

# LEGISLATIVE COUNCIL

Wednesday 25 October 2006

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

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

## ADOPTION AMENDMENT BILL

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

**Motion by the Hon. John Della Bosca 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.**

## NSW OMBUDSMAN

### Report

**The President** tabled, pursuant to the Ombudsman Act 1974, the report entitled "Annual Report 2005-06".

**Ordered to be printed.**

## POLICE POWERS (DRUG DETECTION IN BORDER AREAS TRIAL) ACT REVIEW

### FIREARMS AMENDMENT (PUBLIC SAFETY) ACT REVIEW

#### Production of Documents: Order

**Motion by the Hon. Michael Gallagher agreed to:**

That under Standing Order 52 there be laid upon the table of the House within seven days of the date of the passing of this resolution the following documents in the possession of the Minister for Police, the Ministry for Police or NSW Police:

- (a) review of the Police Powers (Drug Detection in Border Areas Trial) Act 2003 provided to the Minister for Police in January 2005,
- (b) review of the Firearms Amendment (Public Safety) Act 2002 provided to the Minister for Police in April 2006, and
- (c) any document which records or refers to the production of documents as a result of this order of the House.

## CRONULLA RIOTS REPORT

#### Production of Documents: Order

**Motion by the Hon. Michael Gallagher agreed to:**

- 1. That under Standing Order 52 there be laid upon the table of the House by 12.00 noon on the day following the date of the passing of this resolution the report known as the Sorrenson-Jefferies Report into the subsequent disturbances following the Cronulla riot in December 2005 and issues relating to TaskForce Enoggera, in the possession of the Commissioner of Police, the Minister for Police, the Ministry for Police or NSW Police.
- 2. That under Standing Order 52 there be laid upon the table of the House within seven days of the date of the passing of this resolution the following documents in the possession, custody or control of the Commissioner of Police, the Minister for Police, the Ministry for Police or NSW Police:

- (a) any document referring to terms of reference of the inquiry conducted by retired Chief Superintendent Sorrenson and Commander Tony Jefferies,
- (b) any correspondence to or from retired Chief Superintendent Sorrenson and Commander Tony Jefferies relating to the inquiry and report into the subsequent disturbances following the Cronulla riot in December 2005 and issues relating to TaskForce Enoggera, and
- (c) any document which records or refers to the production of documents as a result of this order of the House.

### **FIREARMS AMENDMENT (PUBLIC SAFETY) ACT REVIEW**

#### **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 by 12.00 noon on the day following the date of the passing of this resolution the New South Wales Ombudsman's review of the Firearms Amendment (Public Safety) Act 2002, in the possession, custody or control of the Minister for Police, and any document which records or refers to the production of documents as a result of this order of the House.

### **MALDON-DOMBARTON RAILWAY LINE**

#### **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 following documents in the possession, custody or control of the Department of Transport, The Cabinet Office, NSW Treasury, the Premier, the Treasurer, the Minister for Illawarra or the Minister for Transport, created since 30 June 2005:

- (a) any document referring to the completion of the Maldon-Dombarton railway line,
- (b) any document which refers to the Maldon-Dombarton railway line being completed by public private partnership, and
- (c) any document which records or refers to the production of documents as a result of this order of the House.

### **POLICE POWERS (DRUG DETECTION IN BORDER AREAS TRIAL) ACT REVIEW**

#### **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 by 12.00 noon on the day following the date of the passing of this resolution the New South Wales Ombudsman's review of the Police Powers (Drug Detections in Border Areas Trial) Act 2003, as required by section 22 of the Act, in the possession, custody or control of the Attorney General, and any document which records or refers to the production of documents as a result of this order of the House.

### **PETITIONS**

#### **Same-sex Marriage Legislation**

Petition opposing same-sex marriage legislation, received from **the Hon. Tony Catanzariti**.

#### **Uniting Church Congregation Rights**

Petition requesting amendment of the Uniting Church in Australia Act 1977 to protect the rights of a congregation that chooses to disassociate from the Uniting Church in Australia, received from **Reverend the Hon. Dr Gordon Moyes**.

### **BUSINESS OF THE HOUSE**

#### **Suspension of Standing and Sessional Orders**

#### **Motion by the Hon. John Della Bosca agreed to:**

That standing and sessional orders be suspended to allow a motion to be moved forthwith relating to the conduct of the business of the House.

**Precedence of Business****Motion by the Hon. John Della Bosca agreed to:**

That Government Business take precedence of debate on Committee Reports this day.

**POLICE POWERS (DRUG DETECTION IN BORDER AREAS TRIAL) ACT REVIEW****FIREARMS AMENDMENT (PUBLIC SAFETY) ACT REVIEW****Withdrawal of Motion**

**The Hon. MICHAEL GALLACHER:** I seek the leave of the House to withdraw the motion that I moved, and which the House passed, this morning. For the benefit of members I indicate that it duplicated motions moved by Ms Lee Rhiannon and agreed to by the House.

**Leave granted.**

**Motion withdrawn.**

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

**Ms LEE RHIANNON** [11.15 a.m.]: I move:

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 138 outside the Order of Precedence, relating to longwall coalmining, be called on forthwith.

