or the other as to whether that is so. The Opposition supports the bill.

Ms SYLVIA HALE [4.43 p.m.]: The Greens support the Fair Trading Amendment (Motor Vehicle Insurance and Repair Industries) Bill, which attempts to address the problems existing between smash repairers and insurers. I understand that the Government has worked with the relevant parties, such as insurers, the NRMA and the Motor Traders Association to try to iron out the problems associated with Internet tendering for smash repair jobs. The bill provides for a number of improvements and for an enforceable code of conduct.

As a result of this bill, the system of web-based repair management and quotation will be used only in instances of non-structural damage. Insurance companies will be required to provide more information, thus enabling those tendering for smash repair work to provide accurate estimations of cost. The bill will amend the Fair Trading Act so that the regulations may declare a mandatory code to regulate the relationship between insurers and motor vehicle repairers. The industry code of conduct will be gazetted and become a declared code under the Fair Trading Act. The Greens support that initiative because self-regulation and voluntary codes are often ineffective and do not always work to the benefit of consumers.

The dispute resolution procedures already exist. Under the provisions of the bill both insurers and repairers will be able to invoke the enforcement mechanisms of the Fair Trading Act if they are not the party refusing to participate in the dispute resolution process as specified in the code. However, a public interest test will be applied before the Fair Trading Act provisions can be triggered. The Office of Fair Trading will be able to apply for court orders to enforce the code and the mandating of the code will make it more enforceable. Any person whose vehicle has been damaged in an accident and requires repair will benefit; they will no longer be caught up in protracted disputes between insurer and repairer.

The bill will also ensure that vehicle owners are able to choose a repairer without being unfairly inconvenienced. The NRMA has agreed to allow its members to choose their own repairer rather than it dictating to them who they should use. The legislation will improve relations between insurers and repairers and increase enforceability of the rules, all of which should benefit vehicle owners.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [4.43 p.m.]: The Democrats support the Fair Trading Amendment (Motor Vehicle Insurance and Repair Industries) Bill. This bill bears an uncanny

resemblance to the legislation foreshadowed by the Hon. Richard Torbay, who was very interested in looking after the interests of the small motor vehicle repairers as against the insurance companies. As anybody who has read any economics textbook knows, the first chapter talks about perfect markets and all the other chapters talk about distortions to the perfect market by people having monopoly powers and influence, and the development of oligopolies, oligopsonies and various other forms of distortion within the market.

The general situation is that somebody either gets vertical integration or they get a segment of the market where they are dominant and then they have a perfect market in the group from which they buy. Supermarkets that buy from a perfect market of producers are able to force the price right down to the marginal cost of production. As long as somebody can meet that cost in a perfect market, the profit margin will be extremely low and the ones that cannot meet it will go broke. So if there is a concentration of power, as there is in retailing in Australia, thanks to laissez faire policies of governments, or indeed concentration of ownership, as in the media, the small players will be forced out.

In the insurance industry—which is a highly subsidised industry where everything is tax deductible and that effectively means that the taxpayer pays for half of it—the dominant motor vehicle repairers have been able to set prices for the small motor vehicle repairers. The NRMA would like to have photographs of damaged cars on the web site, have everybody tender for the repair from those photographs, and then choose the repairer. Of course, if some repairer looks at the photograph, gets it a bit wrong and puts in a very low quote, he will either have to do it at a loss or take the risk that his costs have not been covered. He may have quite a problem. In a perfect competitive market, the insurers with oligopolistic market dominance are able to minimise their costs and avoid price pressures in their segment of the market.

I can see the wrong on both sides. Some years ago in Lithgow I was involved in a shunt accident, but the car was drivable so I drove home. I went to a repairer, whom I was informed was not too bad. I was told that I had to get three quotes, which I did, but, not surprisingly, the quote of the first repairer was marginally lower than the others and he got the job. So in a sense the requirement to get three tenders was something of a farce. I think his price was reasonable, although I am not an expert on car repairs. The NRMA insisted that Internet tendering would lower the cost of repairs. Motor vehicle repairers try to do a decent job but if a car is in reasonable condition insurers insist on repairers using second-hand parts to force the price down to such a level that they simply cannot do a good job.

I use the analogy of my former work in workers compensation. Under my system people who came to me with a crook back were sent immediately for a scan. I would have a diagnosis within an hour of them arriving at my surgery and I would book them in to see a neurosurgeon if they needed a disk removed, and they would see the surgeon within a couple of days. It was a very good service. I would fill out the forms for the insurance company and post them on the same day as the patients saw me. I would always ring the insurance company when a patient was with me, because if it took some time for me to get on to the claims manager, at least the patient could see that I was actually spending the time on his or her case. I wasted a large amount of time, for which fortunately I was paid.

The insurance companies would never give me an answer quickly authorising a neurosurgeon to operate. I knew exactly how long it took because I brought patients back at weekly intervals. It transpired that insurance companies did not open their letters for 28 days. If I rang at weekly intervals, I would not get an answer until the fourth week. The insurance companies would open their letters but would not make a decision. People in agony wait one month for approval for surgery. Quite often the neurosurgeon would also write to the insurance company. Of course, the insurance companies were still paying workers compensation. This is how they kept the costs down and interfered in my medical practice, and this had an adverse effect on patients.

Insurance companies use money on the short-term money market and if they did not have to make a payout, even to assess the claim, they could use the money for the month. It was all about investing money. It is very bad policy to give insurance companies this type of power. Today, as I was standing in the queue for lunch, a woman who had been in a car accident said, "How is it that my car was fixed in two weeks but I still have to wait a month for all my medical bills and treatment to be approved? They should have a protocol for my whiplash, and it should come quickly."

When insurance companies had the whip hand they dictated to practitioners. They dictated to me and they have been dictating to motor vehicle repairers. They had this incredible power in the market. If small repairers are competing with each other without market power and are dependent upon insurance companies, they will be extremely vulnerable. They need this legislation to redress the imbalance. Anybody who thinks the

market will fix the problem when the market is imperfect in economic terms is deluded. This bill is sound and it is necessary. I note that the bill is the result of the Motor Traders Association seeking to redress this imbalance.

A similar situation exists with egg production in that four major companies produce all the eggs. Growers are given starter chicks and they buy the food from the big egg companies. They then sell the birds after 60 days—or however long it takes to grow them these days. The price of the birds, the price of the feed and the price they will pay for the bird are all set by the large egg corporations. Because of these monopoly powers it has been necessary for us to guarantee a certain price per bird in order to give people in the industry a viable living. Anyone who believes that a market situation will give the cheapest price is deluded. The market is a good servant if it is structured in the right way but it is not a god that will solve all economic problems, and it is simplistic to believe otherwise. This bill will ensure that people have some chance of receiving quality repairs. It will also prevent people from being directed to certain repairers who, in order to achieve low prices, will do shoddy work, use second-hand parts, or both. I support this important bill.

The Hon. Dr PETER WONG [4.56 p.m.]: I congratulate the Government on introducing the Fair Trading Amendment (Motor Vehicle Insurance and Repair Industries) Bill, which, hopefully, will ensure the high quality and safety of motor vehicle repairs following accidents. I hope the legislation will ensure that there is fair competition for repairers. Many speakers mentioned that smash repairers, broadly speaking, are represented by small family organisations and small business. Many had to close their doors because of the greed of big insurance companies. I sincerely hope that this legislation will achieve the objectives referred to in the Minister's second reading speech.

Reverend the Hon. FRED NILE [4.57 p.m.]: The Christian Democratic Party supports the Fair Trading Amendment (Motor Vehicle Insurance and Repair Industries) Bill, which will amend the Fair Trading Act to enable the declaration of a code relating to the conduct of insurers and motor repairers. All honourable members are aware of the tensions—some might call it a war—between NRMA Insurance and smash repairers over their respective roles in the repair of insured vehicles. The NRMA endeavoured to set up a system to simplify the repair business by using the Internet and by assessing visually the amount of damage to a vehicle. This was not acceptable to some companies in the repair industry.

To try to resolve the conflict the Government has introduced the bill, which we hope will achieve its purpose. Concerns have been expressed about transparency of network repairer arrangements, transfer of network repairs status when the repair business is sold, repair methods, responsibility for repair warranties and payment terms. These issues are very important. They are national in scope and were examined by the Australian Competition and Consumer Commission in 2003 and the Productivity Commission in 2005. A national voluntary motor vehicle insurance repair industry code of conduct has been developed and supported by insurer and repairer representatives following the Productivity Commission report.

It was due to have a staggered commencement, beginning in September 2006. The national code will include some of the matters that I have referred to, such as a transparent and independent external dispute resolution mechanism, the requirement for full disclosure; retention of preferred smash repair status upon the sale of a business, the requirement for full disclosure in quoting for work and payment, standards for the allocation of responsibility for repair warranties, standards for payment terms, and requirements for up-front disclosure on whether insurance policies provide choice of repairer. This legislation will amend the Fair Trading Act to provide for the declaration in the regulations of a code relating to the conduct of insurers and repairers. It will also ensure that insurers and repairers can use the enforcement mechanisms in the Fair Trading Act only if they are not the party refusing to take part in the dispute resolution procedure under the code.

Enforcement of the code will be through a range of existing civil, rather than criminal, measures in the Fair Trading Act. The code will be enforced using court injunctions: orders to disclose information; show cause action to cease trading; trading prohibition orders; civil action for damages; and court orders for injunctions and corrective advertising to compensate for damage. Fair Trading may apply for injunctive court orders on behalf of wronged parties. The Christian Democratic Party hopes that this will help to resolve disputes, and that there will be a reduction in conflict and harmony in the motor repair industry.

The Hon. ERIC ROOZENDAAL (Minister for Roads) [5.01 p.m.], in reply: I thank honourable members for their contributions to the debate. The bill provides important protections for repairers and consumers. Consumers will benefit from the improved relationship between repairers and insurers, fair treatment and a reasonable expectation of convenience. Repairers will get greater transparency and a fair go from insurers. Insurers can trust that all their colleagues in New South Wales are operating according to the best

practice outlined in the code and that together repairers and insurers ultimately aim to get the best outcome for consumers. The bill mandating the code targets insurers and repairers who have obligations under the code and it is important that the rules, dispute resolution mechanisms and remedies apply equally to repairers and insurers in New South Wales. This will ensure the best outcome for consumers.

The primary relationships proposed to be covered by the mandatory code are the relationships between New South Wales insurers and New South Wales repairers in relation to insurance policies held by New South Wales residents. Fair trading legislation already does a great deal for consumers who are concerned about the way insurers deliver on the promises made in an insurance product disclosure statement. The General Insurance Code of Conduct also outlines the requirement of the insurance industry to deliver an appropriate level of customer service. Any repairs arranged directly between the owner and the repairer will continue to be regulated by the Motor Vehicle Repairs Act 1980. This bill supplements the mechanisms available to consumers to seek redress against insurers if necessary. The bill provides a sound solution to the dispute that has troubled these industries and left consumers in the dark. This bill and its remedies provide a clear pathway for the industries to work together in the future toward achieving a good outcome for the consumer. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

Third Reading

The Hon. ERIC ROOZENDAAL (Minister for Roads) [5.03 p.m.]: I move:

That this bill be now read a third time.

Reverend the Hon. Dr GORDON MOYES [5.04 p.m.]: I wish to add a few points to what my colleague Reverend the Hon. Fred Nile said in the second reading debate on the Fair Trading Amendment (Motor Vehicle Insurance and Repair Industries) Bill. The object of the bill is to amend the Fair Trading Act 1987 to require compliance with an industry code of conduct for motor vehicle insurers and repairers. The Christian Democratic Party has looked at this very closely and has been in contact with quite a number of people in the industry. I should say up front that I have been involved as a director of quite a large national car insurer for over 20 years, during which time I took an interest in the whole issue of car repair and car insurers.

The smash repair industry is characterised by a multiplicity of car repairers and a handful of car insurers. A large proportion of car repairers are generally small business operators, that is, businesses employing fewer than five people. These businesses contribute around 64 per cent of the total income earned by the industry. Due to comparative size, the market influence of repairers pales in comparison to the influence wielded by insurers within the industry. Thus, any significant change made by insurers will directly affect and impinge on market practices and, consequently, on the manner in which repairers conduct their business. With the pressure of increasing profits, retaining market share and satisfying shareholders, insurers have brought about significant changes to the industry in the past decade.

For instance, technological developments and changed organisational service delivery structures have led to marketplace phenomena such as online business, outsourcing and streamlining of operations. The end product aimed for by insurers is a more efficient and effective way of conducting business, benefiting consumers and their shareholders alike. However, such developments have not benefited a number of repairers and, accordingly, have caused immense friction between insurers and some repairers. My office has been contacted by quite a number of repairers who have suffered greatly because of this friction between the insurers and some repairers. One specific change brought in by some insurers has been the adoption of an arrangement known as the "preferred repairer" or "network repairer". That arrangement is not new; I can remember it operating 20 years ago. Under this arrangement, an insurer will steer all business towards a network of preferred repairers. Insurers have asserted that these arrangements benefit the consumer by reducing administrative overheads, lowering repair costs from economies of scale, bringing about faster turnaround times and better control of quality. However, some repairers have met these arrangements with stiff opposition. The Productivity Commission, in its 2005 report, entitled "Smash Repair and Insurance", explored some of the downsides of these arrangements. It stated:

Preferred smash repairers (PSRs) face considerable added pressure as insurers drive costs down; contracts appear detailed and somewhat intrusive; tenure of PSR status is not secure and PSR status is generally nonassignable and thus lost if the business is sold

Non-preferred repairers often miss out on work, (particularly as insurers, through 'valet' services and managed repair schemes, 'direct' consumers to preferred repairers); suffer the loss of long term consumer relationships; receive slower payment for the insurance work they manage to obtain; and often have to deal with a misleading perception that they provide lower quality work.

Another contentious issue is the use of Internet tendering systems for repair works. As mentioned in the second reading speech, in July 2003, the Insurance Australia Group developed its network repairer scheme by introducing such a system. Clearly, the Internet is a viable platform for a market, as we have seen with the success of online auctions such as e-Bay. Internet tendering means that pictures of a vehicle, plus an assessment of the work needed to be done can be posted on a secure web site. It is then incumbent on repairers to place quotes on the repair jobs. It is clear that this forum lends itself to the provision of competitive quotes. However, some factors may be amiss under this arrangement. What if the photograph does not accurately portray the extent of the car damage? If that is the case, it is likely that the repairer will underquote the amount necessary to repair the vehicle. What if a repairer, in providing the most competitive quote, undermines the quality of repairs? Standards are then compromised.

The repair industry, led by the Motor Traders Association, has in fact claimed that this online scheme is unsafe for some of these reasons. Significantly, a Staysafe committee report back in December 2005 found that this system resulted in poor quality repairs and should be suspended. In her second reading speech in the other place the Minister had this to say about concerns in the industry as a whole:

There have been general concerns about the outcomes of the changing insurer-repairer relationship, including the transparency of network repairer arrangements, the transfer of network repair status when the repair business is sold, repair methods, responsibility for repair warranties, payment terms, and the fairness of online tendering systems.

Importantly, these concerns and issues are not unique to repairers in New South Wales; they are national. Consequently, the Federal Treasurer requested that the Productivity Commission inquire into the relationship between the Australian motor vehicle smash repair industry and the motor vehicle insurance industry. It is significant to note the commission's report in this context, because it precisely identifies the issues that repairers have grappled with across New South Wales. The commission delivered its report on 17 March 2005. Most of the issues between the two industries, in the view of the commission, "overwhelmingly stem from a lack of trust and co-operation between the two industries". Unfortunately, as the dispute has a long, adversarial history, scope for relationship building between the two industries has been far from a reality.

The commission cited anecdotal evidence of persistent problems occurring between the two parties, especially in relation to transparency, fair trading and the efficiency of operation of the market. Four options were laid out to address the ongoing dispute. These may be briefly put as follows: first, continue to rely on the current practices and procedures of insurers, including their individual corporate codes of conduct, where they exist; second, adopt legislative means such as "anti-steering" provisions; third, take action in a broader context, for example, through amending the Trade Practices Act; and fourth, develop an industry-wide code. The commission's view, particularly in view of the major differences in negotiating strength between insurers and repairers, was:

There is prima facie justification for the development of an industry-wide code as a cost-effective way to improve the relationships between insurers and repairers. However, the net benefits of a code depend critically on its scope and content.

The Australian Competition and Consumer Commission also suggested a voluntary code of conduct in 2003. Importantly, the commission determined that the framework's focus should be on the insurer-repairer dynamic. Therefore, it would not be appropriate to set down a mechanism to resolve insurer-consumer or consumer-repairer issues. Ample scope has been granted for resolution of these issues in other regulatory fora. Notably, on 18 August 2005 the Federal Government announced the establishment of an industry code of conduct in response to the Productivity Commission's inquiry. The Federal small business and tourism Minister, Fran Bailey, stated:

An industry code will inject transparency and certainty for smash repairers and will go a long way to resolving the longstanding disagreements between the two sectors. The Government agreed with the key recommendations of the report—that disputation between the parties is serious enough to warrant the introduction of an industry code.

The national industry code is due to have a staggered commencement, beginning in September 2006. Importantly, the code will provide a transparent and independent external dispute resolution mechanism, the requirement for full disclosure in preferred smash repairer arrangements, the retention of preferred smash repair status upon the sale of a business, the requirement for full disclosure in quoting for work and payment, standards for the allocation of responsibility for repair warranties, standards for payment terms, and requirements for up-

front disclosure on whether insurance policies provide choice of repairer. In view of the national code, it is apparent that the New South Wales Government has seen fit to legislate for the New South Wales repairer and insurer industries. The bill inserts a new part 5E into the Fair Trading Act 1987 and also makes incidental amendments to other sections of the Act. This part will enable an applicable industry code of conduct to be declared by regulation.

Significantly, it will be mandatory for an insurer or repairer, in trade or commerce, to comply with an applicable industry code of conduct. Further, enforcement or remedies under the Act will be available to insurers or repairers. However, they will not apply unless, first, the dispute resolution procedures under the code have been followed but the dispute has not been resolved, or, second, the insurer or repairer refuses to take part in those procedures. Action by an insurer or repairer may only be taken if the insurer or repairer is not the party refusing to take part in the dispute resolution procedures under the applicable code.

Enforcement of the code will be through a range of existing civil, rather than criminal, measures in the Fair Trading Act. This puts a breach of code on the same level as misleading and deceptive conduct and unconscionable conduct. A number of remedies will be available to enforce the code, including: court injunctions, orders to disclose information, show cause actions to cease trading, trading prohibition orders and civil actions for damages. The Department of Fair Trading will be able to apply for injunctive court orders on behalf of wronged parties. Lastly, the Minister and the director general will have the discretion to refuse to take action under part 6 if they consider that it is not in the public interest to take that action.

As the Productivity Commission put it, the effectiveness of the code will depend on the code's scope and content. In my opinion it is fair to say that the code will provide greater transparency and guidance in relation to many of the issues that have vexed the parties. It will indeed be an improvement on the current situation. One example is that in relation to network smash repairer schemes the code will require that insurers document and publish criteria for membership of those schemes. This level of transparency had not previously existed. The code also provides guidance for the estimate, repair and authorisation process, repair warranties, payment terms and, most importantly, the dispute resolution process. We have received many letters from constituents who run repair businesses or who have friends who run repair businesses. Their complaints have typically consisted of claims that a certain insurer has allegedly told a smash repairer the price to fix the vehicle, told a smash repairer where to buy the second-hand parts from, the source of these second-hand parts being a company owned by that insurer, and called in a company of their choice which then uses the smash repairer's facilities—for example, workshop and power and so on—for which the smash repairer receives no commission.

It is hoped that the code will be a start towards resolving the longstanding issues between insurers and repairers. I hope that small businesses do not continue to lose out over the current system. In this context, it is right to pay regard to the initiative of Mr Richard Torbay, the Independent member for the Northern Tablelands, in introducing the Motor Vehicles Repairs (Anti-Steering) Bill into the Legislative Assembly. This bill brought attention to the many and varied issues that the instant bill seeks to address. This legislative initiative may well have prompted the Government to introduce the bill we debate in the House today. On behalf of the Christian Democratic Party I commend this bill to the House. I encourage the Government to push ahead on this issue. We all remember when it seemed impossible to change the old system of standover merchants driving tow trucks and the fights that used to break out between different firms and so on. All of those difficulties were eventually overcome by good legislation. We trust that this legislation will take a further step in the right direction.

Motion agreed to.

Bill read a third time.

CRIMES (ADMINISTRATION OF SENTENCES) AMENDMENT BILL

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

Motion by the Hon. Eric Roozendaal agreed to:

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

Second reading ordered to stand as an order of the day.

ROAD TRANSPORT LEGISLATION AMENDMENT (DRUG TESTING) BILL**Second Reading**

The Hon. ERIC ROOZENDAAL (Minister for Roads) [5.21 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The purpose of this bill is to provide New South Wales Police with new powers to detect drug drivers and create new drug driving offences. The bill introduces random roadside drug testing and provides for drug testing of any driver, rider or supervising licence holder involved in a fatal crash.

The bill amends the *Road Transport (Safety and Traffic Management) Act 1999* and other legislation to ensure that motorists who take drugs and drive can be detected and penalised just as those who drink drive.

The incidence of drug driving in New South Wales is alarming. A study on drug driving commissioned by the Roads and Traffic Authority in 2003 found that 43 per cent of a sample of drug users in New South Wales admitted to driving while affected by drugs. Less than 3 in 10 of these drug users thought it was likely that police could detect them for drug driving.

A 1999 report showed that 24 percent of drivers killed in New South Wales in the years 1997 and 1998 were found to have drugs in their system.

Random roadside drug testing is a road safety initiative designed to keep drug drivers off our roads.

The driving skills of motorists with active drugs in their system are affected. Drugs affect a driver's judgment, concentration, and ability to react quickly and appropriately. Stimulants like speed and ecstasy can also lead to aggressive driving and cause motorists to take risks they wouldn't normally take.

Drug driving and its resulting trauma cause grief and distress for not only the victims themselves but also to their families and friends. People who have active drugs present in their system should not be driving on our roads.

Existing New South Wales legislation allows Police to test for drugs in limited circumstances, where the police officer has a "reasonable belief" that a motorist may be under the influence of an illicit drug. This bill gives police the power to drug test drivers without prior evidence of impairment in two additional situations—randomly at the roadside or following a fatal crash.

Let me begin by discussing that part of the bill which allows random roadside drug testing.

Random roadside drug testing will be based on the successful model in place in New South Wales for random breath testing for alcohol. Following the introduction of random breath testing in New South Wales in 1982, the incidence of drink driving sharply declined, less people were killed on the roads and drink driving became socially unacceptable.

This bill aims to achieve similar outcomes for drug driving in New South Wales. I am confident that a reduction in road deaths and trauma will be achieved over time.

The bill allows police to randomly test drivers for the presence of three illicit drugs in oral fluid. These are speed, ecstasy and THC, the active ingredient in cannabis. These drugs are illegal, they are the most commonly used drugs in the community and they all affect the skills and sound judgment required for safe driving.

This bill will make New South Wales one of the first jurisdictions in the world to conduct random roadside drug testing. Victoria introduced random roadside drug testing for THC and speed in December 2004 and South Australia commenced in July this year.