This matter is urgent. New South Wales is facing possibly its most severe drought. Meanwhile it is business as usual for mining industry practices that waste water and damage rivers, creeks, wetlands and other waterways. The motion needs to be given consideration today as at least 49 rivers in the Gloucester Basin, Gunnedah Basin, Hunter coalfields, southern coalfields and western coalfields are under threat from open-cut coalmining and longwall coalmining. Many mining operations will occur at the headwaters of rivers that are critical to the health of our environment and our communities. Those rivers are the source of the water supply for much of the coastal population between Wollongong and Forster. Some Hunter Valley farmers have had to cease irrigating their crops because the river water has become too saline due to mining. This is a matter of urgency—

**The Hon. Ian Macdonald:** That is rubbish.

**Ms LEE RHIANNON:** I acknowledge the interjection by the Minister for Mineral Resources, who represents the Hunter. Clearly, he does not know what happens in his own region. This is a matter of urgency because the Government has been unwilling or incapable of moderating the destructive action of the coal industry. This motion is not about shutting down the coal industry—

**The Hon. Duncan Gay:** Come on! That is your policy.

**Ms LEE RHIANNON:** I will say it once again: It is most definitely not our policy. Our policy is for no new coalmines. I acknowledge all the interjections, but, once again, the Coalition and Government members are trying to distort Greens policies. I repeat: The motion is not about shutting down the coal industry; it is about bringing this industry into the twenty-first century, so it adopts practices that do not result in damage to waterways and pollution of water. I urge members to support this motion. As members of Parliament we have a duty to consider the future of the water resources of this State. Drought is having a negative impact on the State economy, dislocating communities, causing personal hardship and resulting in untold environmental damage. Surely this House has a responsibility to consider practices that exacerbate the effect of the drought by damaging the waterways of the State. The mining industry has to change its operating methods. I urge members to support the motion to allow the debate to proceed.

**The Hon. IAN MACDONALD** (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [11.18 a.m.]: The Government strenuously opposes the motion; it is very much in the realm of another stunt by the Greens in relation to the coalmining industry. The Government has

acknowledged, and continues to acknowledge, the Scientific Committee that has looked at longwall coalmining. The committee has determined that longwall coalmining is a key threatening process.

**The Hon. Dr Arthur Chesterfield-Evans:** What are you going to do about it?

**The Hon. IAN MACDONALD:** If that noisy lot would listen, they would learn that the Government has handled this issue responsibly. In the past there have been some difficulties with longwall mining, and mining generally, near some of our rivers. That is why the Government introduced the Subsidence Management Planning [SMP] Process in 2004: to strengthen environmental protection measures. The SMP approval process enables greater consideration of subsidence impacts on the surface and subsurface features, including a much greater focus on community consultation and a requirement for baseline environmental studies in sensitive areas.

The Government appreciates the importance of our rivers. For that reason, should the potential impact of mining be considered unacceptable, particularly with regard to rivers and our water supplies, approval will either be refused or proposals will be modified to reduce potential impact. That is the sane and sensible way of approaching this issue. The honourable member is attempting to force debate on her motion, which she says is urgent. The motion is not urgent. These issues have been canvassed over a period. In fact, most of the streams listed at the end of paragraph 2 (c) of the honourable member's substantive motion have been the subject of lengthy consideration in relation to mining in those regions. The subsidence management plan takes that into account.

Recent decisions by the Department of Primary Industries, through the Department of Mineral Resources acting as its agent, relating to the subsidence management plan at Appin 3 were based on the fact that longwall mining was not going under the streams. In fact, mining is occurring 150 metres from the streams. Each case is separate and has to be geologically assessed. Decisions must be made on a scientific basis and not on the rhetoric at which the Greens are so professional.

**The Hon DUNCAN GAY** (Deputy Leader of the Opposition) [11.21 a.m.]: The Opposition does not support the granting of urgency to enable debate on item No. 138. It is an important issue that must be addressed, but it does not need to be debated urgently today. The key point we are discussing now is urgency. A lot of things are happening and the Opposition has worked hard to change a number of mining practices. So far as I am aware, no longwall mining is currently taking place under our rivers. This is a matter of concern and there is genuine concern about this issue in the community.

Frankly, I find slightly obnoxious the fact that the Greens indicated this matter was urgent because of the drought. There are drought issues and other very real issues in the community that are urgent. The Greens are doing everything they can to bring about debate on this motion to suit their political bent. A full and independent hydrological inquiry should be conducted before mining goes ahead on the Liverpool Plains at Caroon. They are things that should happen and they are the issues that should be addressed, rather than a political stunt such as this, which is designed only to force us to debate this issue today because it suits the Greens' political agenda.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [11.23 p.m.]: The Government has shown considerable disrespect for the Scientific Committee. Former Minister Eddie Obeid wanted the right to overrule it, as it had to take other things into account; he was not happy that it had to take into account science and the facts. The Minister for Primary Industries blabbered on about science planning, which are nice words, but if we take a whole strata and there are cracks down to the mining level, whether or not it is close to a river, water still runs down the cracks and the rivers are adversely affected.

The words "community consultation" are also fine words, but they will not change scientific data. This matter is urgent. We are experiencing a drought and we will have to limit longwall mining in a number of areas if we are to preserve our ability to use surface water. This motion is particularly urgent in view of the drought. The Government just fobs off this issue to be debated in the never-never.

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

**The House divided.**

**Ayes, 6**

Dr Chesterfield-Evans  
Mr Cohen  
Ms Hale  
Mr Oldfield

*Tellers,*  
Mr Breen  
Ms Rhiannon

**Noes, 28**

Mr Brown  
Ms Burnswoods  
Mr Catanzariti  
Mr Clarke  
Mr Colless  
Mr Costa  
Ms Cusack  
Mr Della Bosca  
Mr Donnelly  
Ms Fazio

Miss Gardiner  
Mr Gay  
Mr Jenkins  
Mr Lynn  
Mr Macdonald  
Mr Mason-Cox  
Reverend Dr Moyes  
Reverend Nile  
Ms Parker  
Mrs Pavey

Mr Pearce  
Ms Robertson  
Mr Ryan  
Ms Sharpe  
Mr Tsang  
Mr West

*Tellers,*  
Mr Harwin  
Mr Primrose

**Question resolved in the negative.**

**Motion negatived.**

**THREATENED SPECIES CONSERVATION AMENDMENT (BIODIVERSITY BANKING) BILL****Second Reading**

**Debate resumed from 24 October 2006.**

**Mr IAN COHEN** [11.31 a.m.]: When I was last speaking on the Threatened Species Conservation Amendment (Biodiversity Banking) Bill I had just concluded listing a significant number of conservation groups that have expressed concern about the bill. I think it is important to recognise that some of these organisations have been established for a long time. For example, the Ulitara Society, which is based at Coffs Harbour, has been working for decades to achieve local conservation outcomes while taking a keen interest in conservation issues throughout New South Wales as a whole. Groups such as that have generally had a pretty close relationship with the Australian Labor Party. Yet they are extremely concerned about the direction in which Labor is now moving. They are disenchanted that their ongoing, reasonable working relationship—although it was prickly at times—is in danger of disintegrating.

Conservation groups have expressed strong concerns about the bill. I have received a brief entitled "Labor environmental atrocities in New South Wales over the last term of government". The issue of biobanking is dot point No. 5 in a long list of issues, which extend to several pages, about which conservation organisations are concerned. The brief says that the New South Wales Government is set to implement a disastrous system of vegetation offsets on development, known as biobanking. It says that the scheme will entrench the ongoing net loss of native vegetation and threatened species habitat in coastal New South Wales, remove public consultation provisions for threatened species matters, undermine many of the most fundamental principles of modern conservation and then attempt to dress it all up as a win for the environment. That sums up the general attitude that is emerging regarding the Government's betrayal of people and organisations that have supported it in the past. The brief goes on to say:

The bill threatens at least six of the most fundamental principles of modern conservation.

The first principle is that conservation is not transferable and is best undertaken in situ. The bill encourages the relocation of conservation efforts away from areas of high conservation threatened with development to less-threatened areas. The second principle is that land-use planning should involve public consultation or

review. The bill supports the practice of making a wide range of land use and conservation decisions without public consultation or review.

The third principle of modern conservation is that native biodiversity will not be sold for government revenue. The bill effectively allows for payment for approval to destroy biodiversity and threatened species. As I said last night, that payment will go directly into consolidated revenue. It will not even be hypothecated and used to fund conservation measures. If we expect the Treasurer to offer financial support for worthwhile conservation measures, we can whistle for it.

**The Hon. Rick Colless:** It's a tax.

**Mr IAN COHEN:** I acknowledge the interjection by the Hon. Rick Colless. It is a tax, and the money will go to consolidated revenue. Judging from some of the Government's recent policy decisions, we do not have to guess in what extremely ugly directions that funding will be directed. The fourth principle of modern conservation is that conservation law should be strong, clear and comprehensive. The bill leaves the key arguments about biobanking to be defined later by policies or regulation. The fifth principle is that conservation areas should be conserved in perpetuity. The bill allows the Minister to terminate or vary offsets, or allow development on offset areas.

There will be a determination and a trade-off, and the offset area will be designated. This process will be driven by the developer, or those hired by the developer, with no public consultation on the matter. We will be left with a mere shadow of what has been lost, but it will be trumpeted as a great win for conservation. Furthermore, what was won in the past may be threatened in the future. When I was elected to this place in 1995 Parliament passed legislation to protect areas in perpetuity. In the past when we won national park gazettal we breathed a sigh of relief, secure in the knowledge that local biodiversity and threatened species were protected for all time. However, the Government is moving away from that approach. Less land is being classified as national park and the Minister claims that the Crown land designation will protect biodiversity.

The bill is a classic example of the way in which the Government is moving away from the traditional idea of conservation. I do not know whether all members agree with some of the conservation methods adopted by the Government. But when an area is designated as national park through legislation, we know where we stand and we can move on. That is no longer the case. The fundamental community action that produced conservation wins over the years is being eroded significantly by the Government's latest, and very tricky, legislation.