In Victoria, Police have tested more than 21,000 drivers since random roadside drug testing began, with 436 drivers confirmed to be positive for drugs by the Victorian analytical laboratory. This represents 1 in 49 drivers testing positive for illegal drugs.

In Victoria, there was bipartisan support for the continuation and expansion of random roadside drug testing, which Parliament made permanent from July 2006. Victoria began testing for ecstasy from September and is increasing the penalties for driving with the presence of THC, speed or ecstasy. South Australia has also announced it will now test for ecstasy as well.

Recent advances in technology mean that police can now screen for certain drugs in saliva or oral fluid in a roadside environment. The Government undertook a rigorous Expression of Interest process for the selection of the most reliable oral fluid drug screening devices to be used at the roadside. Only devices which met the strict selection criteria were chosen for use in New South Wales. The devices chosen for use here are the same as those used in Victoria and South Australia.

The bill gives Police the authority to test anyone driving, attempting to drive, or supervising a learner licence holder.

Police will conduct the random roadside drug test through the window of the driver's car. The driver will be required to "lick" the test pad of the preliminary testing device. An indicative result will be known within a few minutes. Based on the experience in Victoria and South Australia, most drivers will test negative and will be able to drive away.

Any drivers who test positive to this preliminary test will be required to undergo a second screening test in the Police drug testing support vehicle at the scene. If this test is positive, the driver will be prohibited from driving for 24 hours by Police and the remaining oral fluid sample from this second test will be sent to the Government's analytical laboratory for confirmatory analysis.

Police can prosecute the driver for the new offence of driving with the presence of one or more of the three illicit drugs, if the result from the laboratory is positive. There will be no need for Police to prove that a person's driving was impaired. It need only be proved that the drug was present in the person's sample. This sends a clear message to motorists that driving with any amount of these illegal drugs in the body is not tolerated in New South Wales.

The bill also creates offences for failure to cooperate in tests and refusal to submit to tests. These are similar to the offences that already exist in relation to the drink driving scheme.

A person who is physically unable to produce an oral fluid sample as directed by Police, for example because of medical inability, may be taken to hospital by Police to have a blood sample taken by medical professionals. The blood sample will be analysed at the Government's laboratory for the presence of THC, ecstasy and speed. A person who has a blood sample taken in lieu of an oral fluid sample will be subject to the same penalties.

The primary focus of Police operations will be heavy vehicle drivers and locations where police intelligence indicates there may be drug use. A purpose built New South Wales Police drug testing support vehicle will initially be used to conduct random testing across the state. The introduction of the drug testing bus is the first step in a planned rollout of random drug testing.

Let me now turn to the second major part of the bill which enables compulsory drug testing of drivers, riders, and supervising licence holders following fatal traffic crashes.

A fatal road crash is a very serious matter and often involves dangerous or illegal actions by one or more of the drivers involved. If drivers involved in fatal crashes have alcohol or drugs in their system when they crash, police should be able to gather that evidence and present it for consideration by a court when determining the driver's culpability for the crash.

The bill permits Police to require any driver, rider or supervising licence holder involved in a fatal traffic crash to be taken to hospital for the purpose of having a blood sample taken and tested for drugs. The blood sample will automatically be tested for drugs whether the person is injured or not. Police will not need to form any sort of 'reasonable belief' that the driver is under the influence of drugs, before proceeding with a blood test for drugs. The bill gives Police a period of four hours from the time of the crash to obtain these samples.

The analytical laboratory will analyse the sample for alcohol and a wide range of legal and illegal drugs known to impair driving. Based on the results of the drug analysis the driver may be charged with driving under the influence of drugs. The penalty for this offence is a maximum fine of \$2,200, at least 6 months licence disqualification, and gaol for a maximum of nine months. If a driver is charged with driving under the influence of drugs, the evidence can be used to support a further charge of dangerous driving occasioning death.

The bill also creates the new offence of driving with the presence of cocaine or morphine (if identified as resulting from heroin administration) in blood or urine. The penalty for this offence is a maximum fine of \$1,100, and three to six months licence disqualification. This offence is consistent with the other aspects of this bill which take a clear zero tolerance approach to drug driving. This additional drug presence offence can be used to detect and prosecute drivers who have been blood tested and found to have one of these other two illicit substances in their system when driving.

During the consultation process on this important Bill, consideration was given to minimising the impact of the additional blood sampling after fatal crashes on hospital emergency departments. I must emphasise that the number of extra blood samples to be taken at any one hospital will be minimal. To ensure this is the case, the bill will allow *prescribed sample takers* to take blood samples from uninjured arrested drivers. The Government will contract private pathology service providers to come to hospitals and take samples.

The Government will pay for the new drug testing arrangements by using funding from the New South Wales Health Drug Budget 2 and by increasing driver licence fees by two dollars. This is a small price to pay to remove drug drivers from our roads.

The Government will conduct a review of the legislation after 12 months, to ensure the legislation is achieving its objectives and that these objectives remain valid. A report on the review will be tabled in both Houses of Parliament.

Drug drivers are a threat to everyone using New South Wales roads and these tough new powers are about removing this threat from New South Wales roads. The new laws will allow the Iemma Government to be as tough on drug drivers as it is on drink drivers.

The bill is consistent with the Iemma Government's commitment to law and order and to ensuring that New South Wales roads are safe for all road users.

I commend the bill to the House.

The Hon. MELINDA PAVEY [5.22 p.m.]: I lead for the Opposition on the Road Transport Legislation Amendment (Drug Testing) Bill. The Opposition will not oppose the bill, but I would like to discuss a number of concerns and reservations surrounding it. First, I agree that there is a strong need for it. The following statistics illustrate the problem of drug-driving in New South Wales: 24 per cent of drivers killed in New South Wales in 1997-98 were found to have drugs in their system; 43 per cent of drug users admitted to driving under the influence of drugs; 88 per cent of injecting drug-users in Sydney have revealed that they have driven a vehicle in the previous 12 months; and about 4 per cent of respondents—6 per cent of men and 2 per

cent of women—to the 2001 National Drug Strategy Household Survey admitted that they had driven while under the influence of drugs in the previous 12 months.

Although there is a clear need for the bill, I am concerned about the length of time it has taken the Government to introduce it. I am worried that the Government's failure to act on this issue has resulted in unnecessary road deaths. This inaction because of a series of ministerial changes is of serious concern, and I will return to that issue shortly. The Opposition also has concerns about the availability, scope and focus of the drug-testing program. If these issues are not addressed, the effectiveness of the bill will be severely compromised. In addition, the Opposition is concerned that the bill will result in certain sections of the New South Wales population being unfairly targeted or burdened with yet another levy. I will also return to these issues later.

I will address the imperative for the bill and the Labor Government's continual failure to respond to it. A key issue is the length of time taken for drug testing to be introduced. It is important to track the history of this issue in New South Wales. In 2002 the shadow Minister for Roads, Don Page, called for random roadside drug testing to be implemented in this State. In 2004 random drug testing laws were passed in Victoria and Tasmania. In that same year, on 11 November, responding to the Opposition and what had happened in other States, Roads Minister Carl Scully finally announced that laws to allow random roadside drug testing would be introduced in State Parliament. Two years have now passed. Random drug-driving testing also came into effect in South Australia in 2006. Legislation is under review in the New South Wales Parliament. It took two years for the Labor Government to acknowledge the Opposition's call for new legislation and it took a further two years for it to table this bill. Even though we have understood the imperative to control the number of drug-related car accidents for many years, the Labor Government has clearly been slow to act.

I will share some calculations that my leader, Andrew Stoner, has previously revealed. Studies over the past few years have shown that approximately one-quarter of drivers involved in fatal accidents in New South Wales were found to have drugs in their system. In addition, 500 people have been killed on our roads in the past two years—the time it has taken the Labor Government to introduce this legislation. One-quarter of those 500 fatalities could have been due to the driver being under the influence of drugs. Therefore, it is possible that up to 200 lives could have been saved if this legislation had been introduced earlier.

Given the Labor Government's slow response to this crisis, how much longer will it take for a systematic random drug testing program to be implemented and when will the prosecution of offenders begin? The Government—which is more interested in spin than substance—did not consider action on this issue for a decade, and then spent a further two years sitting on its hands before even attempting to deal with it. The Opposition wants to know how much longer the people of New South Wales must wait before the random drug testing program is adequately implemented and before we start seeing drug users off our roads.

The availability of drug testing is a big issue. The media has recently carried reports about the solitary Winnebago that the legislation provides for the entire State. The Opposition is concerned that the existence of one testing facility indicates that random drug testing will be largely unavailable across New South Wales. The single mobile drug testing facility is likely to remain in metropolitan areas, meaning that the vast majority of New South Wales will not have random drug-driving testing. I look forward to the Minister's response to these important issues.

With 60 per cent of all road accidents occurring in country New South Wales, how can we expect one drug testing bus to service the 801,600 square kilometres that comprise New South Wales? As with the current random breath testing system, we should expect the random drug testing system to act primarily as a deterrent, not as a net to catch all offenders. How are we to expect potential drug-drivers, especially those in rural and regional areas, to be deterred by the remote chance that they may encounter the one drug-testing Winnebago on the 182,000 kilometres of roads in New South Wales? This is the Winnebago that Police Minister Scully and Roads Minister Roozendaal have delightedly posed in front of for photographs.

It is obvious that this bill needs to provide more resources if it is to be an adequate deterrent for potential drug-drivers. The Opposition's concern is that the bill is not about reducing drug-use-related accidents, but instead is another example of the Labor Government using public money to show off before the next election. I think I speak for most people in saying that we want an assurance from the Minister that drug testing services will be available across the State, not just in one bus that has been rolled out for a press conference. I challenge the Minister to explain to the House where drug testing will take place throughout New South Wales, given that there is only one testing unit.

The Opposition is also concerned about the proposed financing of the legislation. The Government has budgeted \$10 million for the program—money taken from the Health budget—and it will impose yet another new levy on the citizens of New South Wales. One would expect that, with a huge budget after 12 years at the helm—the Labor Party and the New South Wales Labor Government have been able to double the size of the budget from \$20 billion to more than \$40 billion—the Government would have enough money to allocate funds for this project. It has had to impose yet another levy on the citizens of New South Wales to deter drug users from driving on our roads. All we will end up with is a drug-driving testing program that consists of only a single campervan to service the entire state.

Questions arise as to where the \$10 million budget for the program will go, as only approximately \$350,000 has been spent on the drug testing campervan. The Labor Government is going to impose a \$2 levy on all licences to raise \$10 million per annum for the drug-testing program. Although \$2 may appear an insignificant amount of money, many motorists are concerned that this levy is yet another new tax from a government that promised no new taxes yet has introduced many. New taxes include recent increases in stamp duty, the fire service levy on insurance products, the waste and environment levy, new mining charges to pay for government regulation, new measures on mortgage duty, the additional \$20 to pay for green slips, and increases to water and electricity charges.

These changes, and the new levy on drivers licences, have a substantial impact on hardworking families who are already struggling to manage their budgets. Due to the Government's poor economic management, which has resulted in the State's economy performing poorly and a massive budget deficit, New South Wales taxpayers will now have to foot the bill for a drug-testing program that should be a service, rather than another financial imposition.

The Opposition believes that the scope of the bill is too narrow, and that for it to be fair and effective it must be enlarged to enable screening for a series of dangerous drugs. The bill provides that the drug tests will only screen for THC, which is the active chemical in marijuana, and for ecstasy and speed. Although these drugs impair driver performance and are commonly used, a host of other illegal drugs are used in New South Wales and should be included in the random drug tests. We need to know whether the drug testing will screen for other dangerous drugs, such as methamphetamine and fantasy.

The drug methamphetamine, also commonly known as ice, is becoming more prevalent in New South Wales and is having disastrous effects on our young people. Addiction to this drug frequently causes depression and can result in permanent damage to the brain. As we have seen with recent high-profile cases, addiction to the drug may lead users to commit heinous crimes in order to satisfy sexual or physical urges, or simply to score a fix. Not only does ice affect the livelihoods of our younger generations, it also threatens to have a serious impact on our society and on law and order.

Although the Parliamentary Secretary Alison Megarrity has assured us that ice will be included in the roadside drug testing, the bill does not expressly provide for that. Gamma-Hydroxybutyric acid, or fantasy, is another illegal drug that is dangerously on the rise. Fantasy has led to numerous fatalities in New South Wales and Australia. Most notably, it caused the death of Dianne Brimble on a P&O cruise ship in 2002. Once again, under this bill, people driving under the influence of fantasy will not be detected.

My concern is that we will be legislating for a new drug testing system that does not screen for the most deadly and socially destructive drugs in New South Wales. It appears as though the police, although having limited resources, will only have the power to detect three of the many illegal drugs currently available in New South Wales. As a result, the people using the hardest, most dangerous drugs may not be deterred from doing drugs and driving.

The new random drug testing system excludes the screening of legal prescription drugs that may impair a driver's skills. In many cases, legal drugs have the same negative impact on drivers that illegal drugs have. Tranquillising drugs such as rohypnol and oxazepam, for example, can make users drowsy and almost certainly more liable to err while driving. Even the common antihistamines, which block allergic reactions, slow down reaction time and impair co-ordination. Other common legal drugs, such as barbiturates, decongestants and antibiotics, also impair driving skill, and may have the same negative impact as illegal drugs. However, the New South Wales drug-driving legislation does not make it an offence to drive while using such drugs.

Clearly the bill is inadequate, as it only screens drivers for three drugs out of the many legal and illegal drugs that are used throughout New South Wales. I fear that the bill may deter only a small proportion of the

community from consuming drugs and then driving. The road transport industry is concerned that truck drivers will be targeted by the drug-testing program. These concerns are not without justification, because on 7 September the Minister for Roads said:

As part of the strategy we will also target heavy vehicle drivers because there seems to be a fair bit of evidence of the abuse of amphetamines in the heavy vehicle industry.

Recently there have been reports of amphetamine use in the trucking industry, and we believe that it would be unfair to target truck drivers. Not only would this be unfair but it would contradict the supposed random nature of the testing program. In fact, if any demographic or location were specifically targeted, the purpose of the drug testing, which is to deter individuals from taking illegal drugs and then driving, would be compromised.

A functioning application of deterrence theory is predicated by the presence of a perceived high probability of punishment by the subject. If in any way the drug-testing program specifically targeted certain people and certain locations, the subjects' perceived probability of punishment would be diminished. If truck drivers are targeted, it will come at a cost to the transport industry. The legislation needs to be fairly applied, and those who do the wrong thing, whether they be truck drivers or social drug users, need to be targeted equally.

The legislation should not be used to target certain professions, demographics or locations. If there is drug abuse and amphetamine use in the road transport industry, it must be cleaned up. Over recent years much has been done to clean up the industry. However, this should be achieved by working with the industry representatives, not by introducing legislation in order for the Labor Government to get high-publicity convictions before the next election.

I conclude by expressing the Opposition's concern about the proposed penalties for people who are caught driving whilst under the influence of drugs, as the emphasis of the penalties is on large fines, rather than on longer licence disqualification periods. The period of disqualification should be the emphasis of the penalties. Licence disqualification is a penalty that affects all offenders regardless of their financial status. If a monetary fee is to remain the key penalty for driving under the influence of drugs, the State may end up with poorer drug users but with people taking illegal drugs and resuming driving more quickly.

I am concerned that the Labor Government may be primarily concerned about raising money through fines rather than about trying to get drug users off our roads or deterring them from driving. In order to have a more effective and fair system that deters drug users from driving, there must be a shift of focus from monetary fines to longer drivers licence disqualification periods. Notwithstanding our concerns with regard to the bill, we will not oppose it. I trust that the Minister will respond to the concerns I have raised and I hope that the legislation will assist in reducing the incidence of drug-driving and, consequently, the number of preventable fatalities on our roads.

The Hon. ROBERT BROWN [5.37 p.m.]: The Shooters Party supports the Road Transport Legislation Amendment (Drug Testing) Bill, which is important legislation. The bill provides for the introduction of a regime of random roadside oral fluid drug testing for any presence of certain specified illegal drugs in the driver's body. It amends the existing legislation regarding the drug testing of persons involved in fatal motor vehicle accidents, and offences relating to driving a motor vehicle with any presence of certain drugs in the driver's oral fluid, blood or urine. The bill creates a new offence of driving a motor vehicle with any presence of morphine or cocaine in the driver's blood or urine.

Importantly, the bill increases the period of time, from two to four hours after driving, during which a person can be required to submit to sobriety assessment or be required to provide blood and urine samples after such an assessment or, if they have refused to undergo such an assessment, after driving. We know, very clearly, that there is a relatively invariant relationship between alcohol and impairment of driving performance: the higher the concentration of alcohol in the body, the greater the degree of impairment. But with drug-driving the issues are more problematic. With new research and modern technology, we are now in a position to make inroads. Over the last several decades we have made progress in understanding the effects of drugs on driver behaviour.

I am pleased to be a member of the Parliament's road safety committee, the first joint standing committee ever appointed in this Parliament. Recently the Hon. Kevin Rozzoli, Speaker of the New South Wales Legislative Assembly from 1988 to 1995, writing in *Gavel to Gavel—An insider's view of parliament*, commented:

Since the introduction of random breath testing the STAYS SAFE Committee has continued to be the cutting edge think-tank for road safety measures in the State, providing a stream of references on important issues.

Over a decade ago, in 1992, the Staysafe committee came to these conclusions on drug driving:

The nature and extent to which drugs, other than alcohol, are a serious road safety problem cannot be specified with certainty at this time. A growing body of literature suggests that certain drugs (e.g. marijuana) impair psychological and behavioural abilities that are functionally related to driving, even though the extent to which drug impaired driving causes crashes cannot be inferred from this research. The accumulating evidence suggests there is a risk posed by driving after consuming some drugs at high dosage levels.

I draw the attention of the House to a recent publication from the United States Transportation Research Board, released in May this year, under the title "Drugs and traffic". This is a report containing the proceedings of a symposium to discuss the role of drugs in traffic. The symposium was held in Woods Hole, Massachusetts, on 20 and 21 June 2005. The report is a state-of-the-art summary of the issues in drugs and driving, featuring the contributions of the very best researchers and policy makers in the area of drug driving. The symposium was led by Kathryn Stewart, of the high-level consultancy firm Safety Policy and Analysis International, and she edited the proceedings. She is the chair of the Alcohol, Other Drugs, and Transportation Committee of the Transportation Research Board. The report provides an overview of the information presented and the discussions among the participants, as well as the background papers prepared for the symposium. Ms Stewart writes:

The crash risk associated with typical levels of alcohol is much greater than for other common drugs. Moreover, alcohol is the most common impairing substance found in drivers (either those involved in crashes or selected randomly for testing). Therefore, alcohol is still the drug most likely to have a major effect on traffic safety.

Policy makers and researchers have also become concerned with the effects of psychoactive drugs other than alcohol on traffic safety. A large body of research now exists that provides information about the performance effects of drugs, the risks posed by drugs in traffic, and enforcement strategies for dealing with drugs in traffic. This research paints a complicated picture and many questions remain unanswered.

So the conclusions advanced by the Staysafe committee over a decade earlier remain relevant. Ms Stewart continues:

Cannabis (marijuana) is one of the drugs other than alcohol most commonly found among drivers. There is considerable evidence that many drugs can impair some measures of performance. [These include] those drugs most frequently found in drivers and those that are most often used in combination with alcohol. These would include cannabis and benzodiazepines and possibly stimulants. Medicinal drugs may increase crash risk.

Drugs that may impair driving include certain prescription and over-the-counter drugs as well as illegal drugs. I quote Ms Stewart further:

Enforcement of drugged driving laws poses significant logistical and technical challenges. A major point of concern during the discussion of enforcement is the degree to which efforts to enforce laws against drug-impaired driving might lead to a decrease in enforcement of other traffic safety measures, especially alcohol-impaired driving. If the more difficult and time consuming drug enforcement efforts do detract from other enforcement, a net negative effect on traffic safety might result.

Let us look at some Australian research into drugs and driving. The public health promotion unit of Central Coast Health and Newcastle University have been key players in researching the problem of illicit drugs on the road. Douglas Tutt and others have given particular focus to delta-9-tetrahydrocannabinol [THC], contained in cannabis, and its impact on road fatalities in the Central Coast area. The public health promotion unit undertook a detailed examination of local Central Coast coronial records over the period 2000, 2001 and 2002. It found that there were more young drivers killed in car crashes who were affected by THC than by alcohol. The unit defined "young" as being under the age of 45 years, and of the 24 deaths of drivers who were under 45 years old, four were alcohol-only positive, five were tested as THC positive, and three were positive for both alcohol and THC. The study found that all THC-only positive fatalities that occurred in this three-year period exhibited the same characteristic: every one of them was a single vehicle accident where the driver left the road and collided with a roadside object.

In other studies, the health promotion unit of Central Coast Health has found that the incidence of driving while affected by cannabis is rising in parallel with increased cannabis use in the community. The studies highlight cannabis intoxication and driving as a particular injury prevention concern for the under 40 age group. Further to this, a study undertaken by the Department of Forensic Medicine at Monash University in 1997 found that cannabis accounts for 4 to 5 per cent of total driver fatalities, with that percentage being greater for those under the age of 40. A more recent Victorian study, conducted by Phillip Swann and his colleagues in

VicRoads in 2000, found that, based on blood tests to detect the active metabolites of THC, which is indicative of recent use, the risk of a fatal crash is 6.4 times that of a non-drugged driver.

Therefore, the available data on drug use by crash-involved drivers suggests that the drug and driving problem is likely to be substantially less than the alcohol and driving problem, but as new drugs become popular—particularly the psychostimulants, such as ecstasy and methamphetamines—the incidence of people who use these drugs and then go out onto the road as drivers may be increasing. The drugs that appear to have the most potential to be serious highway safety hazards—based on currently available information regarding incidence and impairment—are psychostimulants; tranquillisers, for example, Valium; sedatives and hypnotics, for example, barbiturates; and marijuana.

The bill now provides for the first practical roadside screen for drugs that affect driving performance: THC, speed and ecstasy. This will impact on people who drive impaired after taking ecstasy, injecting speed, or smoking dope or marijuana. It will also impact on commercial drivers who use speed as a fatigue offset so they can keep driving longer and further. While I am pleased to support the bill, I have several questions for the Minister that I would like him to address in his reply. If a driver fails the saliva test for the presence of an illegal drug, does he or she have the right to request a blood test? For alleged drink drivers who fail a breath test, they have the right to request a blood test at their own expense. Surely, it is fair and reasonable to allow a similar right to an alleged drug driver. After all, the consequences for a conviction for drug driving are quite dire. We need to make sure that we do not get "false positives"—that is, a driver who on a saliva test shows as being a drugged driver but who, in fact, does not have a drug in his or her system at all. I would like to hear the Minister's comments on the future development of this technology.

Is it anticipated that screening for further illegal drugs may be introduced as the capacity to test—reliably and validly—becomes available? And bearing in mind the conclusion drawn by Kathryn Stewart in her recent report that alcohol remains the principal impairment of drivers, can the Minister advise what efforts will be made to ensure that our very valuable investment of policing resources in random breath testing to combat drink driving will not be diverted to chasing the drugged driver? I am conscious that Australia is leading the world in this new technology for drug driving enforcement. I am also aware that we need to be very careful in its application so that what appears to be a valuable new tool to address road safety is not compromised through mistakes in the legislation or the implementation of the testing practices. I commend the bill to the House.