The sixth principle of modern conservation is that the formal reservation system of protected areas under the National Parks and Wildlife Act is the cornerstone of conservation. As I have said, the bill redirects conservation efforts away from the formal reserve system into untested and insecure mechanisms. The brief goes on to detail the major flows under the biobanking scheme and reveals clearly the widespread opposition to the bill throughout the State. I have also received a letter from the Humane Society International opposing the legislation.

Biodiversity certification and a whole host of environmental planning instruments have not been completed. I understand that only a handful of councils across the State have prepared local environmental plans for biodiversity certification. This legislation is ill-timed and should be withdrawn. The Government is asking us to trust it to get the methodology right. This is a big ask. It is becoming increasingly common for the Government to introduce legislation and ask the Parliament to trust it to work out the details later, whether it be through regulations or otherwise. This is not an acceptable state of affairs. For the proper democratic process to occur, details should be in the legislation, open to scrutiny and debate. Scientific principles should be protected in the legislation. I will move an amendment to ensure that methodology is applied by government staff, not contractors employed by developers. That methodology should be consistent with the Native Vegetation Act.

I understand that farmers are opposed to the bill. The New South Wales Farmers Association believes the bill as inequitable. The association would like rural landowners to be able to purchase credits to meet offset requirements with property vegetation plans for landscape claims under the Native Vegetation Act. In other words they want to be a part of the action. However, this would require changing the Native Vegetation Act and regulations, as well as the associated environmental outcomes assessment methodology. The Greens oppose these proposed changes. I received a very telling letter from the Minister dated 16 October 2006, which outlined details about the consultation process that had been undertaken on the bill and the biobanking scheme. It also attached letters of support from the Property Council, the New South Wales Urban Task Force and the New

South Wales Minerals Council. But a letter was also attached from the Local Government and Shires Associations that stated, "At this stage we do not have a formal position on biobanking."

As a result of extensive consultation, those supporting the legislation are limited to developers and the mining industry, which most clearly indicates where support for this Government is coming from. We have seen a shift in democracy: once upon a time governments of either persuasion would appeal to the people, but now they appeal to the very wealthy and to those with powerfully vested interests to get support. As a result of that support, governments are able to fund and finance their election campaigns and hoodwink the general population. They rely on a certain element that is rusted on to particular parties. People who are going to think about their vote will be convinced by an avalanche of propaganda around election time, funded by these sorts of supporters of government.

**The Hon. Christine Robertson:** I am wondering about all the funny Green press in our area at the moment.

**Mr IAN COHEN:** I do not understand the interjection, but I will certainly have an entertaining discussion on the matter. My letterbox in the city has actually been stuffed with glossy propaganda from Malcolm Turnbull—everybody is at it.

**The Hon. Melinda Pavey:** In Byron Bay?

**Mr IAN COHEN:** No, where I stay in Sydney.

**The Hon. Christine Robertson:** Please don't preference us.

**Mr IAN COHEN:** I should think not. I am proud to say that the Hon. Christine Robertson will not get any preferences, but I am just one opinion. As a result of extensive consultation, those supporting the legislation are limited to developers and the mining industry. This is indicative of what a disaster the legislation will be for the environment. The scheme has had vocal criticism from a multitude of environment groups, some of which I listed earlier, as well as the *Sydney Morning Herald*, dare I say Alan Jones and farmers—quite an unlikely alliance. The Government introduced this bill at the end of the last parliamentary session and allowed it to sit on the table over the winter break, ostensibly for further consultation. While I appreciate the time to scrutinise the bill, I believe it should have been an exposure draft. The result of the extra consultation was further pressure from the developer lobby, which resulted in the Government moving more than 60 amendments in the other place, mostly to appease developer groups. I agree with the Opposition that this has made the bill a dog's breakfast.

This legislation will lead to the overdevelopment of land in Western Sydney and coastal areas of New South Wales. Honourable members who visit those areas are aware of the associated problems. On Monday night I was at Budgewoi where people are absolutely ropable because portable desalination plants are being foisted on their beachfront. As the Minister for Planning said, it is part of the Government's plan to pull New South Wales out of the black economic hole with planning and development. He sees himself as the saviour of New South Wales, particularly in these sensitive areas that will cop the brunt of development and will suffer from the attitude of this Government, which has run amok at this point of time.

**The Hon. Christine Robertson:** Run amok?

**Mr IAN COHEN:** Indeed. Recently I have been thinking that we could replace some of the statues in this Chamber with a statute of the Treasurer on one side of the Chamber and Sartorius.

**The Hon. Rick Colless:** Why on earth would you do that?

**Mr IAN COHEN:** It is not a case of why we would do it; it is a case of the desire of certain individuals to have it done to fulfil their destiny of complete control of New South Wales.

**The DEPUTY-PRESIDENT (The Hon. Amanda Fazio):** Order! I remind members that interjections are disorderly at all times, and I ask Mr Ian Cohen to ignore them.

**The Hon. Rick Colless:** It was bad enough dumping the coat of arms.

**Mr IAN COHEN:** The coat of arms might just be the beginning—you never know. The legislation will lead to large corporations making a buck out of buying land that is not under current threat of development and using it for biobank sites. If the land is a real biobank swamp then by its very nature it will have environmental significance. Therefore, by its very nature it will be protected under other legislation, other rules and local council ordinances. It will be other protected land that will have a new badge on it and treated as a trade-off, as a commodity. Rather than being an important area to be protected it will become another piece of real estate. It will be an enviro or green piece of real estate to be traded off. Is there any net gain? No, because that land is already in a reasonable state with certain threatened, endangered or vulnerable species on it. It is rebadged under a claim of greater protection. The green light has been given to developers to go ahead and destroy the primary piece of land they have their eyes on that is home to threatened species.

I can see the logic from the developer's point of view but not from a conservation point of view. It just does not add up. Those biobank sites will not exist in perpetuity under this bill. This legislation provides a stepping stone for further relentless development in those sensitive areas, particularly in Western Sydney and on our coastal fringe, which is under threat at the best of times. The example has been raised in the Legislative Assembly of Hardie Holdings buying up large tracts of land in the Hunter. A benevolent gesture for the environment? Surely it is a case of preparing for this upcoming legislation and making big bucks out of leaving the land undeveloped, in return for trashing some other site. Once again, it is an example of the Government playing to the tune of its developer mates.

A few days ago I bumped into an executive of the Hunter Economic Zone [HEZ] who was cock-a-hoop about this legislation, so much so that he was in Sydney to visit various Ministers for a mutual back-slapping session. He and his organisation have done very well. I know that other honourable members are on the inquiry and are enamoured with the development potential of the HEZ site in the Hunter Valley. I have to say that we will lose some very significant and sensitive areas of land in the area and the trade-offs do not add up. They are a trade-off and sell out of our environment.

The Greens support the Opposition's move to establish a select committee to monitor the Threatened Species Conservation Amendment (Biodiversity Banking) Bill. If the scheme is to go ahead, which of course the Greens will continue to oppose, then at least it should do so in a manner that does not entail jumping in the deep end. A long-term trial should first be established. If it is found not to work in the interests of conservation, the entire scheme should be scrapped. But that will not happen. There has been a quiet interesting gameplaying exercise, with the Opposition in the lower House moving for an inquiry. But that will not stop anything.

Reverend the Hon. Dr Gordon Moyes expressed a desire to have as broad an inquiry as possible. That would mean we would inquire into and look at as many of these biobanking relationships as possible, but essentially all these biobanking arrangements will go ahead. We might criticise and have some input through that inquiry, but the reality is that the scheme will go ahead, and the inquiry will be a sideshow. The Government, if it is re-elected next term with a massive majority, as it now has, will not take any notice of any inquiry. It will be able to steamroll ahead, and threatened species and the very essence of our sensitive conservation areas, particularly on the coast, will be significantly eroded.

I believe the scheme will be a huge win for the developers. I cannot express too strongly how appalled I am at the tabling of this disastrous bill by a Minister holding the New South Wales Environment portfolio. The New South Wales Labor Government is clearly pandering to the whims of its developer mates. I do not think more needs to be said. The Greens stand opposed to this type of trade-off bill. We are incensed by the destructive nature of the bill, which is clothed in the elegant attire of green wash. Well, it will not wash at the next election.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [11.52 a.m.]: In his second reading speech on 8 June the Minister said there were originally 274,000 hectares of Cumberland Plain woodland; that only 13 per cent, or 35,620 hectares, of this remains, with 2,500 remnants, of which 1,500 are smaller than 4 hectares. Only 80 remnants are large enough to be sustainable in the long run for the majority of fauna and flora. When it comes to development, the important question is: What do you do with these little remnants? And will they all be wiped out, one by one, by various development applications?

The argument for concentrating biodiversity conservation efforts on the large remnants is important, but even without conserving the complete range of biodiversity, small remnants can and do preserve particular species. These may not be the most spectacular ones, but they may be lost if their particular local habitat is not preserved. It is even more important to emphasise that the smaller remnants also have social values other than



biodiversity. Any changes in regulations must go together with strengthening the urban planning regulations to preserve the urban and social benefits of open spaces for recreation, air purification, playgrounds, et cetera.

Many diverse interest groups were consulted on the drafting of the bill. They included developers, infrastructure providers, miners, councils, lawyers, economists, environmental consultants, local government and catchment managers. But town planners were not included. The details of the scheme, which we are still waiting for, will be developed with stakeholders and participants. This means that the detail will be in the regulations and will not necessarily be subject to proper public scrutiny.

The assessment does not require the preservation of any particular species but concentrates on the biodiversity values of any ecological community. The definition of "biodiversity value" includes the composition, structure and function of ecosystems, and includes, but is not limited to, threatened species, populations and ecological communities, and their habitats. Biodiversity values do not extend to fish or marine vegetation, except those that are considered animals or plants under section 5A of the Environmental Planning and Assessment Act.