Ms LEE RHIANNON [5.48 p.m.]: The Greens will not oppose the Road Transport Legislation Amendment (Drug Testing) Bill, but we have a number of concerns about it. Road safety is an issue that the Greens take very seriously. People whose spatial or cognitive functions are impaired should not drive as it is not safe for them, their passengers or others. The Greens accept that drug use is linked with fatalities, just as we accept that drink-driving is linked with fatalities. I note the bill will allow testing for only three drugs: tetrahydrocannabinol [THC]—an active ingredient of cannabis—amphetamines and ecstasy.

I had some initial concerns about the accuracy of the testing and the possibility of false negatives. I have consulted with experts at the University of New South Wales' National Drug and Alcohol Research Centre and at the Turning Point Alcohol and Drug Centre in Victoria. Obtaining research on the reliability and validity of roadside drug testing devices is difficult. This is for a number of reasons. There are multiple devices in use, the research has frequently been commissioned by the companies owning the devices and hence is not available in the public domain, governments have conducted their own evaluations of part of the implementation of programs, and those that have been published are rapidly out of date due to the long lags between submission of a peer review journal article and its final publication. This does not necessarily mean that the devices in use in Australia are unreliable, but we need to be aware of these shortcomings.

In relation to the false positives, I have been advised that in all States the positive oral samples are subjected to laboratory analysis before any charges are laid. In relation to cannabis use, screening devices have been shown to only detect THC, which is the intoxicating element of cannabis at very high levels and the window of detection is only about one hour. The tests cannot pick up the non-active component, which stays in a person's body for a longer period—only the active component. Therefore, those who smoke cannabis the day before will not test positive, according to the advice I have received.

We need to consider the impact that this legislation will have on truck drivers. Drivers can be under a lot of pressure to drive for long periods and some drivers feel that the only way they can meet those unrealistic deadlines is by using amphetamines to stay awake. We can expect more truck drivers to be fined for drug abuses. But what about their employers, the big companies such as Coles and the big retailers that rely on those

trucks going very fast up and down our highways. Clearly they must have a responsibility for pushing drivers to drive for unreasonably long periods in order to meet tight deadlines. This puts the community and truck drivers at risk, and the families will suffer if there is an accident. The Greens are satisfied with the penalties for drug-driving because they are in line with drink-driving offences. Therefore, we will support the bill but we think the testing regime needs to be continually monitored and improved.

Reverend the Hon. Dr GORDON MOYES [5.52 p.m.]: I speak on the Road Transport Legislation Amendment (Drug Testing) Bill, the object of which is to enable police to carry out random roadside drug testing by amending the Road Transport Safety and Traffic Management Act 1999 and other related legislation. Powers are also given to police to carry out testing for drugs on all drivers involved in fatal accidents. This is long-awaited legislation. The Christian Democratic Party has agitated for reform in this area for many years. I will give a couple of examples of where this has occurred in this Chamber. In 1997 during question time my colleague Reverend the Hon. Fred Nile asked the Attorney General at the time, the Hon. Jeff Shaw, what steps had been taken by him to include marijuana drug testing in random breath testing procedures. This question, 10 years ago, was asked because a young driver in Victoria had been charged with driving dangerously under the influence of marijuana but the magistrate dismissed that charge against him. The following answer was provided by the then Attorney, who said:

I am advised by the Deputy Commissioner Specialist Operations that persons observed driving under the influence of drugs other than alcohol will be arrested and charged. Section 5AA of the Traffic Act 1909 empowers Police to arrest drivers who they believe are under the influence of drugs and transport them to a hospital for the purpose of supplying blood and urine samples for drug analysis. Since December 1987—

that is now 20 years ago—

the NSW Police Service has processed approximately three thousand five hundred (3,500) drug samples of which eighty five percent (85%) were positive to one or more drugs other than alcohol. Of the samples analysed over this period, approximately seventy percent (70%) indicated the presence of cannabis.

On the basis of the facts submitted by the then Attorney General it was apparent that drug use among drivers sampled was prevalent and that cannabis was the preferred drug of use. This was the state of affairs in 1997. Further, this evidence provided the cogent basis for the introduction of drug testing methodology 1997, especially methodology effective in detecting cannabis. In 2002, as the second example, I came across a study by the Australasian College of Emergency Medicine that reported that a survey of Central Coast records, referred to by the Hon. Robert Brown, showed that more drivers died while intoxicated with cannabis than with alcohol. This was a startling finding. I asked questions about it in the House back in 2002.

I asked myself whether drivers were more willing to drive under the influence of cannabis than alcohol, given that the presence of cannabis in a person's body could not be detected by a breathalyser. This led me to ask a question of the relevant Minister in the House and the Minister responded by saying that, among other things, a task force had been established with representatives from NSW Police, Health, the Office of Drug Policy, the Attorney General's Department and the Roads and Traffic Authority to look at addressing the harms of using cannabis whilst driving. I am relieved that the Government has finally taken action on drug-driving and the Christian Democratic Party wholeheartedly supports the measures introduced in this bill.

In order to sufficiently understand the rationale for the bill consideration must be given to one of the seminal reports on drug-driving in Australia. In 2003 in an article entitled "The incidence of drugs in drivers killed in Australian road crashes" a team from the Department of Forensic Medicine of Monash University examined the incidence of drugs and alcohol in fatally injured drivers in New South Wales, Western Australia and Victoria. A total of 3,398 driver fatalities were investigated, which included 2,600 car drivers, 650 motorcyclists and 139 truck drivers. Alcohol way above the normal limit was present in 29 per cent of all drivers. The highest prevalence was in car drivers—30 per cent—and the lowest in truck drivers, which was 8 per cent.

Drugs other than alcohol were present in 26 per cent of cases and psychotropic drugs in 23 per cent of cases. These drugs comprised cannabis, 13 per cent; opioids, 4.9 per cent; stimulants, 4.1 per cent; benzodiazepines, 4.1 per cent; and other psychotropic drugs, 2.7 per cent. Opioids consist mainly of morphine, codeine and methadone, while stimulants consist mainly of methamphetamines. Almost 10 per cent of the cases involved both alcohol and drugs. Hence the extent of drug-driving was very close to the extent of drink-driving in all of the cases examined. Although extensive campaigns against drink-driving had been promoted by the Government, it is ironic that the same attention has not been devoted to date to drug-driving. It is with interest

that I note that the report shows that the prevalence of drugs increased over the past 10 years, particularly with cannabis and opioids, while that of alcohol has in fact decreased.

Notably, the report has indicated that cannabis, 22 per cent, had a larger prevalence in motorcyclists whereas stimulants had a much larger presence in truck drivers. These results confirm concerns about truck drivers being compelled to drive long distances in a short span of time and thus resorting to drugs to increase endurance and alertness. A bulletin issued in 2005 by the New South Wales Bureau of Crime Statistics and Research and the National Drug and Alcohol Research Centre at the University of New South Wales entitled "Driving under the influence of cannabis: The problem and potential countermeasures" is also very illuminating. The bulletin made mention of a survey by the Australasian Institute of Health and Welfare which said that more than 60,000 Australians aged 14 years and over reported driving a motor vehicle in 2004 whilst under the influence of drugs other than alcohol. Arguably these results do not reflect the extent of drug-driving on a national level. Apart from the awkwardness in those surveyed of volunteering information at the risk of sanction, the survey could not target certain hard-to-reach populations potentially at risk of drug-driving.

Further, at a State level, survey data by the New South Wales Roads and Traffic estimated in the past year prevalence of driving after any illicit drug use to be 4 per cent. Eighty per cent of recent drug drivers reported using cannabis on the last occasion on which they drove under the influence of drugs. The authors conducted face-to-face interviews with 320 cannabis users in New South Wales and extracted certain facts on this basis. Of course, replication of the interview with a larger sample size would more closely reflect the state of driving under the influence of cannabis on our roads. The bulletin reported:

While quite low among the general population, the prevalence of drug-driving is more common among certain subgroups. Offender populations and young drivers for example, are more likely than non-offenders and older drivers to report drug-driving.

Males, dependent users, early onset cannabis users, frequent drivers, cannabis users who had used more classes of other drugs and cannabis users who believed that their risk of accident would not change following cannabis use were all more likely to report driving under the influence of cannabis. Another issue canvassed was the likely deterrent effect of roadside drug testing. On the basis of facts gathered in the interview process, random drug testing [RDT] appeared to act as a more effective deterrent against drug-driving than either increasing the severity of sanctions or providing factual information about the risks associated with the behaviour.

New South Wales will be the third State in Australia to implement roadside drug driving testing because Victoria and South Australia have already introduced it. Victoria introduced a 12-month roadside drug testing trial in 2004. Ms Lee Rhiannon indicated that this work in New South Wales would be an Australian first, but in point of fact we come after both Victoria and South Australia. The introduction of this world first trial in Victoria in 2004 had a spectacular inception with the fourth driver pulled over for testing recording a positive result in two preliminary tests. However, the trial has not been without issue and conflict in Victoria. Two of the first three positive roadside drug tests—and I say this for the benefit of the Minister for Police—returned a negative result, prompting grave concerns about the accuracy of the results that the equipment was providing. This allegedly led to the downfall of the Minister for Police in Victoria at that time—as reported in the *Age*.

Further, the technology employed at the time of the roadside trial was taking 20 minutes to provide a result. These issues have mostly been ironed out with laboratory tests confirming 95 per cent of positive results at initial screening and the lag time in providing an initial result reduced to approximately five minutes. The Queensland Transport Minister, Paul Lucas, has also declared his intention to introduce drug-driving tests in nine months' time. Saliva swab tests for marijuana, cocaine, heroin and amphetamines will be introduced throughout Queensland by the middle of 2007. On the basis of the spread of testing across Australian States—that is, Victoria, South Australia, New South Wales and Queensland—it appears that scope exists for a national framework to tackle drug-driving. It is clear that all States should adopt random roadside drug testing, given the incidence in drug use on our roads and the concomitant public concern.

One matter that needs to be discussed is what is the link between drug use and driving ability. A paper by the National Drug and Alcohol Research Centre at the University of New South Wales is of use in this context. That article looked at the effects of drugs on driving performance given that, in the view of that centre, the mere presence of drugs does not provide evidence of a causal role for drugs in accidents. The authors conducted a review of studies conducted in 1980 on the specific effects brought about by the consumption of a particular drug. I vividly remember a film made by the Ansvar Insurance Company, a total abstainers insurance company, with the University of New South Wales. People were invited to drive public buses and, as they drove

those buses on a closed course and did figure eights and so on, they had to pass through a bridge. What they did not understand was that the width of the bridge was able to be narrowed and its height lowered.

As I remember the results from that film, the more drugs that were taken, the more risky the drivers began to drive, leading to quite a number of drivers on a second or third attempt trying to drive through a bridge that was too narrow and too low, leaving the top of the bus scraping on the bridge above. There is unequivocal evidence that alcohol produces significant impairment in driving performance, as demonstrated through laboratory, simulator and driving studies. It is clear that the greater the amount of alcohol consumed, the greater the impairment, and usually the driver believes that he or she is driving better. On this basis, threshold levels of consumption may be established.

In relation to cannabis, there is evidence from laboratory, simulator and driving studies that the principal psychoactive component of cannabis, the famous THC, significantly impairs driving performance. But not all studies are conclusive as to whether there is a causal link between THC and driving performance. Experiments involving both opioid-dependent and non-opioid dependent patients have generally shown evidence of mood effects after administration of opioids, including mental clouding, calmness and drowsiness. However, there is inconsistent evidence as to whether opioids produce psychomotor impairment. This may be due to such factors as the type of opioid administered, the route of administration and the tolerance level of the individual.

For example, the article indicates that methadone has been shown to influence performance in non-opioid users, in areas such as reaction time, information processing and visual acuity. However, few studies have found any evidence of methadone-induced performance decrements in methadone maintenance. There are also inconsistent results from laboratory studies regarding stimulants and performance impairment. The authors concluded that "overall, while differences arise due to the type of drug in consideration, it is apparent that high doses of drugs, multiple drug use and drugs in combination with alcohol are all likely to produce a significant threat to traffic safety". That, of course, leads us right to the heart of this bill.

The bill sets up a regime for random drug testing and also drug testing for all persons involved in fatal car crashes. Amendments are made principally to the Road Transport (Safety and Traffic Management) Act 1999, with other amendments to the Crimes Act 1900, Criminal Procedure Act 1986, the Law Enforcement (Powers and Responsibilities) Act 2002 and the Road Transport (General) Act 2005. Under the regime proposed in this bill, cars will be stopped in a similar fashion to the current random breath testing regime that everyone would be familiar with. Drug testing by New South Wales police will require randomly chosen drivers to lick the test pad of a preliminary testing device. The result of this test will be known within a few minutes. Any drivers who test positive to this preliminary test will then be required to undergo a second screening test in the drug testing support vehicle, the famous Winnebago.

If that test is positive, the driver will be prohibited from driving for 24 hours. The remaining oral fluid sample from this test will be sent to the Government's laboratory for analysis. Importantly, developments in practice and technology have been gleaned from Victoria's experiences since the inception of the scheme in that place. If a positive test result ensues, the police will be able to prosecute the driver under the new offences created by the bill under the Road Transport (Safety and Traffic Management) Act. These will include a new offence of a driving a motor vehicle with any presence of three specified illicit drugs in the driver's oral fluid, blood or urine, these being drugs known as THC, speed and ecstasy, and the new offence of driving a motor vehicle with any presence of morphine or cocaine in the driver's blood or urine.

No requirement is detailed in the bill for the police to prove that a person's driving was impaired. The police will only need to prove that the drug was present in the driver's sample. The maximum penalty for both offences is 10 penalty units in the case of a first offence and a fine, currently \$1,100, or 20 penalty units in the case of a second or subsequent offence and a fine, currently \$2,200.

A person who is physically unable through, say, medical inability to produce an oral fluid sample may be taken to hospital by police to have a blood sample taken by medical professionals. Once taken, the sample will be sent for assessment at the Government's laboratory. Where a police officer believes that a road accident is fatal or it is likely that a person will die within 30 days as a consequence of the accident the police officer may take similar steps to have a sample taken and analysed. Penalties will ensue where persons refuse or fail to undergo a test when required. A maximum penalty of 10 penalty units will apply.

With 4.8 million licensed drivers in New South Wales, it is envisaged that the drug testing scheme will be paid for by charging licence holders a levy of \$2 each. It is not known how much the scheme will cost to

implement; however, it is understood that, with the level of sophistication of the testing technology involved and the follow-up procedures for analysis, costs will be considerable. Currently, only one drug-testing vehicle—the famous Winnebago—has been commissioned for testing. It is hoped that the technology will cover the spectrum of drugs that are available on the market. Finally, I suggest that the police park their Winnebago outside the cricket ground the next time the Australian test team is playing against the Pakistan test team. I commend the bill to the House.

The Hon. JON JENKINS [6.11 p.m.]: I will be careful in what I say because I do not want to be irresponsible. I foresee problems with the implementation of the Road Transport Legislation Amendment (Drug Testing) Bill. Some people seem to be confused: police will not be testing for opiates in saliva samples; the test for opiates will be done via a different mechanism, for various reasons. People legitimately taking prescription drugs could give a false positive or a real positive test result for opiates. Opiates are prescribed for medicinal reasons. There are several different types of opiates and I am not sure which ones will result in a positive result and which will not.

Perhaps there could be annotations on licences indicating that people are using opiates on a continual basis. That would not be extraordinarily onerous. I understand that people will be tested for opiates if they appear to be impaired in their driving. They may be a bit wobbly when they get out of the car. People on opiates may be unwell anyway. I am a bit wobbly on my feet: I have some fairly serious medical issues myself at the moment. These people could have their car locked up and be dragged off to have a blood or urine test. Such people could be subject to continual harassment because of their medical condition. The problem might affect only a small proportion of the population but it should be addressed.

There are other serious issues. When I spoke to the people concerned with the testing for opiates they said that they could differentiate illegitimate heroin usage and legitimate morphine or other synthetic opiate usage by some of the breakdown products. It is very dangerous to make assumptions about the purity of the heroin that people are getting. A black market for legitimate morphine could be created. I have to be careful not to mention particular products but the testing scheme could create a black market for another drug that masks the result of the tests. So this could open up another area of criminal activity. I will not mention how it is done but it is not too hard to find out.

Another serious matter involves the incidental use of THC. These are technical issues. I gather from the people from the Minister's office that they believe—there is some experimental evidence for this—that if a person is in a club where people are smoking cannabis this incidental usage by people inhaling the surrounding air could unwittingly be enough for them to have a positive test result. It is asserted that because people are not directly smoking cannabis there would be a poor partitioning of the THC into the saliva. It is very difficult to differentiate. I understand that if people smoke a joint or a bong large amounts of THC are deposited onto the inner part of the mouth. From my time when working at one of the medical centres I know of the extraordinary number of false positives brought in for testing. I hope there will be a better result with the tests envisaged under the bill. If a person produces a lot of saliva the THC will be diluted. If people do not have a lot of saliva the THC could be concentrated. I do not know how this can be differentiated. We could be opening a can of worms.

Finally, certain diseases—I will not mention the two I can think of—can cause false positives for some of the tests. The diseases are not common; they are very rare metabolic disorders. This is well documented and I can provide references showing that the two conditions can cause false positive test results. People who legitimately use opiates or who have a metabolic disorder and who have shown a history of having false positives should have their licences annotated so that they are not inconvenienced. I support the thrust of the bill.

The Hon. Dr PETER WONG [6.17 p.m.]: The Unity Party strongly endorses the Road Transport Legislation Amendment (Drug Testing) Bill and congratulates the Government on introducing it. All too often we have seen the deadly effects of the use of alcohol or drugs or, for that matter, a combination of both has had on our roads. Like alcohol, drugs slow a driver's perception of time, space and distance. The bill provides for the introduction of a regime of random roadside drug testing for the presence of illicit drugs in the system by using oral fluid samples in a compulsory drug test of any driver, motorcycle rider or supervising licence holder who has been involved in a fatal traffic crash. It is particularly important, given that younger people today—in particular teenagers who have just acquired their licence—are more likely to use drugs or a combination of drugs and alcohol.

Combining drug use and alcohol with teenagers' inexperience on the road and the increased likelihood that they will take greater risks is a recipe for disaster. Random breath testing has been a great success since it

was introduced and I for one would like to see a similar system in place to give police the power and ability to drug test people. I am sure that the police themselves would prefer to prevent a tragedy from occurring rather than have to inform a family that a family member has died or been severely injured. Under the bill police will have the power to arrest drivers involved in a fatal crash or serious crash likely to result in a fatality and take them to hospital to have a blood sample taken to be tested for drugs.

While this is a step in the right direction, I fail to see why these powers are not extended to any crash scene requiring police attendance. Although I agree in theory that, as the Opposition spokesperson said, it would be appropriate to test for as many drugs as possible, in reality it is not practical or possible to do so. I note that the Minister's second reading speech mentioned the testing of THC, ecstasy or speed. Of course, ecstasy and speed are related to amphetamine and its derivatives, including ephedrine, dexamphetamine and methamphetamines. I have serious doubts that anyone who had taken a good dose of ecstasy, voluntarily or involuntarily, would be in any state to drive.

Some speakers mentioned drug use by truck drivers. It was said that the only way for some drivers to continue driving for long distances is to use amphetamines or similar drugs. I do not believe that is a good excuse because they endanger not only themselves but also other road users. I am pleased that the Hon. Jon Jenkins alerted the House to the use of opiates. Of course, the other issue is narcolepsy, which is caused by amphetamines. It is reasonable for the Government to require medical practitioners to issue medical certificates to patients who need to take opiates or amphetamines long term and to patients who suffer from other illnesses.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [6.23 p.m.]: I have a longstanding interest in drugs and road accidents. When I was a child sitting silently listening to the radio I would witness my father railing at the news. The phrase often used by the announcer reporting a road fatality was that a car "failed to negotiate the bend". My father was a trauma surgeon and often saw people who smashed their chest on a steering column or their head on a windscreen; he would have to sew them up. He was instrumental in the campaigns of the Australasian College of Surgeons' Trauma Committee for mandatory seatbelts and the introduction of random breath testing. While he said that the biggest problem was the loose nut behind the wheel—which was the common fatalistic view of accidents—he was strongly in favour of changes to road construction to reduce the rate of deceleration of cars. Crash barriers and road inclinations now lessen the chance of accidents occurring. Michael Henderson was the first person to elevate road accident research to a science rather than to rely on the fatalistic view that people were not being careful enough.

The fall in the road toll has been dramatic in public health terms and a huge cultural change has occurred in respect of drink driving. The pity is that the Government has not pursued the same sort of cultural change in the use of tobacco. There has never been that level of commitment in relation to tobacco use. I regret that I have not been a member of the Staysafe committee. It is one of the great committees of this Parliament. Although its members do not earn much kudos in electoral terms for their efforts on the committee, it plays a valuable role. I listened with interest to the contribution of the Hon. Robert Brown and the figures he quoted. The committee and the changes that it has recommended are important. The black spot program is also important in demonstrating that we must look at roads in an analytical fashion, establish where accidents are happening and make changes.

Roads in Australia are cambered so that vehicles travelling around corners can maintain a constant speed. Roads in America are not cambered because the authorities believe that motorists should be driving properly and reduce speed when negotiating a curve. Of course, that is not what happens in practice. The moralistic view that motorists should slow down—which is a preachy demand that one adapts because it is the moral thing to do—results in many more accidents and it is not very smart. Maintaining a constant speed on the open road is a good idea. The laws of physics are brought to bear on bends. The fact that vehicles tend to keep going straight ahead because of momentum must be factored in to road design. Australia does better than other countries in that regard. The Scandinavians have crash-absorbing barriers that, although they cost more to maintain, reduce the road toll even further.

Drug use has become if not more widespread then more widely discussed. The prohibition approach of increasing penalties to stop drug use has failed. We should learn from the failure of prohibition in the United States of America and move to a harm-minimisation policy. As a member of the parliamentary drug law reform group and a supporter of the Wodak 10-point plan, I advocate lessening the harm of drug use if we cannot reduce it. Prohibition is silly.

There is absolutely no doubt that drugs impair performance. Anyone who does not accept that is foolish. In my youth I tried methaqualone, which is the active ingredient in mandrax and cannabis. While

hitchhiking through Scotland I attended a party at a little flat in Glasgow at which a group sat around a fire passing around a joint and congratulating one another on its quality. I was sitting next to the fire, which was a little too hot. After taking a puff I had to take two steps across the front of the fire to hand the joint to a person on the other side. After a couple of puffs I realised that I would have to step carefully. Eventually I was not confident that I could safely hand on the joint, so I said that I had had enough. Anyone who thinks that the use of cannabis does not cause significant impairment is wrong, and a great deal of research has been done to support that view. We must pursue a policy that minimises the use of and harm caused by drugs. Harm minimisation is even more important than minimising drug use. The members making fatuous remarks should be more sensible.

The increasing use of recreational drugs must be addressed. Cannabis, or tetrahydrocannabinol—the alkaloid ingredient in marijuana—is interesting because it has been so widely used. Very little is said about marijuana's fat solubility. Body fat—apart from that in the brain—has poor blood supply. Inhaled marijuana quickly saturates the blood because it is a polar fluid and it is fat soluble. It travels to the brain quickly and has a short active period, not because it is metabolised quickly but because it is redistributed from a high level in the brain as a result of the good blood supply to other areas of fat in the body. Of course, if it is used over a long period and the entire body fat stores become saturated, it takes a long time to clear. As a result, marijuana remains in the body long after the level in the brain has diminished below a level at which it would have a psychoactive effect. That makes law enforcement easier because it can be detected after the fact.

It is questionable whether law enforcement is useful when you are getting rid of residual loads in body fat stores. Speed, or methamphetamine, and ecstasy, or methylenedioxymethamphetamine, are both stimulants. In a sense they are analogous to adrenalin-like drugs, in that they excite mood and have other effects. The assay of these drugs is improving, probably because of the emphasis on sports testing in real time. It is important to be able to detect these substances, to stop their widespread use.

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

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [8.00 p.m.]: Another consideration is the use of stimulants by truck drivers. Having worked extraordinarily long hours as a trainee registrar in surgery, I am aware how exhausted one can be and how impaired one's functioning can be. My understanding of the deregulation of the trucking industry historically is that the Transport Workers Union had fairly rigid rules about the hours that drivers worked, and indeed insisted on the stipulated hours fairly successfully. The transport company bosses resisted this, and the Transport Workers Union was largely disbanded and a large number of owner-drivers secured contracts.

Often the trucks of owner-drivers are mortgaged to the hilt, and are even tied to a certain company, which may or may not give them work. While the good companies have some limitation on long-distance driving, about 10 per cent of the long-distance truck driving fraternity are extremely flexible, in the sense that they will almost do anything to get work. This probably makes the total cost of freight transport cheaper, because a large elasticity of supply is riding on the backs of these drivers, who have to work very long hours if there is the demand.

While some drivers in the trucking industry have secure positions and relatively controlled hours of work, the smaller percentage who work more flexibly—in other words, who bend the rules in terms of hours worked, either because they have a huge mortgage or because it is the only way they can make money, or both—take stimulants to keep themselves awake, and that is not good for their health. One of the tasks I undertook when I was in occupational medicine was to test the health of truck drivers. I recall testing a fellow in his early 30s who looked like he was 60 years of age. He looked very unhealthy: he was a little underweight; he smoked heavily. I had a feeling that he really was not fit to drive, but I could not find anything particularly wrong with him. I took his blood pressure, which was all right. I listened to his chest and it was not great; given that he was a smoker, he was going to get respiratory problems in a few years, although he did not have them at that time.

I asked him a lot of questions. He said to me, "Doctor, I have a \$400,000 mortgage. If you take my licence away from me, I'll kill you." I thought: I can't find a reason to fail him, so I don't have to face the crisis of whether I have the courage to tell him he cannot have his truck licence and take the risk that he will kill me. But certainly it emphasised to me that anyone who thinks that general practitioners can reliably test people and take their licences away from them is living in some sort of fairyland. A far better system has to be worked out. I am pleased that the Minister for Roads is in the Chamber to hear me say that.

I have spoken to long-distance truck drivers, and people have discussed with me the problems of long-distance truck driving, including the safety aspects and the need for pill popping. When I was an after-hours doctor in the mid-1970s people used to ask me for prescriptions for outrageous amounts of Ritalin and other substances to use as uppers for their truck driving. They were very brassed off when I would not give them the prescriptions. Of course, they then did not want to pay me for the home visit, which was an irritation to say the least.

Truck drivers have said that they have problems with unloading if they all go to Melbourne on overnight trips. What used to happen was that they paid for overnight airfreight, but in fact the freight went on a fast truck. Of course, the load got there the next morning because someone had driven very fast in a truck. The problem with a lot of the depots is that they cannot handle all the trucks that unload overnight, particularly on the Sydney to Melbourne and Sydney to Brisbane runs, and they queue them up. They have only one forklift truck unloading a lot of trucks. So not only do the drivers drive all night, but they then have to queue for several hours because it is cheaper for the big distributors to only have a small number of forklifts. They move up two truck lengths every 10 minutes, which of course means the drivers cannot even sleep in their trucks, and then they have to do the return journey after very little sleep. Theoretically all this is looked after by log books, but I understand that the forging of log books is something of an art form.

The Hon. Melinda Pavey: Things have gotten a lot better. There has been a lot of legislation in this regard.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I note the interjection from the Hon. Melinda Pavey. There has been some improvement in the situation, but certainly that was the dynamic when I was working in occupational medicine and certainly that was the dynamic that was explained to me by people who are concerned about this. My suggestion was to have halfway points on the major routes—say, at Tarcutta for the Sydney to Melbourne run, and along the New England Highway and the Pacific Highway for the runs between Sydney and Brisbane or the Gold Coast. Perhaps the drivers going north could swap trucks with the drivers going south, and each of them would effectively do half the trip and come back, so they would be back at their home city and have a better chance of getting some sleep. Obviously the depots must have some obligation to unload the trucks in a certain amount of time after the trucks arrive, so the driver has some period in which to sleep. If we are going to enforce these sorts of rules, we should look at the broad context in which these drivers are working and determine why they are taking these drugs.

On the technical aspects—and this was alluded to by the Hon. Jon Jenkins—at a personal level there is a large difference in dose response relationships. Those who are naive in a pharmacological sense—that is to say, those who have not developed tolerance—may be very much affected by lower levels. In alcohol terms a regular drinker may be almost unaffected by a prescribed concentration of alcohol of 0.05 whereas someone who does not drink at all will be very drunk at that level. But, in the interests of legal certainty, this aspect has been completely ignored. I am not sure about dose response relationships in other drugs and how many false positives there are; my pharmacology is not quite good enough. Obviously, the reliability of testing, the masking of drugs and false positives must be addressed.

These are not insignificant issues; such tests could result in one receiving a criminal record and/or losing one's licence. Therefore, it is important that the tests be completely reliable. So while I agree that the Government should be empowered to conduct such tests, and I agree with random drug testing, the technical aspects must be addressed, and I note the bill is not very specific on that point. Hopefully, the technology is right and there will be no problems. Technology has advanced because of drug testing in sports. In one sense that is a good thing as there is now some experience with protocols of drug testing regimes. I hope the technology is right, but I have knowledge of that. As my father said: You have got to get the drugs out of the people who are driving or operating machinery. The bill is certainly a step in the right direction.

The Hon. ERIC ROOZENDAAL (Minister for Roads) [8.11 p.m.], in reply: I thank honourable members for their contributions to this debate; they have been most valuable and some very good points were made. The Iemma Government is providing our hardworking police with the new powers they need to detect drug drivers. And we are creating new drug driving offences. The Road Transport Legislation Amendment (Drug Testing) Bill introduces random roadside drug testing and provides for compulsory drug testing of any driver, rider and supervising licence holder involved in a fatal crash. Drug driving and its resulting trauma cause grief and distress not only for the victims themselves but also for their families and friends. The incidence of drug-driving in New South Wales is alarming. Too often people think it is a harmless risk: that they will not get caught or that it does not matter.

Random roadside drug testing is about keeping motorists who take drugs and drive off our roads. Existing drug-driving legislation allows police to drug test motorists in limited circumstances. The Iemma Government is now giving police the power to drug test anyone driving, attempting to drive or supervising a learner licence holder. For the first time in New South Wales police will be able to randomly drug test motorists at the roadside. The bill allows police to test drivers for the presence of three illicit drugs in oral fluid: methylamphetamine, ecstasy and THC—the active ingredient in cannabis. Methylamphetamine is known by various street names including speed and ice. I note one member questioned whether ice could be detected. Clearly, that is one of the drugs that can be detected.

These drugs are all illegal, and they are the most commonly used drugs in the community. Most importantly, they all affect the skills and sound judgment required for safe driving. Many prescription and non-prescription medicines, such as benzodiazepines, affect a person's ability to drive safely. Police currently have the power to require drivers they suspect are impaired by such medicines to undergo drug testing. However, these are legal substances and the Government cannot make it illegal for people to drive with the presence of these medicines in their body. While heroin and cocaine will not be tested for at the roadside, the bill creates a new offence of driving with the presence of cocaine or heroin in blood or urine. In addition, drivers found to be impaired by drugs such as cocaine and heroin can already be prosecuted under existing police powers for the "drive under the influence" offence.

The bill will make New South Wales one of the first places in the world to conduct random roadside drug testing. The Drug Testing bill is an important initiative, the legislation is complex, and we wanted to get it right. The Government consulted widely on the new legislation. The Government established an Interagency Drug Driving Working Party to oversee the new drug driving legislation, ensuring a whole-of-government approach to drug-driving. The Working Party comprised representatives from the Roads and Traffic Authority, NSW Police, NSW Health, the Division of Analytical Laboratories, the Attorney General's Department and the Cabinet Office. The agencies on the working party had opportunity to comment on draft bills. In addition, the Attorney General, the Minister for Health, the Special Minister of State, the Transport Workers' Union and the Australian Trucking Association were all formally invited to provide comments on the draft bill.

The Government has been closely watching the implementation of testing in Victoria and we believe we have the laws and the technology right. The roadside oral fluid drug screening technology is not of an evidentiary standard. The results of the roadside screen can never be used to prosecute drivers for a drug-driving offence. Only a drug positive result from the Government's analytical laboratory can be used to prosecute for a drug-driving offence. The oral fluid roadside test is merely a screen, to give an indicative result in a non-invasive, rapid and reliable manner.

Those who are screened as being drug positive will be required to provide an oral fluid sample for further testing. The oral fluid screening technology to be used in New South Wales has passed a rigorous expression of interest process instituted by the Government to ensure that the most reliable and appropriate oral fluid testing technology was selected for use in New South Wales. The same devices that are being used successfully in Victoria since December 2004 and South Australia since July 2006 will be used in New South Wales. I note some of the comments earlier about the time taken to implement this policy. I think it is quite appropriate that we observe the Victorian experience, which was bumpy at first, to ensure that we did not duplicate some of the problems Victoria had initially with the rollout of their roadside drug testing.

Advice from Victoria and South Australia is that the devices are working well. Victoria, which has now conducted more than 21,000 random roadside drug tests and has advised that 436 positive roadside samples have been confirmed positive by their laboratory. A recent study undertaken by the New South Wales Injury Risk Management Research Centre for NSW Health found that one in five truck drivers in New South Wales admitted to regularly using illegal drugs such as speed to stay awake on long haul trips. Heavy vehicle drivers will be targeted by random roadside drug testing, but they will not be the only targets. Heavy vehicles can be particularly dangerous on our roads because of their large size and the long hours spent on the road. Drug taking by heavy vehicle drivers is an occupational issue with some heavy vehicle drivers taking stimulants such as speed to stay awake and depressants such as cannabis to counteract the effects of the stimulants so that they can sleep at the end of a shift.

To ensure that random roadside drug testing is introduced in New South Wales as smoothly as possible, one purpose-built drug testing truck will be used initially, with specially trained officers conducting the testing. Random roadside drug testing will be rolled out across New South Wales in a similar way to the way in which random breath testing was introduced. Driver licence fees are to be raised by \$2 to pay for these new initiatives,

which equates to, on average, less than \$2 million per year. This will fund much more than the first specialist vehicle police plan to deploy in random drug testing operations. The funds will be used to cover all costs of drug testing, including the purchase of drug testing kits and equipment, training and education for police officers, the cost of paying police officers and police operations, changes to the police computer systems and the costs of informing the community about the new laws.

A \$2 increase on driver licence fees is a small adjustment to pay to help combat the drug-driving problem. It is a common sense approach—road users funding enhanced road safety. Drug-drivers are a threat to everyone using New South Wales roads, and these enhancements to the road transport legislation are about removing this threat from the road. The bill sends a clear message to motorists that driving with any amount of illegal drugs in their body in New South Wales will not be tolerated. The Government is about giving police the laws, the powers, the resources and the support they need to drive down crime. The bill is consistent with the Government's commitment to law and order and to ensuring that New South Wales roads are safe for all road users. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

THREATENED SPECIES CONSERVATION AMENDMENT (BIODIVERSITY BANKING) BILL

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

Motion by the Hon. Eric Roozendaal agreed to:

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

Second reading ordered to stand as an order of the day.

BUSINESS NAMES AMENDMENT BILL

Second Reading

The Hon. ERIC ROOZENDAAL (Minister for Roads) [8.21 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 Bill I introduce today will make a number of minor, but important, amendments to the Business Names Act 2002, to ensure the Act continues to be effective and well administered.

The main purpose of the Business Names Act is to provide a means to identify the person or corporation who is currently or has previously been carrying on business in New South Wales under a particular business name.

Having access to this information enables consumers and business owners to identify the legal entity behind a business name and assists them to protect their rights.

Registration of business names also allows the Government to ensure businesses do not use names that are offensive or misleading.

Another purpose of the registration scheme is to avoid confusion in the marketplace by preventing businesses from operating under names that are the same as or closely resemble the names of existing businesses.

This Bill contains amendments to the Act that will streamline the registration process and deliver greater fairness and certainty in registering a business name.

To conduct a business in New South Wales under a name other than their own name, a person must apply to the Office of Fair Trading to register the business name. Registration of a name lasts for three years.

To continue using the name beyond that date, registration must be renewed for a further three-year term. A renewal application can be lodged with Fair Trading up to eight weeks before the registration expires.

Where a business name registration expires without being renewed, the Act currently provides for a new application to be made to re-register the name.

The Government recognises that it is not always possible to renew registration of a name before it expires. This can happen, for example, if the business owner is away at the relevant time or it can simply be the result of an oversight.

Over the past year, around 29% of renewal applications were received late. So as not to disadvantage business owners, the Office of Fair Trading has accepted and processed these renewals.

However, businesses that renew their registration late run the risk that someone else may apply to use the name during the period in which the registration is lapsed.

Fair Trading cannot hold an expired name in reserve indefinitely just in case the business owner may one day decide to renew it. A refusal by Fair Trading to allow another person to use the name would probably not be upheld in the Administrative Decisions Tribunal.

To address these issues, the Bill will amend the Act to give business owners a clear three-month window in which they can apply to restore an expired business name registration. The business name will also be unavailable to other applicants during the three-month restoration period.

Where a renewal application is not received on time, the registration of the business name expires. However, following these amendments, Fair Trading will be able to refuse other applications to register the same or a similar name until the three-month restoration period has ended.

After the end of the restoration period, if registration has not been restored, the business owner would need to re-apply to register the name. The name will also be available for potential registration by other applicants.

These amendments support the fair operation of the business name registration system by providing a clear time frame after which an expired name will be available for use by other businesses.

A second set of amendments in the Bill will clarify the Commissioner's ability to refuse or cancel the registration of a business name that includes the word "sheriff".

The Act already prohibits registration of a name containing the word "police" unless the use of the name has been approved by the Commissioner of Police under the Police Act 1990. Where Fair Trading is notified that approval to use the name has been revoked, the Business Names Act allows steps to be taken to cancel registration of the name.

The Sheriff Act 2005 contains similar provisions to those in the Police Act, in that use of a name containing the word "sheriff" is prohibited without approval of the Sheriff, and approval may be revoked in certain circumstances. It is appropriate that the Business Names Act deal consistently with these kinds of matters.

Accordingly, the Bill inserts a provision to enable registration to be refused if a proposed name containing the word "sheriff" has not been approved under the Sheriff Act. A further amendment will enable Fair Trading to cancel registration if the Sheriff's approval is revoked.

I think everyone would agree it would be inappropriate for business owners to be able to register a name which could mislead the public into believing the business is associated with the police force or the Sheriff's office.

I should mention that no currently registered names will be adversely affected by the amendments. Because the Sheriff Act prohibits use of the name 'sheriff' without consent, Fair Trading already refuses to register such names. The amendments will simply ensure parity of treatment with names containing the word "police" and will give Fair Trading firmer legal ground for refusing and cancelling registration of these names where their use is not approved.

The third main set of amendments to the Act relate to the age at which a person may apply for the transfer of registration of a business name.

The Act currently allows a person aged 16 or more to register a business name. Registration can also be transferred to another person or entity, for example, where the business is sold. A joint application for transfer is required to be made by the transferor and the transferee.

However, an anomaly in the legislation means that only a person aged 18 or above may sign the application as a transferee. The amendment will ensure that persons aged 16 or more are able to apply to have registration of a business name transferred to them.

This will make it easier for young people setting up a business to be named as the proprietor of the relevant business name.

Finally, the Bill makes several minor amendments of a statute law revision nature to clarify or update aspects of the Act. The definitions of "Department" and "Director-General" are brought up to date and made consistent with the definitions contained in other Fair Trading legislation.

The general regulation making powers are being amended to make it clear that the Governor is able to make regulations with respect to the waiver or refund of fees payable under the Act.

Currently, section 40 of the Act broadly allows regulations to be made with respect to any matter required or permitted to be prescribed, or that is necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

A regulation is in place permitting the Commissioner for Fair Trading to waive or refund a fee in certain limited circumstances, for example, where it would be unfair in the circumstances of a particular case to require payment. Should this regulation need to be amended or remade in the future, doubts could arise as to whether the general regulation making power is sufficient. The Bill rectifies this by including a specific regulation making power.

Although a full review of the Act will be undertaken in 2008 to ensure it is continuing to meet its objectives, these amendments are necessary in the interim to ensure the ongoing smooth operation of the business name registration scheme.

The changes being made by this amendment Bill will establish clear rights for business owners to have an expired business name reinstated within three months of expiry, and will ensure that the name continues to be protected during this period.

The amendments will also increase certainty as to when an expired name becomes available for other potential businesses.

The Government, through the Office of Fair Trading, is participating in a national Business Name Registrations Project which will streamline the multiple registration processes required to set up a business in this country.

The project, which has been endorsed by COAG and the Small Business Ministerial Council, will enable business operators to apply for a range of different business registrations, including their business name and ABN, on one web site.

In closing, I would like to emphasise my ongoing commitment to reducing the administrative burden on business through the business name registration requirements and I will continue to explore ways in which this may be achieved.

The Hon. DAVID CLARKE [8.21 p.m.]: The Business Names Amendment Bill, whilst not a contentious bill, is important because it will provide greater certainty and protection for individuals and corporations who have registered business names for the purpose of conducting a business in New South Wales. The bill has the support of the Opposition. Presently in New South Wales many thousands of individuals and corporations operate businesses under a business name registered pursuant to the Business Names Act 2002. By registering a business name, proprietors obtain the sole use of that name for the period of registration, being three years, to the exclusion of all others. This helps provide them with certainty and security in the operation of the business by having exclusive use of the business name.

A proprietor can take restraining action against any other individual or corporation purporting to use the same name. Were it not for this system of business name registration and legal protection from use by others, the commercial world, from businesses employing thousands down to sole traders, would be subject to great uncertainty and chaos. Currently the Act provides that a business name is registered for three years and then lapses unless it is renewed by the proprietor. If the proprietor fails to renew the business name, another individual or corporation may apply to register the same name. According to official figures, 29 per cent of renewal applications are made late—that is, after the three-year registration period has expired. In those circumstances an owner runs the risk of another applicant seeking registration of the name.

To deal with this problem the bill provides for a three-month period from the expiration of registration for an owner to renew the registration, during which time the Department of Fair Trading will refuse the registration of that business name to any other applicant. At the expiration of three months any applicant may apply for the registration of that name. This is a sensible provision because there are many reasons why a business name proprietor may be late with a renewal application. An owner may have been delayed overseas, may have been in some way incapacitated, or may simply have overlooked the matter. The consequences of a failure to renew a business name registration in time could be disastrous for a business.

The second major purpose of the bill is to amend the Business Names Act so as to prohibit the registration of a business name containing the word "sheriff" unless such registration has been consented to by the Sheriff under the Sheriff Act 2005. It further provides that a registered business name containing the word "sheriff" may be cancelled in the event that consent to the use of that name is revoked. This will bring the Act into alignment with provisions that already restrict the use of a business name containing the word "police".

Unless there were such a prohibition on the use of the terms "sheriff" and "police" in a business name, the public could quite misleadingly believe that the business operated under the business name was, in some way, associated with NSW Police or the Sheriff's Office. The third major amendment provided by the bill will allow a business name to be transferred to a person aged 16 or over. This will rectify the present anomaly whereby the Act allows a person 16 years or over to register a business name but allows only persons 18 or over to sign a transfer application as a transferee. As I said, the Opposition does not oppose the bill.

Ms SYLVIA HALE [8.24 p.m.]: The Greens support the Business Names Amendment Bill. The amendments have a fourfold purpose. The first is to change the renewal of business name rules so that if a business fails to renew the registration of its business name when it falls due, the name is reserved for three

months. If after the three months the business does not re-register that name, any other business may register it. The second amendment changes the Act so that a business cannot use the word "sheriff" in its name without the approval of the New South Wales Sheriff's Office. This amendment will have the effect of treating the word "sheriff" in the same manner as the word "police" is treated in the Act. The purpose of the amendment is to make the provisions consistent and to allow the Department of Fair Trading to refuse the use of the word.

The reason for this amendment is to prevent confusion among members of the public, who may believe that a business is part of the New South Wales police force or part of the Sheriff's Office. The monopoly that those agencies seek to exercise over common words may, however, produce ridiculous results. Not so long ago there was a cafe in Australia Street in Newtown close to the Newtown police station, and the owners want to call it "70 Police in My Kitchen", but they were barred from doing so. They then chose a name that contained a word similar in sound to "police" and evaded the prohibition. However, I think it is unlikely that members of the public would have confused that small cafe with the police station. These provisions are probably unnecessary but the Greens do not oppose the bill because of them.

The third purpose of the bill is to allow the transfer of a business registered by a person 16 years or older to another person who is 16 years or older. At the moment a business name can be transferred only upon the signature of someone 18 years or older who is the transferee. This is inconsistent with the provision that someone 16 years or older can register a business name. If that is the case, a person 16 years or older should be able to sign as the transferee. The final amendments are of a statute law revision nature. The definitions of "Department" and "Director-General" are being updated so that they conform with the definitions in other Fair Trading legislation. The regulation-making powers will be amended to make it clear that the Governor can make regulations by including a specific regulation-making power. The Greens support the bill.

Reverend the Hon. Dr GORDON MOYES [8.28 p.m.]: I speak to the Business Names Amendment Bill on behalf of the Christian Democratic Party. The purpose of the bill is to amend the Business Names Act 2002 to enable an application to be made to restore an expired business name up to three months after expiry and to prohibit the registration of a business name that contains an unauthorised use of the word "sheriff", amongst other things. The amendments are not controversial; neither are they complicated. Their aim is to provide greater clarity in matters of an administrative nature and to ensure consistency between the provisions of the Business Names Act 2002 and other relevant legislation. These types of amendments are necessary to improve the flow of transactions and to give certainty to those affected by the Act.

In New South Wales, businesses may be run under the owner's name or under a separate business name. Individuals generally run their businesses under their own names for the sake of convenience. This is because an owner must submit an application to the Department of Fair Trading to conduct a business under a business name. In cases where a business name is to be used, current legislation imposes certain requirements on the nature of that name. For instance, the name must not be too similar to another registered business name, offensive in any way, or deceptive or misleading in its nature.