Payments to the biocredit owner are guaranteed for a defined minimum period. The biocredit is attached to the title of the land. Is it a permanent asset, or is it a diminishing one? I would like an answer to that question. Developers will use a biobanking assessment methodology to establish the number of credits required to offset the development. They have had to obtain a biobanking statement from the Director General of the Department of Environment and Conservation. The development has to be assessed for endangered species according to parts 4 and 5 of the Environmental Planning and Assessment Act 1979.

The following points seem to be raised by the explanatory notes to the amendments. Under division 1, biobanking assessment methodology considers, first, management action that will improve biodiversity; second, different classes of biodiversity credits; third, circumstances of biodiversity being maintained or improved; and, fourth, impacts that cannot be offset by biodiversity credits. The question is: Who will determine the relative credits to be assigned to particular biological entities, for example, the golden bell frog, or an orchid that flowers every few years, or a micro-organism that is essential for the growth of gum trees? These questions are difficult to answer. Indeed, some of the biological entities may not even be known so that they can be considered.

Division 2 relates to biobanking agreements between the Minister and landowners. These create biodiversity credits and bind the landowner to take, or desist from, certain actions on the land. They are registered on the land title and can be transferred with it in perpetuity. They can be varied only if that would have no negative impact. Management actions under biobanking agreements are exempt from the Environmental Protection and Assessment Act 1979, and biobanking agreements can be enforced by action before the Land and Environment Court.

Under division 3, biodiversity credits are created by the director general on application of the owner. Under division 4, trading in biodiversity credits is subject to regulations yet to be developed. Part of the price paid for biodiversity credits is to be paid into a Biobanking Trust Fund, which is dealt with under division 7. Under division 5, biodiversity credits may be cancelled by the director general, either for a wrongdoing of the holder, or on the request of the holder. Biodiversity credits can be suspended by the director general for up to two months.

One must ask: What is the purpose of this? Can the owner do whatever he or she likes during the suspension of the biodiversity credits? Biodiversity credits can be retired when used as an offset, either voluntarily or by direction. This is somewhat confusing. When the biocredit is sold to offset somebody else's destruction, do the payments from the trust fund continue? If they do not, the work required to maintain biodiversity is unlikely to be continued. When the owner of a biodiversity credit requests cancellation of it, does he or she have to pay for it? And do the payments to the original owner continue?

When a property for which a biodiversity credit is cancelled or sold, can the new owner establish a new credit by entering into a contract with the director general? This would be a magic pudding for making money out of dealing in biodiversity credits. I note that, according to the *Sydney Morning Herald* of 8 August 2006, Graham Richardson was the first to set up as a dealer in biodiversity credits. Far be it from this to make one suspicious. The developer Hardie Holdings has bought bushland areas in anticipation of creating biodiversity credits.

Division 6 deals with biobanking statements. Applications must include assessment of impact on biodiversity and a description of the biodiversity credits to be used. This requires the developer to make a

biodiversity assessment, and thus does not represent a simplification of the development approval process. The developer must demonstrate that all cost-effective measures are being, or will be, carried out to minimise the impact. The director general can issue a biobanking statement if the development maintains or improves biodiversity. The Minister can direct the director general to issue a biobanking statement for developments that do not improve or maintain biodiversity, if the development is under part 3A of the Environmental Planning and Assessment Act 1979. Biobanking can be modified and revoked, and biobanking statements are valid for two years.

Part 3 of the Environmental Planning and Assessment Act concerns major infrastructure and other projects that are approved by the Minister. This provision gives the Minister complete discretion. Under division 7, which deals with the Biobanking Trust Fund, the fund is sourced from part of the first sale or transfer of biodiversity credits. The biobank site owner is paid from the fund for the maintenance of biodiversity. The question is: How long does that continue? Does it continue to the original owner after credits are sold or cancelled by the new owner? Are the scheme participants, including brokers, to pay contributions towards fund administration?

Division 8 deals with the register for biobanking sites, biobanking credits and biobanking statements. Division 9 deals with appeals to the Land and Environment Court, exempts the Minister, director general and departmental officers from liability, and allows the making of regulations. The reason for the introduction of this bill is to facilitate the development of small pieces of land in a high-value area that so far have been saved from developers. One suspects that the main motivation is to please developers.

**Pursuant to sessional orders business interrupted.**

## **QUESTIONS WITHOUT NOTICE**

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### **POLICE MOBILE TACTICAL COMMAND CENTRES**

**The Hon. MICHAEL GALLACHER:** I direct my question without notice to the Treasurer. Is the Treasurer aware that Police Commissioner Moroney has indicated he wants both a permanent and a mobile tactical command centre to handle major incidents such as occurred at Redfern, Macquarie Fields, Dubbo and Cronulla? Is he aware that, after meeting with former Assistant Commissioner Hazzard yesterday, the Commissioner of Police has accepted all 33 of his recommendations? Is the Treasurer also aware that, despite indicating yesterday that Commissioner Moroney would have virtually a blank cheque to fix the problems identified by the Cronulla review, the Premier, this morning on radio, backed away from any commitment for those centres? Has the Premier, the Minister for Police or the Commissioner of Police approached either the Treasurer or Treasury for funding for those centres? If so, what was the amount of funding sought? Will the Treasurer give an assurance to the House that NSW Police will be provided with all funding needed to implement the recommendations of the reports into the Cronulla riot and subsequent revenge attacks, as well as the review of Task Force Enoggera, before the first anniversary of the Cronulla riot?