For instance, under the Act, the use of the word "police" in a business name is not permitted unless the use of the name has been approved by the Commissioner of Police under the Police Act 1990. Similarly, the use of the word "sheriff" is prohibited, consistent with current requirements under the Sheriff Act 2002, unless the use of the name is authorised under that Act. The bill also provides for the cancellation of the registration of a name if the Sheriff's approval is revoked. I was faced with a difficulty some time ago, having registered names for Wesley Mission, one called "Lifeline" and another called "Creditline", a financial counselling service. The latter business name was taken up by one of the major banks, which wanted to run its own program called "Creditline". We took the bank to court and won because we had had some years of continuous use of the name.

Significantly, the bill provides for the restoration of an expired registration by providing a grace period of three months. It is reasonable, though, to expect business owners to renew their business name within a three-year period, the period during which a business name is valid. A renewal application may be lodged with the Department of Fair Trading up to eight weeks before the registration expires. The current system requires business owners to re-register a business name after the name initially expires. For the sake of practicality, the bill enables the Commissioner of Fair Trading to refuse an application by someone else to register an expired name during the three-month period in which it can be restored.

It may be envisaged that the vicissitudes of life sometimes bring chaos into an otherwise ordered business life, thus affecting the day-to-day running of a business. Business owners may neglect to renew their business name due to a momentary lapse in concentration. But there are numerous instances where there is no

grace period and individuals are expected to renew their document within a given time frame. Imagine talking to someone at the Roads and Traffic Authority about your driver's licence and explaining that you had had a monetary lapse of concentration and that is why you did not renew it; or, similarly, speaking to someone at the passport office and suggesting you had simply forgotten to renew your passport for three months or so. There is no room for oversight in these circumstances.

It would seem that if a grace period were allowed in these circumstances, the cost and administrative burden involved in handling late requests would increase. Letters would have to be sent out advising drivers licence holders that they can renew their licence within a three-month grace period. Of course, business owners are not infallible, but it may be expected that they handle their affairs in an effective and efficient way.

Second, it may be worth allowing a registration to be valid for a three-year period, say, if an owner thinks it possible he or she would like to change their business name; or for a five-year period in a case where an owner is comfortable with the use of the business name or the name has been tested in the market and has proved to be successful. It costs \$137 to register a business name for three years. An incentive to register a name for five years may be given through charging a better fee, say, \$150 for five years, similar to the way you can get a drivers licence for different periods.

Currently, only a person aged 18 or above may sign an application as a transferee for a business name. Amendments to the Act allow for an application for transfer of registration of a business name to be made by a person aged 16 years or over. This is to establish a consistent minimum age of 16 years across relevant licensing and registration regulations. The added benefit of this amendment is that, as pointed out in the second reading speech, it will be easier for a young person setting up a business to be named as the proprietor of the relevant business name.

The bill provides a regulation-making power to enable the regulations to provide for the waiver or refund of fees payable under the Act. Other minor amendments are brought about by way of statute law revision. A review of the Business Names Act 2002 is to take place in 2008. At that point close consideration will indicate which provisions have worked well and which have not. Further amendments may need to be proposed to make the legislation more workable. It may be said that the amendments to be passed today will go some way towards making the bill more effective in achieving its purposes. On behalf of the Christian Democratic Party I have pleasure in commending the bill to the House.

The Hon. HENRY TSANG (Parliamentary Secretary) [8.33 p.m.], in reply: I thank honourable members for their support for the Business Names Amendment Bill. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

SUCCESSION BILL

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [8.35 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.

Succession laws, or laws relating to wills and the administration of estates, were imported into the Australian colonies from English law. Over time, the succession laws applying in each jurisdiction changed and diverged, with the result that there was little consistency between succession laws across the States and Territories.

In 1991, the Standing Committee of Attorneys-General or "SCAG" initiated the Uniform Succession Laws Project. The objective of this project is to develop model legislation to be used as the basis for reform by Australian States and Territories with a view to each jurisdiction adopting uniform, or at least consistent, succession laws.

Having uniform or consistent succession laws is expected to make it easier and less costly to administer the estates of people who have moved between or who have held assets in different jurisdictions.

In 1995 the National Committee for Uniform Succession Laws, chaired by the Queensland Law Reform Commission, was established to examine four discrete areas of succession law—the law of wills, family provision, intestacy and the administration of estates.

In December 1997 the National Committee presented a final report to the SCAG on the law of wills. The Law Reform Commission in each State and Territory then released the report. The New South Wales Law Reform Commission released Report No. 85 on the law of wills in April 1998.

The LRC reports contain a model wills bill. The model bill was generally based on the Victorian Wills Act 1994, which in turn was based on a bill contained in the Victorian Parliament's Law Reform Committee's 1994 report on "Reforming the Law of Wills".

The Succession Bill largely mirrors the model bill. It also adopts some of the adjustments made in other jurisdictions as they have implemented the model bill. Victoria, the Northern Territory, Queensland and Western Australia have implemented the model bill.

The bill will replace parts 1 and 1A of the Wills, Probate and Administration Act 1898 other than sections 30 and 31. The Wills, Probate and Administration Act will be renamed the Probate and Administration Act 1898 and its remaining provisions will continue in force.

Some people have queried why the bill is called the Succession Bill rather than the Wills Bill, as it only contains provisions relating to wills. The title is necessary as in the future it is intended to include other provisions relating to the law of succession in this Act. These provisions will be included as New South Wales implements the other LRC reports relating to succession.

The bill makes a number of important changes to the law of wills in New South Wales, namely:

- Making provision for court authorised wills for people who lack testamentary capacity;
- Giving statutory guidance to the court when it considers authorising a minor to make a will;
- Including new rules about beneficiaries who witness wills, survivorship, who is entitled to see a will on the death of a testator and the deposit of wills with the court;
- Revising the law on foreign wills; and
- Including provisions relating to the admission of limited evidence to aid in the interpretation of wills.

I would like to highlight some of the key changes made by the bill that bring the law of wills into the 21st century.

Court-authorised wills for persons lacking testamentary capacity

Clauses 18 to 26 of the bill expand the Supreme Court's jurisdiction by enabling it to authorise the making, alteration or revocation of a will on behalf of a person who lacks testamentary capacity.

Testamentary capacity is essential to the making of a valid will—it requires a testator to know and understand the nature of what they are doing. The testator must also understand the extent of the property they are dealing with by the will and be able to comprehend and appreciate the claims to which they ought to give effect.

A person who lacks testamentary capacity may never have had the capacity to make a will or they may have lost capacity, for example, due to injury or disease. Currently when the person dies, their property is distributed according to the intestacy rules. In the case of a person who has lost capacity, the person may have previously made a valid will which is no longer appropriate due to a change of circumstances, for example: the subsequent birth of a child not mentioned in the will. In these circumstances, the child would have to bring a family provision application for a share of their parent's estate.

There is no restriction on who can apply for a court-authorised will for a person lacking testamentary capacity. Having regard to interstate experience, it is anticipated that most applications will be made by the person's spouse, family member or guardian.

Important safeguards are built into the process for applying for a court-authorised will.

Firstly, an applicant must first seek leave of the court to apply for an order. The requirement for leave is intended to perform a screening function to allow only adequately founded applications to proceed.

A leave application must be accompanied by comprehensive material including evidence of:

- The person's lack of testamentary capacity and the likelihood of acquiring or regaining it;
- The size and character of the person's estate;
- The person's testamentary wishes;
- The terms of any previous will;
- The likelihood of someone bringing a family provision application in respect of the person's estate;

- The circumstances of any other person for whom the person lacking testamentary capacity might reasonably be expected to make provision for under a will; and
- Any other persons who might be entitled to claim on intestacy.

Requiring the applicant to provide such detailed information at this stage will enable the court to gauge the dimensions of the application at an earlier stage of the process. There will be an opportunity for persons with an interest in the proceedings such as the person alleged to lack testamentary capacity, family members etc to be separately represented and heard at an application for leave hearing.

The court cannot grant leave unless satisfied that:

- The applicant is an appropriate person to make the application;
- Adequate steps have been taken to allow all persons with a proper interest in the application to be represented;
- There are reasonable grounds for believing the person does not have testamentary capacity;
- The applicant's testamentary proposal is or may be what the person would have done if he or she had testamentary capacity; and
- It is or may be appropriate for an order to be made in relation to the person.

Once leave has been granted, the next stage is for the court to consider the actual application. In this regard, the bill allows for the merger of the leave application and the application proper.

When it considers the actual application, the court may consider any of the information given to it in support of the application, may inform itself of any other matter in any manner it sees fit and is not bound by the rules of evidence.

The will must be signed by the Registrar of the Supreme Court and retained by the registrar until further court order, or the person dies or acquires or regains testamentary capacity.

This new aspect of the court's jurisdiction also applies to minors—it is intended to complement the court's jurisdiction in respect of competent minors. This means the court can make a statutory will for a minor to whom the court cannot otherwise give authorisation because the minor lacks the requisite degree of understanding, e.g. because of immaturity or because of a particular incapacity.

Many aspects of the bill reinforce previous reforms to shift the emphasis from matters of "form" to the intent of the testator—it moves us from a system where formalities were paramount to one where the court has greater discretion to interpret the testator's intentions. This underlines the policy thrust of the bill that the greatest possible effect should be given to the testator's intentions.

Court authorised wills for minors

Clause 16 of the bill gives statutory guidance of the matters that the Supreme Court may consider when authorising a minor to make a will. Before exercising this jurisdiction, the court must be satisfied that the minor understands the nature and effect of the proposed will, the extent of the property to be disposed under it, that the will reflects the minor's intentions and that it is reasonable in all the circumstances that the order should be made. The Registrar of the Supreme Court must be a witness to the will and must retain it in safe custody.

New rules about beneficiaries who witness wills

Clause 10 of the bill changes the interested witness rules that operate to disqualify the spouse of an attesting witness or a person claiming under the spouse of an attesting witness from benefiting under the will. These rules are usually justified on the basis that allowing a spouse of a beneficiary to witness a will provides an opportunity for the person to exert undue influence over the testator.

Unintended consequences flowed from the application of these rules e.g. wills have been witnessed by spouses of persons who were not contemplated at the time of execution as being a potential beneficiary, but who through the passage of time became a beneficiary because others died before the testator. The rule meant that any dispositions to these witnesses failed.

To address this, the bill provides that a gift to an attesting witness or interpreter for a will is void unless:

- The court is satisfied that the testator knew and approved the making of the gift and the gift was made freely and voluntarily; or
- All of the people who would benefit if the gift to the witness was void, consent to the witness receiving the gift; or
- There are at least two other witnesses to the will who do not receive a gift under the will.

The anti-lapse rule

Clause 41 replaces section 29 of the Wills, Probate and Administration Act, which contains the anti-lapse rule. The anti-lapse rule provides that a benefit left to children or other issue by a will does not lapse if the person fails to survive the testator. Instead the gift passes to the children who survive the original beneficiary.

Law relating to foreign wills

Clauses 47 to 50 essentially restate part 1A of the Wills, Probate and Administration Act. However, the definition of "internal law" has changed slightly to reflect the definition used in other jurisdictions.

New rules about who is entitled to see the will of a deceased person

As a general principle, only a named beneficiary has a right to see the will.

The bill inserts a new provision in the Act that will require the person who has custody or control of a will of a deceased person to allow certain categories of people to inspect the will and copy it. The entitlement extends to a part of a will and to purported wills and revoked wills (and parts thereof), as well as copies. These testamentary instruments can be significant to the determination of questions concerning, for example, the testator's capacity, undue influence or interpretation.

The provision is intended to ensure that persons with a proper interest can see the contents of a will prior to the will's admission to probate (upon which, it becomes a public document). Providing individuals with a right to see the will may assist those who wish to make a claim against the estate, e.g. dependants of the deceased person who wish to make a family provision application.

The categories of persons eligible to access a will represent persons considered to have a proper interest in the will e.g. possible beneficiaries or other claimants against the deceased's estate (such as a person entitled to make a family provision application). The provision will apply to all wills, regardless of when they were made.

Savings and transitional arrangements

I would like to stress that valid wills made prior to this legislation will continue to be effective. People do not have to remake their wills just because we have a new Act.

However introduction of this legislation is a good reminder for people to make a will or to review their will. A large number of people do not have a will, even though they may own property or have children. Other people may have made a will many years ago when their circumstances were very different.

It is important to have a will. A will allows a person to say how he or she wishes to have their property distributed after their death. If someone dies without a will, their estate is distributed according to the intestacy rules, which may not reflect the person's wishes.

Implementation and education arrangements

This bill will have a wide impact on the people of New South Wales. It is important that people are made aware of the impact of its changes.

My Department has formed a committee to plan how to implement the bill and educate the legal profession and community about the changes. The committee includes representatives from the Supreme Court, the Public Trustee and trustee organisations, the legal profession, legal educators and government.

I expect that it will take some months to complete these preparations. The bill will commence once these preparations are complete.

Conclusion

This bill reforms and modernises the law of wills in New South Wales. It also represents a step closer to achieving consistency of succession law across Australia. It is my hope that more people will be encouraged to make wills and to keep them up to date.

I commend the bill to the House.

The Hon. DAVID CLARKE [8.36 p.m.]: The law relating to wills and the administration of estates, collectively known as the law of succession, will at some time or other affect the great majority of us during our lifetime. It will affect those who have accumulated assets during their lifetime. It will affect those who bequeath property, real or personal, to another person on their death, and it will affect those who, through some family or personal relationship, may be entitled to bring a claim in the courts for a share of the assets of a deceased person. However, whilst the law relating to wills and the administration of estates is an area of the law that will impact on most of us in one way or another, it is as confusing and complex to us as much as any area of the law can be.

It is an area of the law the complexity of which is compounded by the fact that it has developed differently in each State and Territory of the Commonwealth. It is for the purpose of bringing some conformity and consistency between the succession laws of the different jurisdictions, as well as making it an area of the law that is less complex, that we have before us the Succession Bill, a bill that is not opposed by the Opposition. The bill restates, with amendments, the law relating to wills in New South Wales in order to implement, with modifications, the recommendations of the National Committee for Uniform Succession Laws regarding the law of wills contained in its final report to the Standing Committee of Attorneys-General in December 1997.

The recommendations were endorsed by the Law Reform Commission of New South Wales in its report "Uniform Succession Law: the Law of Wills", which was published in 1998. The bill is designed to restate the law of wills to assist in establishing uniform succession laws across Australia, thus, for example, helping to make it less costly and difficult to administer the estates of people who have, prior to their deaths, moved between States and Territories or had assets in multiple States and Territories. Specifically, the bill repeals the provisions of the Wills, Probate and Administration Act 1898 relating to wills, and renames the

remaining provisions of that Act as the Probate and Administration Act 1898. The major changes to the law of wills effected by the bill provide for:

- (a) the introduction of court authorised wills for people who lack testamentary capacity,
- (b) the provision of statutory guidance in relation to the matters to be taken into consideration by the court in authorising a minor to make a will,
- (c) new rules about beneficiaries who witness wills,
- (d) new rules about survivorship,
- (e) revision of the law relating to foreign wills to bring New South Wales law relating to choice of law issues into line with the law in other jurisdictions,
- (f) new provisions about who is entitled to see a will on the death of a testator,
- (g) new provision for the deposit of wills,
- (h) provisions relating to the admission of limited evidence to aid in the interpretation of wills.

This is an important bill because it will achieve greater clarity, certainty and uniformity between jurisdictions in the law relating to wills and the administration of estates—an area of the law that will at some stage or other impact on the lives of most of us. As I said, the Opposition does not oppose it.

Reverend the Hon. FRED NILE [8.39 p.m.]: The Christian Democratic Party supports the Succession Bill, whose main purpose is to restate the law of wills as part of a project to develop uniform succession laws across Australia. Each State and Territory has different succession laws, and this has caused a great deal of confusion and has been costly for people who have moved between States or who have held assets in different jurisdictions. The Standing Committee of Attorneys-General initiated the uniform succession laws project to develop uniform or consistent succession laws across Australia. The National Committee for Uniform Succession Laws has carried out the work. It released a report on the law of wills, which contained a model bill, which was endorsed by the New South Wales Law Reform Commission in 1998. The national committee has also released a report on family provision and is working on reports on intestacy and administration of estates.

The bill is based on the national committee's model bill, although some minor changes have been made to address specific issues raised by New South Wales stakeholders. The bill will repeal parts 1, except for sections 30 and 31, and 1A of the Wills, Probate and Administration Act 1898. That Act will be renamed the Probate and Administration Act 1898 and its remaining provisions will continue to operate. I note that the bill contains a provision in relation to the minimum age for a person to make a will. A will made by a minor is not valid. However, a minor may make a will in contemplation of marriage and may alter or revoke such a will, but the will is of no effect if the contemplated marriage does not take place. A married minor may make, alter or revoke a will, and a minor who has been married may revoke the whole or any part of a will made while the minor was married or in contemplation of the marriage.

It is interesting that marriage overcomes the age discrimination. I believe that indicates the importance of marriage in our society. The bill will also make a number of changes to the law of wills in New South Wales. It will make provision for court-authorized wills for people who lack testamentary capacity. It will give statutory guidance to the court where it considers authorising a minor to make a will. It will include new rules about beneficiaries who witness wills, survivorship, who is entitled to see a will on the death of a testator, and the deposit of wills. It will also revise the law on foreign wills and include provisions relating to the admission of limited evidence to aid in the interpretation of wills.

As the bill will have a wide impact on the community, an implementation committee is already meeting to plan how the legal profession and the public can be educated about the changes. Obviously when changes are made to such important areas as wills, an education program is needed so that the legal profession and the public are fully aware of the changes and how they will benefit from them.

Ms SYLVIA HALE [8.43 p.m.]: The Greens support the Succession Bill, which will modernise how wills are dealt with, especially in cases where a person dies intestate or when circumstances have changed since the will was made. The provisions of the bill have been outlined at length so I will not detail them again. The bill is part of a national process to create uniform legislation governing wills and succession. It is based on a model bill and incorporates additions and improvements that have already been incorporated in legislation by other States and Territories.

The bill emerged from a discussion paper prepared by the New South Wales Law Reform Commission in 1998, and the commission has endorsed the changes to the legislation contained in the bill. The most important element is that the court is given more discretion in interpreting the intentions of a testator so that the greatest possible effect can be given to them. Where someone cannot make a will due to incapacity, immaturity or other cause, a court is empowered to make court-authorised wills, and to make, alter or revoke a will where a person lacks testamentary capacity.

Those who have made wills will not be affected by the bill. However, there is a provision that when a beneficiary such as a child of a testator has died, the benefit to go to the child may now go to the children of the deceased beneficiary or, in the language of the bill, the issue of the original beneficiary. It will be as if the testator had died intestate. The bill also addresses the problem that arises where a person has made a will but subsequently is unable to amend the will, as may happen if they have a stroke, for example, although their circumstances have changed. For example, another child may have been born to the incapacitated testator. That child may not be mentioned in the original will but will now be permitted to make a family provision application for a share of the parent's estate. It is not just a child of the testator who can make an application: other persons not directly related to the testator can also make a claim on someone's estate. But most claims will undoubtedly come from spouses, family members or guardians.

Other people may still make claims on another person's estate where there is no will or where the person has no capacity to make a will. The bill lays out the process for this and the evidence that has to be presented to a court. The court must be satisfied that "adequate steps have been taken to allow representation of all persons with a legitimate interest in the application, including persons who have reason to expect a gift or benefit from the estate of the person in relation to whom the order is sought". Thus partners, including de facto and same-sex, could make an application in a case where someone did not have the capacity to make a will under the proposed section 18.

The only concern the Greens and others have is the lack of a scheme for depositing wills. For example, we have a Land Titles office where land titles are deposited. When there is a change of owner the new title deed is deposited with that office. Those records are centralised and computerised. Similarly, it would be an advantage to have a central place to deposit wills. At present a person making a will is encouraged to leave copies with various people. But what happens if the will or copies are destroyed in a house fire or the person holding the will for the testator dies or their solicitor loses the will in a flood? A will might simply disappear. Other than the concern about the lack of a scheme for depositing wills, the Greens support the bill as it is part of a national effort to modernise legislation governing succession and wills.

The Hon. HENRY TSANG (Parliamentary Secretary) [8.48 p.m.], in reply: I thank honourable members for their contributions to the debate. The Succession Bill will bring New South Wales into line with other jurisdictions in relation to how it regulates the law of wills. This is expected to make it easier and less costly to administer the estates of people who have moved between, or who have held assets in, different jurisdictions. I stress again that if someone has a valid will it will still be effective even though New South Wales will have a new Act regulating the law of wills. However, the introduction of the bill is a good reminder for people to consider making or reviewing a will. A will lets the person, instead of the State, decide how his or her assets will be distributed after their death. The bill reforms and modernises the law of wills in New South Wales. It also represents a step closer to achieving consistency of succession law across Australia. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

PORTS CORPORATISATION AND WATERWAYS MANAGEMENT AMENDMENT BILL

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

Motion by the Hon. Henry Tsang agreed to:

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

Second reading ordered to stand as an order of the day.

PROFESSIONAL STANDARDS AMENDMENT (DEFENCE COSTS) BILL**Second Reading**

The Hon. HENRY TSANG (Parliamentary Secretary) [8.51 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.

New South Wales is the leading jurisdiction in Australia with respect to professional standards legislation. New South Wales has had professional standards legislation in place since 1994. It was followed by Western Australia in 1997.

In the past few years, all other States and Territories have enacted professional standards legislation based on the New South Wales Act. This followed decisions by the Insurance Ministers Forum and the Standing Committee of Attorneys-General in 2003 to implement nationally consistent professional standards legislation. Professional standards legislation was one of a number of strategies adopted by governments across Australia to address the ongoing availability and affordability of professional indemnity insurance.

Professional standards legislation facilitates the capping of occupational liability, while also protecting consumer interests through requirements for insurance and the implementation of risk management strategies and complaints and disciplinary procedures.

In New South Wales, there are currently eight schemes approved under the Professional Standards Act. These schemes cover accountants, legal practitioners, engineers, surveyors and valuers.

The Professional Standards Amendment (Defence Costs) Bill 2006 implements a decision of the Standing Committee of Attorneys-General to enable professionals who are members of schemes to hold either costs-inclusive or costs-in-addition insurance policies. Costs-inclusive policies are inclusive of defence costs, while costs-in-addition policies cover defence costs in addition to the indemnity amount.

The Professional Standards Council, the independent body that approves schemes under the Act, has received legal advice that the current wording of the Act means only costs-in-addition policies are acceptable under the Act.

New South Wales solicitors hold cost-inclusive policies and other professionals who are members of schemes also hold such policies because they are more widely available in the market.

The bill will amend the Act to give flexibility for professionals to hold either costs-inclusive or costs-in-addition policies. Consumers will not be disadvantaged if they deal with a professional holding a costs-inclusive policy because the professional's maximum liability to the consumer will be the amount of the cap applying to the professional. That is, defence costs will not erode a defendant's liability for damages to a successful plaintiff.

I now turn to specific provisions in the bill. Item [1] inserts a definition of "costs" into the Act.

Item [2] replaces the existing definition of "damages" in the Act with a more comprehensive definition.

Item [3] inserts a definition of "amount payable" under an insurance policy to include:

- (a) defence costs, where those costs are payable out of the one sum insured under the policy; and
- (b) any excess payable under the policy.