**The Hon. MICHAEL COSTA:** I am very proud of this Government's record in relation to police funding. Even during my time as Minister for Police, we had the resources that were required to do the job, and I do not think the Government's policy is going to change in relation to policing. I also note that in the last budget we increased funding to police by 7.9 per cent. With funding at a record level of \$2.2 billion, we will provide this State's police force with the resources required to do its job.

### **HOME AND COMMUNITY CARE PROGRAM FUNDING**

**The Hon. JAN BURNSWOODS:** I address my question to the Minister for Ageing, and Minister for Disability Services. What support is the Iemma Government providing for frail older people and people with a disability to help them to live independently in their own communities?

**The Hon. JOHN DELLA BOSCA:** The honourable member has asked a timely question. I am pleased to advise the House that funding for the Home and Community Care Program in New South Wales for 2006-07 has been approved. This will result in \$31.4 million in additional funding to help frail older people, and younger people with a disability and their carers. This additional funding brings total Home and Community Care funding in New South Wales to over \$475 million this financial year, an increase of over 7 per cent. More

than \$15 million will be released immediately to 298 Home and Community Care services in New South Wales. Under the 2006-07 Home and Community Care Plan an additional \$3.4 million has been allocated for social support to provide practical help through friendly visits, and help with letters, paying bills, shopping and attending appointments.

Additional funding of almost \$3 million in community transport will help to maintain quality of life through transport to shops and appointments, and group transport to social events. The nearly \$2 million allocated for centre-based day care will provide assistance for people to attend and participate in group activities in a centre-based setting as well as group excursions. Respite will be expanded by more than \$1 million. Respite provides much needed relief or substitute care so that a carer gets a break from his or her usual role. We will also extend home maintenance services, which provide garden and yard help, to keep homes in a safe and habitable condition. That includes minor repairs, electrical and plumbing work, lawn mowing, garden tidying and rubbish removal. The Home and Care Community Care Program provides practical help to vulnerable people in the community.

I take this opportunity to commend my Federal counterpart Santo Santoro on approving this year's Home and Community Care State Plan in record time. It is refreshing to have dealings with a Federal Minister whose sense of co-operation and collaboration is motivated by a desire to improve services for the most vulnerable in the community. Unfortunately that was far from the case with his predecessor, Julie Bishop. Ms Bishop's overriding motivation was to delay funding and criticise the States, and as a result exploit vulnerable people. This is also a style used by the New South Wales Opposition. The shadow minister is expert at using people with a disability for his own selfish political point scoring. He cries crocodile tears but has no plan.

As well as the additional Home and Community Care funding, the Iemma Government will spend an extra \$1.3 billion over the next five years as part of the Stronger Together disability plan. This is an historic increase in disability funding, which will provide more respite care, more supported accommodation, more in-home assistance and more therapy—real help, practical help for the most vulnerable in the community. This is in stark contrast to the New South Wales Opposition. Mr Debnam will not commit to spend this extra funding if elected next year. He has failed to support the New South Wales Government's bid for extra disability funding from the Commonwealth and promises a meagre 5 per cent of the Iemma Government's \$1.3 billion plan. He clearly does not understand the needs of people with a disability, the frail aged and their families and is not prepared to stand up for them.

At the last election the Opposition promised to fund its unreal and impractical promises by stripping the community services sector by \$700 million. A vote for Mr Debnam and the New South Wales Opposition is a big risk for frail older people, people with a disability, their families and carers.

### FARM WATER BILLS

**The Hon. DUNCAN GAY:** My question without notice is directed to the Minister for Primary Industries. Is the Minister aware of Jack and Charlie Francis of Forbes, who face a \$36,000 bill for water but they have not received a single drop of water? Is the Minister further aware of Pat Kennedy of Condobolin, who has a bill for \$75,198? Does the Minister know that it is unfair that farmers have to pay for something that they have not received? Given that The Victorian Government has announced another \$114 million for drought assistance, which includes deferment of water bills for five years and a one-off payment to cover water bills, what is the Minister doing to help drought-ravaged farmers who have been hit with these bills?

**The Hon. IAN MACDONALD:** I have considerable information about Mr Kennedy's case and I have just received information in relation to Jack and Charlie Francis. In relation to Pat Kennedy, I am aware of a recent article in the *Sydney Morning Herald* concerning the impacts of the drought, in particular the reference to Mr Pat Kennedy and his farm west of Parkes. I am advised that the newspaper article claimed Mr Kennedy had received a \$71,000 bill from the State for irrigation water that he did not receive. As to the bill that Mr Kennedy was sent by State Water on 23 August 2006, I am advised that the bill comprised the following major elements: An opening balance of \$26,352, a fixed annual charge for general security entitlement based on a 5,411-megalitre entitlement totalling \$18,483, and regulated water usage of 6,107 megalitres at \$4.42, totalling \$26,992.