Sections 21, 22 and 23 of the Act provide, respectively, that liability may be capped by insurance arrangements, by reference to the amount of business assets, or by a multiple of the fees charged. Items [4] to [7] of the bill reframe sections 21, 22 and 23 by using the new definition of "amount payable" inserted by item [3].

Item [8] of the bill inserts section 26A into the Act to make it clear that a professional's liability to a client cannot be less than the cap applying to the professional where the professional holds a costs-inclusive policy.

Item [10] of the bill applies the amendments contained in the bill to schemes already in force and validates those schemes. It also applies the amendments to proceedings pending before a court.

This bill is strongly supported by the Professional Standards Council. It is also supported by key professional bodies, including CPA Australia, the Law Society of New South Wales and the Law Council of Australia, which were consulted during the drafting of the bill.

I commend the bill to the House.

The Hon. DAVID CLARKE [8.52 p.m.]: The Professional Standards Amendment (Defence Costs) Bill 2006 arises out of recommendations of the Standing Committee of Attorneys-General made in 2003 in respect of professional indemnity insurance and is not opposed by the Opposition. It amends the Professional Standards Act 1994 which, among other things, provides for the setting up of schemes that limit the liability of members of associations of practitioners of particular trades or professions if the practitioner has the benefit of an occupational liability policy that provides at least a minimum level of cover set up by the scheme. The bill amends the Act to allow professionals such as lawyers, doctors and accountants who are members of schemes under the Act to hold either costs-inclusive or costs-in-addition professional indemnity insurance policies. The bill is made necessary as a result of legal advice received by the Professional Standards Council, the independent body that approves schemes under the Act, that only costs-in-addition policies are acceptable under the Professional Standards Act 1994.

Costs-inclusive insurance policies cover defence costs, while costs-in-addition policies cover defence costs in addition to the indemnity amount. Solicitors and other professionals hold costs-inclusive policies because they are more widely available. Henceforth, practitioners covered by the Act will have a choice of costs-inclusive or costs-in-addition policies. Because defence costs will not erode a defendant's liability for damages to a successful plaintiff in a claim, consumers will not be disadvantaged.

Specifically, the bill makes it clear that, although a defence-costs-inclusive insurance policy may, as compared with one that is not defence-costs-inclusive, reduce the amount available to be paid under the policy to a scheme participant's client in respect of a claim, this does not lower the cap on the scheme participant's liability to the client. The scheme participant will continue to be liable to the client for any difference between the amount payable to the client under the policy and the amount of the cap. We have been assured by the Government that the Law Society of New South Wales, the Law Council of Australia and other key professional bodies have all been consulted during the drafting of the bill and are fully supportive.

Reverend the Hon. FRED NILE [8.57 p.m.]: The Christian Democratic Party supports the Professional Standards Amendment (Defence Costs) Bill. This bill will allow professionals who are members of schemes under the Professional Standards Act 1994 to hold either costs-inclusive or costs-in-addition professional indemnity insurance policies. Professional standards legislation facilitates the capping of occupational liability while protecting consumer interests through requirements for insurance and implementation of risk-management strategies and complaints and disciplinary procedures.

New South Wales enacted professional standards legislation in 1994 and Western Australia followed in 1997. In recent years all other States and Territories have enacted professional standards legislation based on the New South Wales legislation. This followed decisions by the Insurance Ministers' Forum and the Standing Committee of Attorneys-General in 2003 to implement nationally consistent professional standards legislation. Professional standards legislation was one of a number of strategies adopted by governments to address the ongoing availability and affordability of professional indemnity insurance.

It is important that the legal profession functions at the highest possible level of integrity and openness. I have been concerned about a television campaign conducted by, I assume, the New South Wales Law Society—probably supported by the Bar Association—that is critical of the legislation dealing with occupational health and safety. It advises people to ring a number that appears to be a government department or some authorised body. Obviously the campaign is being conducted on behalf of the legal profession, which is hurting because it has lost a lot of business as a result of the Government's reforms, which I strongly supported. Money that was available for injured workers was going to the workers and not into the pockets of lawyers. In one year about \$400 million went to injured persons, but almost the same amount went to lawyers. I would rather see \$800 million going to injured workers. It is important that the legal profession operates at the highest standards of integrity when it has a vested interest in seeking additional business.

This bill implements a decision to enable professionals who are members of schemes under the Act to hold either costs-inclusive or costs-in-addition insurance policies. Costs-inclusive insurance policies include defence costs and costs-in-addition insurance policies cover defence costs in addition to the indemnity amount. The Professional Standards Council, the independent body that approves schemes under the Act, has received legal advice that the wording in the Act provides that only costs-in-addition policies are acceptable. That is the reason for these amendments. New South Wales solicitors hold costs-inclusive policies and other professionals who are members of schemes also hold such policies because they are more widely available in the market.

Consumers will not be disadvantaged if they deal with a professional holding a costs-inclusive policy because the maximum liability of a professional is not reduced by the fact that he or she holds such a policy.

That is, defence costs will not erode a defendant's liability for damages to a successful plaintiff. That is an important issue. Where damages are awarded to a plaintiff, the lawyers acting on behalf of that plaintiff should not take an exorbitant amount in professional fees and that should be closely monitored. Hopefully this legislation will ensure that no harm is done to the interests of the consumers of this State.

The Hon. HENRY TSANG (Parliamentary Secretary) [9.00 p.m.], in reply: I thank honourable members for their contributions to the debate. The proposed amendments implement a decision of the Standing Committee of Attorneys-General to enable professionals who are members of schemes to hold either costs-inclusive or costs-in-addition insurance policies. The bill recognises the realities of the insurance market, provides flexibility for members of schemes to hold either costs-inclusive or costs-in-addition insurance policies, and enables professionals to purchase the type of policy which best suits their needs.

At the same time, the bill ensures that consumers will be protected regardless of whether they deal with a professional who holds a costs-inclusive or costs-in-addition policy. Other States and Territories, which have modelled their professional standards legislation on the New South Wales Act, will introduce similar amendments so as to maintain a nationally consistent approach. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

PASSENGER TRANSPORT AMENDMENT BILL

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [9.01 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 purpose of this Bill is to amend the Passenger Transport Act 1990 to enable the accreditation of incorporated associations and groups of two or more persons, who may be partners, as operators of public passenger services.

The Bill will also validate accreditation of these associations and "partnerships" in the past, as well as any contracts entered into with the Director-General of the Ministry of Transport for the provision of regular bus services by associations and "partnerships".

Under this Act, provision is only made for an individual or a corporation to be accredited as the operator of a public passenger service.

Vehicles used may be a bus, taxi-cab, private hire vehicle, four-wheel-drive vehicle, motor cycle (with or without side-car) or motor tricycle. To provide public passenger services without accreditation is a serious offence, for which a court may impose a penalty of up to \$110,000.

The accreditation mechanism provided for in the Act is the principal method by which the Government attempts to ensure safe, reliable and efficient public passenger road transport services.

The criteria relevant in examining an applicant's application for accreditation as an operator, of a public passenger service, include:

- Good repute;
- Fitness and propriety;
- Public responsibility;
- Financial viability;
- Training; and
- Competence.

The activities of operators are closely monitored by the Ministry of Transport, which may fine or prosecute offending operators, or vary, suspend or cancel their accreditation in more serious circumstances.

Whilst it is possible for a driver, operator and licensee to be one and the same person, in many cases the three roles are held by three different parties. There are currently about 12,000 public passenger service operators in New South Wales, using buses, taxis, private hire vehicles and tourist vehicles.

While "partnerships" and associations have been erroneously accredited since 1990, which was exacerbated by incorrect legal advice some years ago, subsequent legal advice from the Crown Solicitor made it clear that only an individual or a corporation can be accredited.

From the 1st July, 2005, upon amendment of the Passenger Transport (Bus Services) Regulation 2000, the previous arrangement of bus operator accreditation for life was replaced with accreditation for three-year terms. Bus operators were advised that, in the light of the Crown Solicitor's advice, they may apply for reaccreditation only as an individual or a corporation.

This requirement created a difficult situation for a significant number of operators. Some such bus operators who were previously "accredited" as "partners" or "partnerships" have remedied the situation themselves, by applying for reaccreditation in the name of an individual.

Others have not applied for accreditation as an individual, claiming that this may unreasonably necessitate a rearrangement of their business affairs through no fault of their own.

Acknowledging industry concerns, the Ministry of Transport agreed to representations by the Bus and Coach Association that legislative amendments be sought to recognise "partners" and associations who are operating public passenger services, as well as those who may wish do so in the future. However, although the amendments are aimed primarily at small country family bus operations, equity demands they will apply to all operators of all public passenger vehicles.

In the meantime, the Ministry of Transport is accepting applications from bus operators for reaccreditation as "partners", "partnerships" and associations but, as they cannot legally be accredited or reaccredited, they are not being processed but are being put aside until the matter is resolved.

The proposals would have a positive and welcome effect on rural families who have set up their business affairs as "partnerships", primarily as husband and wife, to run a small country bus service, by allowing them to continue with that arrangement.

I commend this Bill to the House.

The Hon. CATHERINE CUSACK [9.02 p.m.]: The Passenger Transport Amendment Bill is being spirited through this House, having passed through the other place earlier today. It is one of those tidy-up pieces of legislation that addresses a fairly embarrassing mistake on the part of the Government. A few loose ends need to be tidied up before the next State election. On the positive side, I am pleased that these loose ends are being tidied up. I thank the Bus and Coach Association, and particularly Ian MacDonald, the association's chief executive officer, for drawing the problems to the attention of the Government.

I wish to take up a moment of the House's time to explain the basis of the problem being addressed by the bill, because I do not believe it is clearly outlined in the Minister's second reading speech. Bus operators need to be accredited to ensure that service standards are met in terms of the operators being of good repute, their fitness and propriety, public responsibility, financial viability, and training and competence. These matters were part of an accreditation scheme introduced in 1990 by the former Coalition Government, a scheme that has operated very effectively until changes to the legislation last year.

Under the scheme, bus companies that could be accredited included individuals, companies and partnerships. Last year, when the State Government was in the process of introducing new regulations associated with changing the Passenger Transport Bus Services Regulation 2000, the Crown Solicitor gave the Government new legal advice which effectively said that only an individual or corporation can be accredited, not a partnership. This excludes many hundreds of mum and dad companies in rural communities who operate bus services successfully, and have been doing so since 1990 under the current legislation. Suddenly it was discovered, as a result of the new legal opinion from the Crown Solicitor, that they were operating illegally and could not be accredited under the new Passenger Transport Bus Services Regulation 2000, which was due to come into force on 1 July 2005.

One would think that, given that situation, the Government would change the legislation, perhaps through a statute law revision bill, to facilitate a system that has been operating successfully since 1990. But the Government did not do that. Instead, it wrote to every bus operator to advise that in light of the Crown Solicitor's advice they are now not allowed to apply for reaccreditation as a partnership; they can only do so as a company or an individual. Of course, this created enormous inconvenience for the operators. It appears that some of them modified their arrangements in order to accommodate the administrative convenience of the Department of Transport. Others complained bitterly that it would involve substantially restructuring their affairs. Through the Bus and Coach Association they appealed for the Government to do what it probably should have done in the first place: fix the problem, rather than simply pass it on to hundreds, if not thousands, of operators.

The bill rectifies the problem, and of course the Opposition supports it. As usual, however, we have concerns about the apparent poor attitude of the Department of Transport and the Government towards bus operators. It is extraordinary that this was not done simply and quickly in the first place; it would have had the support of everyone. I am disappointed that this has turned into a great saga, but we are certainly very pleased that at least the bill is passing through the Parliament tonight.

In conclusion I pay tribute to the many mum and dad bus companies in country areas who provide a marvellous service for our children and who are the backbone of school transport schemes in the bush. They get the kids to school safely and on time, often even through floods. If there is a problem with a bus, they all have in place a telegram to keep families informed. They are entrusted with very precious cargo, and they do a marvellous job in discharging their duties.

Reverend the Hon. FRED NILE [9.07 p.m.]: The Christian Democratic Party supports the Passenger Transport Amendment Bill, which has as its object to amend the Passenger Transport Act 1990 so as to make it clear that two or more individuals may carry on bus or other public passenger services in partnership or under other arrangements, and that any kind of corporate body, including incorporated associations and co-operatives, may carry on bus or other public passenger services.

It is apparent that there has been the discovery, following legal advice, of problems with the current legislation, which affects the issue of accreditation for companies or persons who operate bus services in the State. The bill makes it clear that a single individual, two or more individuals, or a corporate body can be accredited. In other words, accreditation is not restricted to incorporated organisations: two or more individuals may carry on a bus service in partnership or under other arrangements. The Christian Democratic Party continues to strongly support private bus companies, as we have on many other occasions, and it is important that the bill be passed to allow them to continue to operate on behalf of the consumers of this State.

Ms LEE RHIANNON [9.09 p.m.]: The Greens do not oppose the Passenger Transport Amendment Bill. It appears that it is necessary to, in effect, tweak the law to ensure that private bus operators do not operate illegally. The legislation highlights that the Government ensures that it puts the necessary measures in place for private bus operators but does not provide for commuters. I will give an example of how tough it is for people in parts of western Sydney. Throughout much of 2005 there was a campaign in St Clair to reinstate the 774 bus service from St Clair to Mount Druitt. The locals who campaigned on this are mainly members of Commuters of Western Sydney, and I have been informed of their activities by Mr Eddie Klein on behalf of that organisation. They have done a whole lot of work lobbying the Government and Westbus because they found that people were severely disadvantaged when the 774 service was removed. Commuters now have to catch two buses or a bus and train and that means they can be 20 or 30 minutes late for work if they miss a connection. It is a fairly basic thing just to ensure that those services are there, and I know this bill is a specific piece of legislation about one legal problem—

The Hon. Catherine Cusack: It is for country bus services.

Ms LEE RHIANNON: It is not just about country bus services. When one reads the second reading speech one sees it is not just about buses, it also mentions taxis, and I think hire cars also come into it. I make the point that the problem we have with this Government is that it will quickly work out these problems for the private sector, but for the ordinary commuter, for people doing it tough in Western Sydney, the Government is not coming up with solutions. Why has the Government not got on to Westbus to provide this service? These people have campaigned outside Mt Druitt railway station and at St Clair and Erskine Park shopping centres. People have put requests to the Minister and Westbus, but their calls have fallen on deaf ears.

We need to remember that the lack of public transport really makes it tougher for people who are unemployed. There are many factors involved when people are not able to get jobs and a really big one is public transport. For instance, if people who live at St Clair cannot get to Mt Druitt for a job because the bus services are not there, it is going to be really tough for them. In this place a lot of members are just not on the page in recognising how difficult it can be.

The Greens believe there is a need for bus services to be genuinely public, particularly in Western Sydney—and that is not a pipe dream. We know that in 1989 the Government purchased two private bus companies, North and Western Buses and Parramatta-Ryde Buses. This brought some government buses to Western Sydney for the first time; services improved and patronage increased. The people of Western Sydney deserve this and the environment also deserves it. Better public bus services mean fewer people will have to use

their cars when they want to travel to work, pick up the kids or just have a day out. There are real solutions. Although it is not directly connected to the matter before us, what springs to mind when one reads this piece of legislation is that once again the Government has gone to all this trouble to work things out for the private operators, but where is the vision? Where is the big picture to get this city working by providing decent public transport?

The Hon. HENRY TSANG (Parliamentary Secretary) [9.13 p.m.], in reply: I thank honourable members for their contributions. I will now address some of the concerns raised by the Hon. Catherine Cusack as to why it took so long to rectify this problem with this bill and why there were problems with mum-and-dad partnerships that operate country buses. I remind the House that this legislation was passed back in 1990 under the Coalition Government.

The Hon. Catherine Cusack: Based on different legal advice. The legal advice did not change until last year.

The Hon. HENRY TSANG: At that time the department and the Ministry of Transport believed that the partnership could be accredited under this Act that had operated for many years and it was of no concern, but quite recently concern was raised and the Government was obliged to seek advice from the Crown Solicitor. The Ministry of Transport believed the department could be accredited under the Act and it was not until many years after the Act commenced and operated that the Crown Solicitor's advice was obtained, which confirmed that this was not the case. Hence the need now to rectify the situation with this bill to give comfort to the mum and dad companies.

The Hon. Catherine Cusack: Before you drafted the bill you wrote to everyone and told them that they could not be accredited.

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

The Hon. HENRY TSANG: Because the Government is a transparent government, the department has advised the Minister that the Minister is obliged to let the mums and dads know that the Government is happy to do something. Hence we are now trying to get this bill through the House.

We appreciate the support of the Opposition. We are now working together for country New South Wales, for mums and dads. That is all I am trying to say. We do not have any conflict because we all want to serve the people of New South Wales. While I appreciate the comments made by Ms Rhiannon, opposing this bill achieves nothing for commuters and only threatens to disadvantage small businesses in rural and regional New South Wales. Of course, the Greens never have to worry about the responsibility of running a government and therefore they do not have to look after small businesses, or big businesses, or the creation of any jobs so they can afford to complain. It is us, the major parties, who have a role to play and we are working together to ensure that country New South Wales is being looked after.

This bill will now clarify and provide for groups of individuals, who may be partners, and incorporated associations to be accredited as operators of a public passenger service using a bus, taxicab, private hire vehicle or tourist vehicle. As Ms Rhiannon said, it is true it is not just the buses; in country New South Wales there are mums and dads who own a taxicab; there might be mums and dads who own a private hire vehicle or tourist vehicle, and they should also have comfort in knowing that this bill will now ensure the continuity of the service of public transport to country New South Wales.

This bill recognises and validates the purported accreditation for all partners, partnerships and incorporated associations, to date, by deeming them to have been duly accredited as operators, and validates all contracts entered into with the Ministry of Transport, to date, for the provision of regular bus services by partners, partnerships and incorporated associations. These proposals would have a positive and welcome effect on families who have set up their business affairs as partnerships, primarily as husband and wife, to run a small rural bus service, by allowing them to continue with the arrangement. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

ELECTRICITY SUPPLY AMENDMENT (GREENHOUSE GAS ABATEMENT SCHEME) BILL

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

Motion by the Hon. Henry Tsang agreed to:

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

Second reading ordered to stand as an order of the day.

HEALTH LEGISLATION AMENDMENT (UNREGISTERED HEALTH PRACTITIONERS) BILL**Second Reading**

The Hon. HENRY TSANG (Parliamentary Secretary) [9.21 p.m.], on behalf of the Hon. John Hatzistergos: 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 have pleasure in introducing the Health Legislation Amendment (Unregistered Health Practitioners) Bill, an important bill that will improve the protection of the New South Wales community by addressing what may be seen as a gap in the regulation of health practitioners. New South Wales is the first jurisdiction in Australia to take this important step. As honourable members would be aware, a great many health services are provided by people who do not come within a statutory registration scheme, and the overwhelming majority of them are honest, caring and competent. However, a few health practitioners are anything but honest and competent and care for nothing more than their own financial advancement.

When patients seek health services they are entitled to be protected from the shonks and rip-off merchants who peddle false hope. People battling serious or terminal illnesses can be desperate, and will sometimes hand over large amounts of money for useless treatments. They may also be influenced to forgo proven medical treatments. The bill addresses community concerns about those charlatans. It provides for the making of a code of conduct for unregistered health practitioners under the Public Health Act 1991, which will set appropriate standards for such health practitioners.

The Health Care Complaints Commission already can investigate complaints about any health service provider. That ability will be expanded to specifically include the investigation of breaches of the code of conduct by unregistered health practitioners. Furthermore, if the complaint is proven the commission will be able to issue a prohibition order that places conditions on the way a person provides health services, or restricts the health services that the person can provide, or prohibits the person from providing health services altogether.

There are also concerns about practitioners who, due to serious misconduct or incompetence, have been deregistered from a health profession but who, nonetheless, continue to practice in unregistered fields. The most obvious examples of that are deregistered medical practitioners or psychologists who set themselves up to practice under titles such as psychotherapist or counsellor. Deregistered physiotherapists, chiropractors and osteopaths may set up under the title of remedial masseur, and deregistered midwives may set up under the title of doula or birth attendant.

To address those concerns the bill provides that when a person is deregistered from a health profession the tribunal or board that deregisters the person may also impose a prohibition order on the person. A person who is the subject of a prohibition order, or who has been deregistered from a health profession, will be required to include information to that effect in any advertising or promotion of the health service they provide. They will be required to also inform each of their patients of the prohibition order or deregistration prior to commencing to provide a service. The rationale for those requirements is simply to ensure that patients can make informed choices about their health service provider when they seek or receive health services.

In preparing the bill, officers of the Department of Health consulted with professional associations representing unregistered health practitioners and discussed its provisions with them. The associations consulted include the Australian Traditional Medicine Society, the Psychotherapy and Counselling Federation of Australia, the National Herbalists Association, the Australian Acupuncture and Chinese Medicine Association and the Australian Register of Homeopaths. The representatives of those associations have been uniformly supportive of the proposed bill as they are as concerned as the Government to remove shonks from the industry. Consultation has been held also with the Medical Services Committee, the Australian Medical Association, and the professional associations representing unregistered health practitioners employed within the public health system, such as dietitians and orthoptists. All bodies consulted have indicated their support for the Government's policy.

I now turn to the specific provisions of the bill. Schedule 1 to the bill amends the Public Health Act 1991. Item [1] to the schedule replaces the current Part 2A of the Public Health Act with a new Part 2A. New section 10AB provides that the limitation period for instituting proceedings for an offence under Part 2A is two years rather than the current six months. The reason for seeking to extend the limitation period is that prosecuting relevant offences can be complicated and can require the use of a great deal of clinical, scientific, and expert evidence. The investigation and evaluation of that evidence cannot reasonably be undertaken in six months.

Proposed section 10AK of the Public Health Act creates an offence for a person to provide a health service in contravention of a prohibition order. The section also requires deregistered people and people subject to a prohibition order to advise their patients of those matters prior to providing health services. Proposed section 10AL requires deregistered practitioners and people subject to a prohibition order to include that information in any advertising for their health services. A person who has been deregistered in another Australian State or Territory will be subject to the same requirements if they provide health services in New South Wales. Proposed section 10AM provides for a code of conduct for unregistered health practitioners to be made by regulation. The code of conduct will be the subject of detailed consultation with all relevant professional groups before it is finalised. A number of the professional associations I have referred to have already assisted in this process by providing the Department of Health with copies of the codes of conduct that apply to their members.

Existing section 10AB of the Public Health Act prohibits the advertising or promotion of health services in a manner that is false, misleading or deceptive, or which creates an unjustified expectation of beneficial treatment. The new provision expands on this by also prohibiting advertising that is likely to mislead or deceive, or which is likely to create an unjustified expectation of beneficial treatment. This expansion is wholly appropriate in a provision that is concerned with consumer protection and it is in line with equivalent provisions in section 42 of the Fair Trading Act 1987 and section 52 of the Trade Practices Act 1974.

Schedule 2 to the bill amends the Health Care Complaints Act 1993. Proposed Division 6A of the Act will allow the Health Care Complaints Commission to take action against an unregistered health practitioner. Proposed section 41A provides that after an investigation the commission may issue a prohibition order against an unregistered person and/or issue a public warning about the practitioner if the commission is satisfied, first, that the practitioner has breached the code of conduct made under the Public Health Act or the person has been convicted of an offence under the Fair Trading Act or the Trade Practices Act that relates to the provision of health services, and, second, that the practitioner poses a serious risk to the health of members of the public.

There is to be an appeal to the Administrative Decisions Tribunal about the commission's determinations. In the same way that proposed section 41A permits the commission to provide a public warning about an individual and their services, proposed section 94A will provide the commission with a power to issue a public warning about particular unsafe treatments or services without linking that warning to a particular individual. The power to issue public warnings is similar to the power to issue public warnings in section 86A of the Fair Trading Act. Proposed section 948 provides for the Health Care Complaints Commission to make publicly available the name of any health practitioner who, on disciplinary grounds, has been deregistered. The commission is also to make publicly available any disciplinary decision of a tribunal or board where the complaint is proved.

Schedule 3 to the bill makes a range of amendments to the various health professional registration Acts. These amendments will permit a tribunal or board that deregisters a practitioner on disciplinary grounds to also issue a prohibition order against that person; and require each of the registration boards to make publicly available the names of practitioners who are deregistered on disciplinary grounds along with any disciplinary decision of the tribunal or board where the complaint is proved. The bill will help to further protect the public by establishing the standards of appropriate conduct expected of all health practitioners and by providing strong powers to deal with the dishonest and disreputable minority of practitioners. I commend the bill to the House.

The Hon. JENNIFER GARDINER [9.21 p.m.]: The aim of the Health Legislation Amendment (Unregistered Health Practitioners) Bill is to ensure that shonky health practitioners are eliminated from practice in New South Wales. The Opposition supports that objective. In different ways the bill relates to both the registered and unregistered health professions. Specifically, the bill amends the Public Health Act 1991 to require health practitioners who are deregistered or who are subject to prohibition orders to notify their patients and employers of that fact and to permit the regulations under that Act to prescribe a code of conduct for unregistered health practitioners.

The bill also amends the Health Care Complaints Act 1993 to permit the Health Care Complaints Commission to give public warnings about unsafe treatments and unsafe practitioners and to make prohibition orders against unregistered health practitioners who pose a substantial risk to the health of members of the public. The commission will be required to publish information about deregistered health practitioners and the decisions of health registration bodies. The bill will ensure that the Health Care Complaints Commission has additional powers to warn the public about unsafe treatments and unsafe practitioners.

With respect to health practitioners in registered professions, the bill amends each of the relevant registration Acts to permit a health registration body to make a prohibition order when cancelling or suspending a person's registration if such a practitioner poses a substantial risk to the health of members of the public. It will require the registration bodies to publish certain decisions and give information about deregistered health practitioners. In principle the Opposition supports those objectives. A number of concerns have been raised with the Opposition, not the least of which is the lack of consultation with a number of the health professions.

The Hon. Catherine Cusack: What a surprise!

The Hon. JENNIFER GARDINER: The Hon. Catherine Cusack interjects, "What a surprise!" As we have noted over the past day or so, the Carr-Iemma Government has dropped a considerable number of bills out of the sky and this is one of them. Many health practitioners and their representative bodies are concerned about claims that they were consulted when they were not, or they were consulted peremptorily. It is important to have an adequate statutory and legal framework in New South Wales so that the State can deal with shonky health practitioners, and for that reason we support the bill. However, the main concern is the intention to establish a single code of conduct to cover all unregistered health care practitioners.

The Liberal and National parties believe there are two main reasons for rejecting that provision. We believe that such a provision will have the effect of displacing the current national code of ethics that address specific issues within the occupational therapy professions. We believe also that a single code covering all unregistered health care professions will be so broad in scope that it will not provide meaningful protection to clients, which is what the legislation should seek to achieve. The Opposition will support amendments to change the bill in that regard. We do not believe that it is adequate to have one generic code to cover diverse professions such as radiation therapists and occupational therapists. They are obviously quite different professions and require specific codes.

The medical radiation profession is currently unregistered and representatives of that profession believe this bill does not provide for the enforcement of its specific codes of conduct. This situation is not replicated elsewhere in Australia. In other jurisdictions the medical radiation profession is registered, so specific codes of conduct for that profession are enforceable in those jurisdictions. Other bodies, such as the Allied Health Alliance, have similar problems with the bill. Therefore, there should be provision for the enforcement of specific codes of conduct and we will support amendments to that end.

The Opposition will work with a number of professions to introduce registration procedures that the Carr-Iemma Government failed to implement. Some health professions were under the impression that the Government was actively working on plans to register health professions that are currently unregistered, only to find out, when they were considering this bill, that those proposals seem to have been set aside. Although there is a flurry of legislation on many matters, the Government has put this issue in the too-hard basket. The New South Wales Liberal and National parties are going to continue to work on provisions for registration of a number of professions that are currently unregistered in New South Wales. With those reservations, we support the bill.

Ms SYLVIA HALE [9.29 p.m.]: The Government's objective in this bill is to improve the protection of the New South Wales community by addressing what may be seen as a gap in the regulation of health practitioners. The bill seeks to do so by amending various Acts to permit the prescription of a code of conduct by regulation for unregistered health practitioners, to permit the Health Care Complaints Commission to investigate complaints of a breach of such a code, to give public warnings about unsafe treatments and practitioners, to make prohibition orders against unregistered health practitioners who pose a substantial risk to the health of members of the public, and to publish information about deregistered health practitioners and about the decisions of health registration bodies.

The bill also prohibits the advertising of a health service that is to be provided by a practitioner who is deregistered or subject to a prohibition order, unless the advertisement specifies that deregistration or prohibition order. It extends to two years the time in which proceedings for an offence under part 2A of the Public Health Act can be commenced. The Greens are supportive of the objective of improving the protection of the public from unsafe treatments and practitioners. It is, however, worth noting that by far the greater amount of the harm suffered by members of the public is at the hands of registered, as opposed to unregistered, health practitioners. While this indicates that unregistered practitioners are less likely to do harm, I acknowledge that this is to be expected because the higher the risk, the greater the need for, and likelihood of, registration.

My point in making this observation is that alternative forms of medicine are not inherently more likely to cause harm to the public than more common forms of medical treatment, and in examining this legislation we should do so without any preconceived bias either in favour of or against any particular practice. The bill should not set up a process to favour one broad range of health services over another. The test to be applied to a health service should be, "Does this practice cause harm to the public?" not "Is it orthodox or alternative health care?" In general, the Greens support the approach outlined in this bill, but with some major reservations. The first of those reservations relates to the impact of this legislation on attempts by professional associations to gain registration for different groups of currently unregistered health practitioners. I would be concerned if an effect of the passing of this bill is a raising of the bar required for registration of professions.

The Government should not use the passage of this bill as an excuse to dismiss applications for the registration of other health practices. The procedures contained in this bill should not become a de facto or second-class version of registration. On this issue I note the comments made during debate on this bill in the lower House by the member for Lake Macquarie and Chairman of the Committee on the Health Care Complaints Commission, Jeff Hunter, that the Government will continue to recommend the registration of traditional Chinese medicine in New South Wales and will look at other practices currently unregistered that may be able to be registered. I also note his comments about an ongoing review of the implementation of this legislation.

The second reservation relates to the power of the Minister to impose a single generic code of conduct on all unregistered health practitioners. Contrary to the Government's claims of unanimous approval for the bill from professional bodies representing unregistered health practitioners, I have had substantial concern expressed to me by both professional associations and individual practitioners about the scope that is given to the Minister to impose such a code. Serious issues have been raised about the effect of such a generic code on the existing voluntary codes already established by many of the professional associations, how such a generic code would reflect the specific nature of each of these areas of health service and what consultation, if any, would take place with professional associations and practitioners before such a code was introduced or amended. I believe that the imposition of a generic code is not the best way to meet the Government's stated objectives, and I will therefore, in Committee be moving, on behalf of the Greens, amendments that have been circulated and that the Hon. Jenny Gardiner has indicated the Opposition will support.

The Hon. ROBYN PARKER [9.34 p.m.]: I support the Health Legislation Amendment (Unregistered Health Practitioners) Bill. This is a genuine attempt by the Government to impose some regulation and provide more information on shonky practitioners. All honourable members would agree that it is important that the public is made aware of such practitioners and that action can be taken with regard to advertising by practitioners who are not registered or who have been struck off the register, and those who are operating in an unhealthy and dangerous manner. Other speakers in the debate have highlighted concerns with this bill and it is to be hoped that amendments that will be moved in Committee will take care of some of those concerns.

I, like other members of Parliament, received many emails from groups about this legislation. Contrary to the Government's spin that everyone had been consulted and is quite happy about the bill, many groups and health care providers believe they have not been adequately consulted. They feel that regulation should have been the first step, rather than this step, and that there should not be one single code of conduct for all registered practitioners. There are obvious conflicts in that regard. Nevertheless, the bill takes care of some of the concerns that have been raised. In the Hunter, where I live, there have been some very sad cases involving shonky practitioners. In one recent case people put faith in someone who purported to have answers for cancer treatment. Sadly it was revealed that in case after case people abandoned traditional medicine and treatments and followed the guidance of a person who clearly was not trained and was unable to offer appropriate guidance in the treatment of cancer. In many instances the deaths of some of these patients occurred sooner than might have otherwise been the case had they not abandoned traditional medicine but stayed with doctors and health care providers who followed standards of best practice.

The bill is about best practice in health care. It is about saying to the community that we have standards in New South Wales. Warnings can now be issued about untrained practitioners and unsafe treatments, and prohibition orders can be issued against unregistered practitioners who pose a risk to the health of members of the public. The bill will establish mechanisms to enable information to be published about deregistered health practitioners, and about the decisions of health registration bodies. The motivation behind the bill is positive. However, the amendments as foreshadowed will enable some concerns to be alleviated.

I pay credit to Greg Gray, a journalist from the Newcastle *Herald*, who uncovered a number of the issues I have identified with regard to a practitioner in the Hunter. We are grateful for his in-depth and forensic exposure of the activities of this person. His actions and series of articles in the Newcastle *Herald* encouraged people to come forward, and certainly provided information to the community that was not previously available. It is important that people consult carefully with the right amount of information. They need information about good-quality, best practice medicine. Those who are providing best practice health care should not be afraid of a bill such as this and should not be afraid of regulation that will rid the profession of shonky operators. However, we need to make sure that we consult, and the Government certainly has not consulted as widely as it would have us believe.

We did consult and we recognised the diversity within the health care professions and the number of different practitioners offering different services. We cannot have a one-size-fits-all code. The philosophy behind the bill is supported by the Coalition, and should be supported. The proposed amendments and the further actions foreshadowed by the Hon. Jennifer Gardiner will ensure that more regulation is put in place to get rid of shonky operators and to give people confidence that the health care they are offered and provided—and for which often they pay a lot of money—is the best possible care. I support the bill and look forward to the foreshadowed amendments.

Reverend the Hon. FRED NILE [9.41 p.m.]: The Christian Democratic Party supports the Health Legislation Amendment (Unregistered Health Practitioners) Bill, which amends the Public Health Act 1991, the

Health Care Complaints Act 1993 and each of the various health professional registration Acts. The limitation period for prosecution of offences under part 2 of the Public Health Act is to be increased from the default position of six months to two years. The reasoning behind this is that offences under part 2A can require detailed clinical and scientific evidence to prove, and conducting an investigation and assessment of the evidence within six months from the date of the alleged offence is all but impossible. A code of conduct for unregistered health practitioners is to be made by regulation. This has caused controversy with the various categories of health care because of the reference to a single code, not codes of conduct plural.

The Government may envisage a general, generic code dealing with basic principles and, underneath that, specific codes containing matters relating to each category of health care. It would be detrimental to the health care of the people of this State simply to have a general, generic code that does not have in it the specific detail that applies to one or more of the categories of health care. Some matters would apply to only one category but not to another and it would be very complicated to cover every category of health care with one code. We will support the foreshadowed amendment because we have been requested to do so by a number of health care bodies.

The term "unregistered health practitioner" includes people who provide services in areas that do not require registration such as naturopathy and counselling, people who have had their registration cancelled for disciplinary reasons or who have allowed their registration to lapse, and registered practitioners who are practising in an area wholly unrelated to the profession for which they are registered. For example, a registered optometrist may provide counselling services. The code of conduct that the Government is proposing will not introduce a registration system by a back door; rather it will address the most serious forms of bad conduct such as taking sexual or financial advantage of patients. That is the point I am making—the Government acknowledges this—that the code of conduct will focus on these matters of bad conduct and where some practitioners have taken advantage of a patient, which we know has occurred even in recent weeks. That will not meet the need of the specific codes of conduct for each category. The amendments to the Health Care Complaints Act will enable the commission to investigate a complaint that an unregistered person has breached the code of conduct or has been convicted of an offence under the Fair Trading Act or the Trade Practices Act relating to the provision of health services.

This suggests that the code of conduct the Government is referring to is more to do with offences committed by people but it is not designed to lay down detail as to how each of the health professionals should conduct themselves in their area. Whether we have another name for it, there needs to be something far more detailed setting out how health care providers carry out their practice. If the commission finds that a complaint is proven and that the provider represents a risk to public health or safety, it will issue a prohibition notice placing conditions on the way that a person provides health services or prohibiting the person from providing certain types of health services. It may even prohibit the person from providing health services altogether. The commission will also be required to make publicly available any finding by it against an unregistered person, any decision to impose a prohibition order, any decision of a health professional tribunal or board where the complaint is proven, and the names of all health professionals deregistered on disciplinary grounds.

The amendments to the health professional registration Acts will enable each of the health professional tribunals, or where there is no tribunal the relevant board, to issue a prohibition order against a person if it deregisters the person on disciplinary grounds. Each registration board is to be required to make publicly available the names of all practitioners who are deregistered on disciplinary grounds and each registration board is required to make publicly available the decisions of the tribunal or board if a complaint is proven. It is obvious that these bodies still need to have their respective codes of conduct. The Government consulted with the chair of the parliamentary Committee on the Health Care Complaints Commission, the Medical Services Committee, the Australian Medical Association, a range of associations representing unregistered practitioners and the registrars or secretaries of each of the health registration boards. The Government claims that all groups and individuals consulted have expressed their support for the bill. That is a problem because some of the bodies have written to me saying that they have reservations about the bill, particularly about the codes. Allied Health Alliance Inc. New South Wales stated in a letter to me of 25 September:

The Allied Health Alliance is the peak body representing allied health professionals across NSW.

While the Allied Health Alliance supports the thrust of the Bill we do have deep concerns about proposed clause 10AM of Schedule 1 of the Bill which seeks the establishment of a single code of conduct covering all allied health care practitioners.

I have referred to this already. The letter continues:

Our objections to this provision are two-fold. First, the provision will have the effect of displacing established voluntary codes of conduct that have been established by each allied health profession addressing specific professional issues within their profession; and second, the provision is to have a single code covering all unregistered healthcare professionals which would be so broad in scope that it would not provide any meaningful protection to clients.

That is why I believe there is an argument for a generic code for all the professions that deals with this focus on the conduct of professionals on moral issues, sexual issues and so on. Then there is something that deals with the specific professional issues in the voluntary code for each category. The letter goes on to state:

We strongly believe clause 10AM is not in the public interest because a global code will not provide adequate protection to patients when compared to the specific codes already established by each allied health profession.

These voluntary codes already exist. It would not be in the interest of the Government or the consumers to scrap them. They should be recognised within the legislation, and the proposed amendment would achieve that. The letter continues:

Therefore we firmly believe clause 10AM should be amended so that it refers to the current voluntary codes thereby enabling the Health Care Complaints Commission to enforce these detailed codes. In so doing we firmly believe this will provide the public greater protection than what would be provided under clause 10AM as it currently stands.

Our proposal would only require a slight amendment to clause 10AM. This amendment would require the words "a code" being deleted and replaced with "codes".

With this amendment the Allied Health Alliance would be in a position to fully support the *Health Legislation Amendment (Unregistered Health Practitioners) Bill 2006*.

The Australian Association of Occupational Therapists made similar points in a letter dated 25 September. Contrary to the Government's statement that it consulted widely, the association states:

The proposed Bill only came to the attention of the Australian Association of Occupational Therapists NSW (OT AUSTRALIA NSW) in the first week of August 2006 through indirect means.

While OT AUSTRALIA NSW supports the thrust of the Bill in seeking to protect the public from health practitioners who are grossly incompetent and/or mislead the public with fraudulent claims, we have significant concerns about the consultation process and some matters contained within the Bill.

The association goes on to outline those concerns at length. Because of its length, I seek leave to have the letter incorporated in *Hansard*.

Leave granted.

1. Consultation process

OT AUSTRALIA New South Wales is very disappointed that the New South Wales Department of Health did not initiate contact much earlier in the consultation period to allow for meaningful dialogue as it did with other Associations. Only after I contacted Ms Brenda McLeod, Chief Allied Health Officer, New South Wales Department of Health in the first week of August 2006 to verify the proposed bill, did a meeting eventuate. This was very hastily organised by Ms McLeod after I alerted her to the fact as she had also only learned of the proposed bill that same week. This meeting was held on 15 August 2006 and was attended by Mr Iain Martin, Ms McLeod, and representatives from the unregistered health professional groups in New South Wales, namely audiology, dietetics, medical radiation scientists, occupational therapy, orthoptics, speech pathology and social work. A copy of the bill was only made available to the participants for the duration of the meeting. The first opportunity to view the content of the bill was after its introduction to Parliament on 21 September 2006. This has not given us a reasonable period of time in which to comment.

Occupational therapy is one of the larger allied health professional groups in Australia and we estimate that approximately 5,000 occupational therapists work in New South Wales. The absence of registration in New South Wales means we cannot quantify accurately the number. Given the size of the profession and recognition of the core role played by occupational therapists in the public and private health care systems, and the education, industry and housing sectors, we believe that the absence of meaningful and timely consultation is a significant oversight by the New South Wales Department of Health.

2. Prescribed electrophysical treatments (Division 2, IOD, page 5)

OT AUSTRALIA New South Wales recognises the use of many electrophysical modalities as legitimate assessment and treatment options (eg. TENS machine, ultrasound, muscle stimulation, EMG feedback). Occupational therapists in Australia and overseas, who have undertaken appropriate training in addition to their undergraduate courses, are considered competent to utilize these techniques and are currently recognised and automatically covered by professional indemnity insurers.

We are concerned that the Public Health Act 1991 excludes occupational therapists that are appropriately trained, from extending their scope of practice and using electrophysical modalities. We are concerned for two reasons. First, this bill reinforces the exclusion and prevents occupational therapists in New South Wales from utilizing treatments that are recognised as acceptable

treatments in other states and territories in Australia and overseas; and second, the exclusion contradicts the stated policy of the Department of Health concerning extended scope of practice in addressing health workforce problems in New South Wales.

In the interests of health workforce initiatives, we believe that the exclusion of occupational therapists from using electrophysical modalities should be changed and that more broadly, the matter of extended scope of practice within this bill be reviewed.

3. Lack of clarity about the roles and responsibilities of the Health Care Complaints Commission (HCCC) and OT AUSTRALIA New South Wales

OT AUSTRALIA New South Wales is deeply concerned about the implications for occupational therapists as unregistered health professionals. The bill proposes amendments to the registered health profession's Acts that strengthen the powers of the registration boards. These Boards generally comprise members of the profession who are able to make expert and authoritative judgements about competent and incompetent clinical practice. The bill, in the absence of any mechanism for complaints handling in conjunction with unregistered health professional associations, by inference gives power to the HCCC to make clinical judgments. No reference is made to the role in complaints management of the unregistered health professional associations. This is a serious oversight. There is potential for a prohibition order to be made against an occupational therapist without any reference to an occupational therapy expert panel.

We believe that the nexus between and the respective roles and responsibilities of the HCCC and the unregistered health professional associations, including OT AUSTRALIA New South Wales, must be clarified before assent is given to the bill.

4. Lack of equity in registration mechanisms

The bill appears to be a back-door approach to controlling the unregistered health professions under the guise of protecting the public "from the shonks and rip-off merchants who peddle false hope" (Proof, New South Wales Legislative Assembly Hansard, 21 September 2006, article 4). It does not address the concern of OT AUSTRALIA New South Wales about the need for registration as expressed in previous submissions to the Ministers of Health over a many years. The bill does not address the current regulation inequities between the registered health professions and the unregistered health professions.

It is the strong view of OT AUSTRALIA New South Wales that there should be an equitable approach to registration across all major health professions in New South Wales, which would provide for Boards or panels to make judgements about clinical performance and ethical behaviour, regardless of whether the profession is registered or unregistered.

6. Use of evidence to determine the efficacy and safety of clinical treatments and/or health services

OT AUSTRALIA New South Wales is concerned about the potential for misuse of evidence in determining the efficacy and safety of clinical treatments and/or health services. The bill purports to address the range of medical or conventional and "alternative" or nonconventional disciplines which have widely differing "bodies of evidence". Again, in the absence of a definition of evidence—based practice and a mechanism to ensure appropriate checks and balances, there is potential for the HCCC to call in medical experts to make biased judgements about non—medical treatments or interventions. The power to publicise information about supposedly unsafe treatments or interventions and to protect all people involved in the dissemination of this information from libellous action including defamation, could potentially to rob the public of useful and proven treatments or interventions.

OT AUSTRALIA New South Wales believes that when there is need for use of evidence, that people of the relevant profession or discipline should be called upon for expert advice, and that an appropriate mechanism for evidence—based judgment is clearly enunciated by the HCCC.

5. Single code of conduct (Division 4, l0AM, page 15)

OT AUSTRALIA New South Wales is very concerned with the proposed clause l0AM of Schedule 1 of the bill which will see the establishment of a single code of conduct covering all unregistered health care practitioners.

Our objections to this provision are two—fold. First, the provision will have the effect of displacing our current national code of ethics that addresses specific issues within the occupational therapy profession; and second, the provision is to have a single code covering all unregistered healthcare professions which would be so broad in scope that it would not provide any meaningful protection to clients.

We therefore strongly suggest that clause l0AM should refer to the specific codes of conduct established by each unregistered health profession and give thereby giving the Health Care Complaints Commission the power to enforce these codes. In so doing we firmly believe that this will provide the public greater protection than what would be provided under clause l0AM as it currently stands.

Our proposal would only require a slight amendment to clause l0AM. This amendment would require the words "a code" being deleted and replaced with "codes".

In conclusion, OT AUSTRALIA New South Wales would only support the Health Legislation Amendment (Unregistered Health Practitioners) bill 2006 if there is appropriate dialogue with the Department of Health and our concerns as outlined above are satisfactorily addressed.

Reverend the Hon. FRED NILE: I have also received correspondence from the Australian Institute of Radiography New South Wales Branch and the Australian and New Zealand Society of Nuclear Medicine New

South Wales Branch, which represent medical radiation practitioners, outlining their concerns. They seem to be in limbo. From a layman's point of view one would think that qualified radiographers would be registered, but a letter dated 25 September states:

In jurisdictions around Australia the profession is registered and through registration the profession's specific codes of conduct are enforceable. However, in New South Wales the profession remains unregistered and the codes unenforceable.

They request that I and other honourable members of this House work to ensure that the medical radiation profession in New South Wales is registered. That is an important issue. Another letter from the institute and the association dated 14 September points out that they cover medical radiation practitioners, radiation therapists, and nuclear medicine scientist. The letter states:

There are over 3000 medical radiation practitioners operating in the public and private health sectors across New South Wales.

But they are unregistered. I urge the Minister for Health to make the registration of these people a priority. They are professionals, but in a different category to the other professionals covered by this bill. There is a strong argument—in fact, a necessity—for these medical radiation practitioners to be registered as a matter of urgency. I support their request while supporting the bill.

Debate adjourned on motion by the Hon. Ian West.

ADJOURNMENT

The Hon. HENRY TSANG (Parliamentary Secretary) [9.55 p.m.]: I move:

That this House do now adjourn.

DENTAL HEALTH SERVICES

The Hon. RICK COLLESS [9.55 p.m.]: I wish to speak tonight about a courageous 65-year-old woman from Uralla, which is in the Northern Tablelands. As an aside, it is the very same New South Wales regional centre in which the new State coat of arms for this House was produced recently by a local contractor.

Mrs Val Shorter has lived all her life in Uralla. She was raised on a small farm a short distance from Uralla in the Rocky River area. Of course, the Rocky River is in the upper reaches of the mighty Gwydir River, which runs through the vast majority of the North West of New South Wales. Following Mrs Shorter's marriage, she moved into a home on a few acres next door to the family home. She raised her children and had them educated in the local school. Unfortunately the house was burnt to the ground in an accidental fire and Mr and Mrs Shorter built a smaller home to see themselves through to their retirement.

The marriage unfortunately did not last and Mrs Shorter continued on as a single mother to raise her family and then help out as a grandmother. Mrs Shorter is a director of the Uralla Bowling Club and an active member of the community. She is highly regarded by all who know her in the area and she is typical of the many local hardworking community matriarchs. She has held various paid positions throughout her life and has had a close association with the nursing profession.

Several weeks ago Mrs Shorter experienced severe pain from a troublesome tooth. She contacted her local public dentist, but to her dismay she was told she would have to wait about six weeks for an appointment to have the tooth treated. Because she was in excruciating pain she kept ringing the dentist in the hope that she would be able to see him. After a week of severe pain, she told friends that she got the pinched-nose pliers, opened a bottle of wine she had won at bowls, had a couple of glasses for a little dutch courage, and extracted her own tooth. She said:

I loosened the tooth one way, which really, really, truly hurt, loosened it the other way, put the pliers on tightly and went forward. My knees hit the floor, the pliers hit the floor and the tooth hit the cupboard.

Although this is true, it sounds like a story from the seventeenth century.

The Hon. Jennifer Gardiner: No, it is from the Carr-Iemma decade.

The Hon. RICK COLLESS: The Carr-Iemma Labor Government has let down the community so badly that people are reverting to extracting their own teeth because they cannot get an appointment to see a public dentist. A few weeks later a concerned friend leaked the story. Phillip Kelly, a local Inverell

businessman, heard about the situation. He took it upon himself to contact Mrs Shorter, who told him that it did not end with the extraction because she had not received any medical treatment and as a result was still having trouble with another tooth that had become infected. A horrified Phillip Kelly contacted his private dentist in Inverell on the Friday, and Mrs Shorter was sitting in his surgery on the following Monday. Phillip drove from Inverell to Uralla, picked up Mrs Shorter, and drove her to the Inverell dentist. During the consultation the dentist assured Mrs Shorter she had done a good job with her self-dentistry as the tooth had come away cleanly. The dentist extracted the other troublesome tooth, gave her a good oral clean-up, and sent her happily on her way.

The question here is: Why, in 2006, did this poor woman have to revert to methods used in the seventeenth century to extract a tooth? Why is it that a private citizen had to take considerable time off from his business and drive 480 kilometres, when it should be the responsibility of government to ensure that citizens of Northern Tablelands, and indeed all parts of New South Wales, have access to public dental services? [*Time expired.*]

HAROLD SPENCER COTTEE TRIBUTE

Reverend the Hon. Dr GORDON MOYES [10.00 p.m.]: I knew Harold Spencer Cottee, AM, for more than 30 years. He had been the joint managing director of Cottee's General Foods and a director of many of Cottee's subsidiary companies. In 1961 his late father, Harold W. Cottee, OBE, set up a citrus orchard-fruit block of 500 acres on virgin land at Paringa, in South Australia's riverland. Upon Harold W. Cottee's death in 1973, this property and the company Sunlush Pty Limited, were left to Wesley Mission Sydney, which is when I came into the picture.

Wesley Mission held all the shares, and dividends were dedicated to help fund Wesley Dalmar Child and Family Care. In the past five years Wesley Dalmar Child and Family Care has helped more than 17,000 children and more than 9,000 families across Sydney and other parts of New South Wales. The orchard contains 440 acres of citrus, predominantly Valencia oranges but with some navels, lemons, grapefruit and mandarins, and 60 acres of almonds and olives. It requires seven full-time staff and casual picking crews of another 30 staff, who work 11 months of the year.

The mission wholly owns the board, along with other subsidiary boards, and I asked Mr Harold S. Cottee, AM, to be chairman of the board. I recommended to the Wesley Mission board that other directors be appointed to serve with Harold, and the first two appointees were Professor Alf Pollard, AO, Mr. Harold Green, AM, General Managers Stan Manning, OAM, Richard Menteith, and later Dr Jim Pendlebury, OAM, Dr Ian Pollard and Warrick Cottee.

The families made a significant contribution to Wesley Mission over the years. Harold and Lois Cottee, the parents, also donated, among other things, a fully equipped dental surgery named the Lois and Harold Cottee Dental Clinic, at which thousands of children received free dental care. In 1980 I indicated in a strategic plan that we needed to do more for homeless youth. I wanted to find a good place in the inner city that had at least a dozen bedrooms. But, as members can imagine, such a large property would have cost a mint, and we had no money at that time.

Then I discovered that a group of German nuns wanted to leave Australia and return to Germany. They had a convent in King Street, Ashfield, with a beautiful chapel and 18 bedrooms. I made an offer on the property, and they agreed to sell. Harold said to me, "When you visit next, tell my mother about your plans, the convent, and your need of money. She may just help." Lois asked me how much money I needed. I replied that I would need a gift of at least \$100,000. Lois immediately got her chequebook and wrote out a cheque for \$100,000.

She asked me how much more I would need, and I said, "At least another \$38,000." So she again opened her chequebook and wrote out a second cheque for \$38,000. Since that day, over the past 25 years, thousands of young people have been cared for at Cottee Lodge. Harold helped me in many other ways at Wesley Mission, and I honour his life. He was also chairman and director of companies involved in motels, insurance, private investment, real estate and rural companies; the chairman of three radio station applications; and a member and chairman of Federal and State government committees of inquiry into Papua New Guinea co-operatives, restructuring gas industry pricing, electricity regulatory review, and electricity performance. He was Commissioner of the Overseas Telecommunications Commission, and he was the first chairman of Aussat, Australia's first satellite.

Throughout his life Harold enjoyed spectacular success. He grew Cottee's and the Passiona Bottling Company to become Australia's largest food and beverage enterprise. After his marriage in 1951 he and Olga shared everything. Their three children, Harold, Warrick and Gay, and eight grandchildren are a credit to them. Harold very deservedly was awarded the Order of Australia for his services to commerce and the community. I was with Harold two weeks ago in the last hours of his life. As with his mother, I read the scriptures and prayed with him. I told him all that he meant to Wesley Mission and to me personally. I thanked him for his influence on my life and my business decisions, and I told him how much I appreciated his support during our board meetings. We prayed together for God's peace, for freedom from pain, and for strength for Olga and the children and grandchildren. Harold approved. I promised I would see him again. And I shall. He died a few hours after I left.

TRISTAR WORKERS ENTITLEMENTS

The Hon. PETER PRIMROSE [10.05 p.m.]: Tomorrow morning around 40 workers currently employed by Tristar, an auto component manufacturer at Marrickville, will go to court—but not because they have done anything wrong. On the contrary, most of these people are workers who have spent their entire working lives employed by the same company; although it has changed hands several times. Many of them have been at Tristar for between 30 and 40 years. Most do not speak English as a first language. Many do not read or write in English. They came to Australia after World War II and they have worked hard to give their children a better life than they had themselves.

There are four unions representing the workers at Tristar: the Australian Manufacturing Workers Union, the Australian Workers Union, the Electrical Trades Union, and the National Union of Workers. The unions are representing their members in the Australian Industrial Relations Commission tomorrow. The reason Tristar is prepared to pay one of the most expensive law firms in the country to come to Sydney from Adelaide tomorrow is that the company is on a mission: to terminate the agreement it has with its workers, because the agreement legally binds the company to compensate the workers if it makes them redundant.

The company has no contracts and no clients. It ceased to manufacture some months ago. Over the past 18 months it has made hundreds of its employees redundant. But it has kept these employees—the longest serving—because they are the most expensive in terms of redundancy payments. So the employees turn up to work each day, as they have done for months, to do nothing! The company has forced the workers to take all their accrued leave, including long service leave, and it has now applied to the Industrial Relations Commission to terminate their agreement.

If the company is successful, the workers will have no redundancy at all beyond the 12 weeks pay under their award: 41 years service, and a payout of 12 weeks for your efforts. Or worse: they could end up on Australian Workplace Agreements, with no entitlements at all, because under John Howard's Government workers are not able to fight for a better redundancy package. The Tristar workers earn an average of between \$30,000 and \$35,000 per annum. Most of them are non-English speaking background production workers with a lifetime of service with the same company. They have little superannuation, because their wages are low and the company did not pay superannuation until it was compulsory to do so. In most cases their entire life savings are in their legally accrued employment entitlements.

The company for whom they have worked admits that there is no future for auto components in this country—the result of the Howard Government's lack of an industry policy and support for exploitative bilateral trade deals. The company has established a joint venture in China, which means that it will export to Australia what it currently manufactures here. In the meantime, the workers at Tristar and their unions must go to court in an effort to save what should be their entitlements—and what amounts to all they will have to live on for their rest of their lives in John Howard's new mean society, unless his welfare-to-work police get to them first. This is one of the most calculated and appalling acts of corporate greed I have witnessed for many years. I join with the workers in condemning the Federal Government, which not only has allowed this to happen but has indeed encouraged it as a matter of deliberate policy.

NEVER GIVE IN

The Hon. JON JENKINS [10.09 p.m.]: This is my final adjournment speech in this House, so I will use the opportunity to reflect a little on my time here. When I first came into Parliament in 2003 I had two primary tasks to accomplish. The first was to repair the public relations disaster that had surrounded my

predecessor. I have done that: the Outdoor Recreation Party is no longer mentioned along with some alleged corruption, and we have managed to restore the faith of our many supporters and rebuild the party.

My second task was to attack the credibility of the extremist conservation movement. Many see the abuse of science and the flawed logic of the "wilderness devoid of humans" mentality, but I have been less successful than I had hoped, perhaps because I have taken on other issues, such as scepticism of the theories of anthropogenic global warming. This is so important that I will take a few seconds to expand on it. Our climate has ranged from warm periods where the Opera House would have been under 30 metres of ocean to cool periods where cities like New York would be under three kilometres of solid glacier. Either of these scenarios would be catastrophic for modern civilisation should they return. However, the current mass hysteria surrounding climate change is based on a fraud.

I probably cannot explain the detail of the flawed nature of these apocalyptic computer models to the average person, but an everyday example may help. El Niño is one of the major climate factors on the earth and if the computer models are unable to even predict next year's El Niño, how is it possible that they can predict the climate in 100 years time? The press has allowed political ideologues to hijack what should have been a scientific debate. I understand and accept that there is a part of the human psyche that finds itself attracted, however unwillingly, to controversy and conflict. Accordingly, the issues that make our commercial headlines are understandable. However, it is the media outlet that holds the very crucible of our democracy in its hands that has particularly disappointed me with its entrenched left-wing agenda—so much so that one could say the ABC may as well be the media arm of the Greens.

Of all my efforts I am proud to say that I have never offered to trade my vote for the rights of the people of New South Wales for good and just legislation for a benefit of any kind. Some would say this is foolish and that I have achieved nothing, but I think Winston Churchill expressed my feelings:

Never give in—never, never, never, never, in nothing great or small, large or petty, never give in except to convictions of honour and good sense.

I have kept that promise I made in my inaugural speech. Just as things were looking up and the possibility of re-election became feasible I became ill with a form of epilepsy. Investigations revealed a glioma as the probable cause and my physicians recommended my immediate retirement. Had not my National Parks Volunteers Service Bill made it back to the precedence list I would have been long gone. This bill, so close to my reason for being here, will mark my time in this House one way or another.

In closing I would like to thank all the members of the New South Wales 4WD Association, who offer their time free of charge to the national parks to do volunteer work. My sincere thanks to Rob Kelly and the other executive members for their personal support during what have been tough times. My thanks also go to Nick Jacomas of the Australian Horse Alliance and Richard Smallwood of the Australian Trail Horse Riders Association—your continued support is appreciated. To Ken Thurlow, Rod Burston, Geoff Ruse, Jack Tait, Philp Creigh, Rowan Phelps, Merv McFie, Maurie Britten and the tens of thousands of fishermen and women up and down the coast whom I have met in the past few years: My thanks for your efforts. Do not give in!

To the bicycle, kayaking, scuba diving and bushwalking communities, my thanks also for your support. I would like to say thanks to all the staff at Parliament House: to Chris, who was in Building Services, and to Lucy and Charles and all the other smiling staff, my thanks and well wishes. To Lynn and Stuart and the Legislative Council staff, my thanks for your assistance. To Hansard, my thanks for reliably reporting my sometimes rambling words, and I ask you to keep thinking of platypuses.

A special thank you to John Evans for your assistance with procedural matters and for your sage advice. To the members of this House, I thank you for your friendship. In particular I would like to mention Gordon Moyes and Fred Nile for your counsel. And to Arthur, please do not give up trying to keep the bastards honest. I believe that democracy will be assured only when we have completely open government. I know many of you in the Government and Opposition quietly and in your own way try to do the right thing but with all the passion that I can, I would urge you not to give in to the "machine" but to fight for what is right and just.

I would like to say a special thank you to my researcher, Renuka Peiris, for her unfailing loyalty, honesty and good humour and for looking after me when I really needed it. To the people of New South Wales I have one salient message: Even though many of you would hate the thought of getting involved in politics I would beg you to do so because it is politicians who make the decisions that affect every aspect of your life. Getting involved is the only way you can change the way we are governed.

Lastly and most importantly, I would like to thank my wife, Virginia, who, probably through the stress of my own ills, has succumbed to her own health problems and yet never complains during my long absences from home. My daughter, Victoria, has taken on the mantle of surrogate mother and carer. My son, Nicholas, has just followed me into the surf life saving club and started his first patrol at Coolangatta last week. To Nicholas and Victoria, I am so proud of you both, you are both great kids and I know you will grow into stunning young adults. To Virginia, I am sorry I have been away from home so much and I am so lucky to have you as my wife, friend and soul mate. I close with the words of Winston Churchill again:

Never give in—never, never, never, never.

TWEED DEVELOPMENT AND EMPLOYMENT

The Hon. CATHERINE CUSACK [10.44 a.m.]: The Far North Coast is continuing to experience a massive transformation in population growth and housing, economic diversification, visitor numbers, and demand for all types of services, including health, education and transport. There has been extraordinary growth and development in all parts of the shire, but particularly along the coast. Last week announcements were made that the Aboriginal community is looking to develop 200 lots at Fingal. Tweed council recommended approval for the development of 204 lots at Seaside City, and Leda holdings, which owns the 900-hectare Kings Forest Site, is expected to get initial planning approval this week. This is a development of between 5,000 and 6,000 blocks.

This is unprecedented and enormous growth, is on top of the existing dynamic of Tweed as the number one retirement place in New South Wales, if not Australia. In fact, 24 per cent of the Tweed electorate is aged over 65—the number one electorate for over 65s in the State. Tweed is ranked last in the State in terms of the proportion of people aged 25 to 64, with just 47 per cent. It is significant that the 2001 Census showed that 46 per cent of Tweed residents had changed their address in the previous five years. This does not surprise me because a community with a large older population—whom we wish, of course, a happy and long retirement—cannot be expected to live as long in that community as perhaps a younger person. In other words, a continuing migration of retirees to Tweed is sustaining the large proportion of older people in the population.

The thousands of newcomers to Tweed have created a large and growing demand for improved infrastructure and access to world-class shopping services. To quote the editorial of the *Daily News* last Saturday, 14 October:

The considerations for Tweed Shire are substantial. Over the next decade as Kings Forest unfolds, population growth and accompanying pressures on local infrastructure will continue to increase. Full regard must be given for the environment and residents' quality of life, including traffic access, essential amenities such as schools and shopping centres—and quiet places to achieve Tweed's wonderful natural surroundings.

I strongly support the views expressed in this editorial. I am not so sure, however, that the current planning administration in the shire is delivering on these very important objectives. I hope this can be addressed and I draw the attention of the House tonight to Gales-Kingscliff.

Two months ago I met with Harry, Stephen and Lisa Segal of Gales-Kingscliff and inspected parts of their large property holdings at Kingscliff, Chinderah and Cudgen. I was greatly impressed by the scale and vision of the family's proposals, which would go a long way towards delivering on the infrastructure needs of the Tweed population—existing and future—and, indeed, surrounding populations as well, such as residents of the Byron shire, who will be some 20 minutes south of Kingscliff when the Pacific Highway improvements at Brunswick are completed.

The three outstanding features of the briefing were first that the Gales-Kingscliff proposals are a unique, one-off opportunity for the region. The land holdings are strategically placed to provide infrastructure solutions without impacting on the village character of the Tweed coast. Second, the family has gone to enormous lengths to consult with the community and it is clear from the briefing that I received that the project meets a pressing demand from locals in terms of world-class shopping facilities.

Third, there is the ever-pressing issue of jobs—particularly part-time work for all age groups in the region. I note that Tweed has the second lowest level of employment in the State, and a project of this type would stem the daily flood of North Coast residents forced to drive to Queensland every day for work. It is not just Tweed, as I believe the Pacific Highway upgrades will bring the Tweed to within 40 minutes of Ballina shire, and such a project would reap benefits across the region.

I was also impressed by the passion of the Segal family and its commitment to an ethical development that will be of lasting value to the region the family holds in great affection. They are good, thoughtful people who are, to paraphrase Sir Robert Menzies, on the list of contributors whose definition of success very much includes their service to the community. I acknowledge that there has been considerable conflict between Gales-Kingscliff and Tweed council planners involving litigation undertaken by the family to protect its property rights in the area—not, I emphasise, to extend those rights but rather to protect existing rights, which are in the midst of a rapidly changing planning environment. It is my hope and expectation that the family's wonderful proposal receives a fair hearing from council. Indeed, all of the residents of Tweed shire and the surrounding region deserve no less. I urge the council to find a way back to the table and not to lose or dilute this once-in-a-lifetime opportunity.

VIETNAM VETERANS CANBERRA MEMORIAL SERVICE

The Hon. JAN BURNSWOODS [10.19 p.m.]: A lot has been said in the last few weeks about the teaching of history, the content of Australian history, and values. I would like to make a couple of comments arising out of some remarks that the Prime Minister made when he went to the Canberra Vietnam Veterans Memorial Service on 18 August. He made some remarks that day not specifically about the veterans but some rather strange remarks about Australia in the 1960s and 1970s, accusing people at that time of not being as grateful and as respectful as the nation should have been. Lately I have been reading, as I often do, that fine publication, the newsletter of the Sydney Branch of the Australian Society for the Study of Labour History. I should like to quote some comments made by Rowan Cahill, who is a frequent contributor to that journal. He wanted to ask some questions arising out of what the Prime Minister's said. He asked:

[Those remarks] beg the question, what was it the nation of forty years ago, and the nation of today, had, and has, to be grateful and respectful for in relation to the Vietnam War? For Australians being involved in an overseas military conflict they had no just cause to be involved in? That the government of Prime Minister Menzies, aided and abetted by tame diplomats, fudged the documentary evidence deemed necessary to make that involvement appear on the up and up? That Australian military planners and strategists profoundly and seriously misunderstood the nature of the Vietnam conflict and the strength and resolve of the "enemy"?

Many more similar questions were raised in this interesting article. He concluded:

No John Howard, not gratitude and respect, but profound sadness. Sadness at the futility of war, sadness that the Liberal led government of the day played with the lives of tens of thousands of young Australians, forcing them into situations of which they had little understanding and over which they had little control, leaving many who survived with profound physical and mental health problems that seem to have crossed via DNA to their offspring.

The Hon. Charlie Lynn: Point of order: The Prime Minister is being misquoted. As a Vietnam veteran, I know that he was speaking on behalf of Vietnam veterans and representing Vietnam veterans. He is being seriously misquoted.

The DEPUTY-PRESIDENT (The Hon. Greg Donnelly): Order! That is not a point of order.

The Hon. Greg Pearce: A further point of order—

The Hon. JAN BURNSWOODS: I thought you ruled against him, Mr Deputy-President.

The DEPUTY-PRESIDENT (The Hon. Greg Donnelly): I have ruled against the point of order.

The Hon. JAN BURNSWOODS: May I continue?

The Hon. Greg Pearce: Mr Deputy-President, you have given me the call. I accept that you ruled against the previous point of order. I am making another point of order. Do you understand that you have given me the call to raise a second point of order?

The DEPUTY-PRESIDENT (The Hon. Greg Donnelly): What is the member's point of order?

The Hon. Greg Pearce: The member is casting aspersions against the good soldiers of Australia.

The DEPUTY-PRESIDENT (The Hon. Greg Donnelly): Order! That is not a point of order.

The Hon. JAN BURNSWOODS: I will continue quoting from Mr Cahill, who stated:

Sadness too that today it is as though nothing has been learned, and a government led by an admirer of PM Menzies, in tandem with allies who variously fudged the paperwork, again plays with Australian lives in Afghanistan, and Iraq, and with the civilian populations of those countries. Who knows where else tomorrow?

MOOLARBEN COAL PROJECT

Ms LEE RHIANNON [10.23 p.m.]: If the Moolarben coal project in the Ulan-Mudgee area goes ahead, all sectors of the community will be affected. Every tonne of coal will come back as climate change. A valuable ground water and river system will be irretrievably compromised and a special cultural and scenic place will be sacrificed. A number of residents in the area have contacted me about the matter and their campaign is clearly worthy of support. What should we do? There should be no new coalmines in this area. What is urgently needed is an independent regional water resources assessment that covers the cumulative and long-term impacts of the three mines on the river and ground water system and an independent subsidence report on impacts to the Goulburn River gorge. Also, the Government should give recognition to the area as a culturally and scenically significant landscape.

The Greens call also for investigation into a buffer zone for river cliffs, gorges and reserve boundaries and for the Government to undertake a thorough cumulative impact assessment of the three mines for increased dust and noise from road and rail traffic on surrounding properties and townships. This would show the impact of the mine because the existing mines are already causing hardship with respect to dust and noise. People are concerned about their beautiful rivers because more than 90 per cent of New South Wales is gripped by drought. To allow mining operations that cause such disruption to our rivers is unacceptable and this mine will waste 6.9 million litres of water per day washing coal. This is an insult to farmers suffering in drought conditions and to people throughout New South Wales labouring under water restrictions.

[Time for debate expired.]

Motion agreed to.

The House adjourned at 10.25 p.m. until Thursday 19 October 2006 at 11.00 a.m.