That makes up a bill of the order of \$70,000. The opening balance was for the previous year, from 1 July for a full year, not the current situation. I should point out that the setting of bulk water prices, including both fixed and usage components, is an independent process undertaken by the Independent Pricing and

Regulatory Tribunal [IPART]. The rates set by IPART are based on the user-pays principle of the Federal Government's National Water Initiative.

Having said that, I advise that the Government recognises that the drought has put extreme pressure on our primary producers. In the Lachlan particularly, the Government has made special water concessions that in the past have included a complete waiver of fixed water charges for the 2003-04 year for regulated water users. In another concession, the Department of Natural Resources agreed to 5 per cent general security allocations, which were later increased to 19 per cent in the 2005-06 year, even though there would have been no allocation under the Lachlan Water Sharing Plan. This was made possible under the State Government's drought contingency plan after consultation with State Water and the Lachlan Customer Service Committee.

I should also emphasise that the New South Wales Government has a statutory obligation under the Water Management Act 2000 to effectively manage our water resources to ensure that water is available on a sustainable and long-term basis for irrigators, the environment and other users.

**The Hon. Duncan Gay:** What are you going to do for the people?

**The Hon. IAN MACDONALD:** I will answer this the way I like. This obligation entails water-sharing planning and implementation, hydrometrics, water monitoring and analysis and the management and operation of major water infrastructure. Everyone benefits from the Government's role in managing and delivering water resources responsibly and thoroughly, including Lachlan irrigators. In fact, these responsibilities and the need for sound management become even more pronounced during times of drought. State Water has made it clear to all customers that for those who may be experiencing genuine hardship or are having difficulty in paying their water bills, the State Water Corporation will consider an alternative payment plan.

**The Hon. Catherine Cusack:** But they are not getting water.

**The Hon. IAN MACDONALD:** The Hon. Catherine Cusack has not been listening. She should stick to dealing with the city. There was a usage component and there was a prior component as well. Anyway, the Hon. Catherine Cusack was not listening but I will forgive her again. I repeat that one of the elements of the bill was regulated water usage of 6,107 megalitres. In relation to the \$36,000 bill of the Francises, their accounts had a combined opening balance of \$18,963. I will deal with this in more detail in a little while, but I point out in the meantime that the Government is considering views from the Lachlan in relation to the current situation.

### CRONULLA RIOTS REPORT

**Reverend the Hon. FRED NILE:** I ask the Minister for Roads, representing the Minister for Police, a question without notice. Is it a fact that the investigations and reports into the Cronulla riots and the Muslim revenge attacks at Maroubra, Brighton-Le-Sands and other suburbs have revealed alarming information? Is it a fact that the Muslim car convoys that travelled from Lakemba for the revenge attacks to Maroubra and other suburbs escorted by police vehicles through Sydney suburbs? Is it a fact that police units were ordered not to confront the Muslim revenge gangs that were smashing car windows and attacking residents at Maroubra, Brighton-Le-Sands and elsewhere? Will the Minister investigate these serious allegations and report to the Parliament on who gave these orders to officers of the New South Wales police force?

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

### GORE HILL FREEWAY

**The Hon. IAN WEST:** My question is addressed to the Minister for Roads. Will he update the House on the latest information regarding the expansion of the Gore Hill Freeway?

**The Hon. ERIC ROOZENDAAL:** I have made it clear that as Minister for Roads I would be providing as much information as possible to the public on all matters. In keeping with this commitment, I advise the House that the Roads and Traffic Authority [RTA] will be closing parts of the Gore Hill Expressway for the first time since its opening 14 years ago. The entire Gore Hill section will be given a new surface in advance of the opening of the Lane Cove Tunnel and expanded Gore Hill Freeway. The new surface will reduce noise for residents and improve road and ride quality for motorists.

Our challenge is to lay 8,000 tonnes of high-grade asphalt on one of Sydney's busiest arterial roads. The truth is that there is no easy way to do that. I repeat: there is no easy way to do that. There will be night-time closures on weeknights over a three-week period. The night-time closure has been decided upon so that work can be done safely for drivers and workers and traffic delays will be minimised. In short, this is the only way for this work to be done. To achieve that, we have to divert thousands of cars a night onto alternative routes, which means that there will be a lot of traffic in the middle of the night. The changes are: Monday 30 October to Friday 3 November, closure of the westbound lanes from 10.00 p.m. to 5.00 a.m.; Monday 6 November to Friday 10 November, closure of the eastbound lanes from 9.00 p.m. to 5.00 a.m.; and Monday 13 November to Friday 17 November, closure of the westbound lanes from 10.00 p.m. to 5.00 a.m. There may be variations, depending on the weather, and we may tweak times, depending on traffic impacts.

The traffic management centre will be operating around the clock to monitor traffic and provide updates to the public. The RTA will be able to provide more information on travel times through the alternative routes as we monitor the situation. It is difficult to predict at this point precisely because this has not been done before. I want to make this clear: My message to the public is to expect delays, but please be patient because we have work to do. We will be doing all that we can to manage these closures. We will be relying on those who travel at night to be patient and to read the signs. People travelling at night, especially shift workers, should plan their trips carefully. The longest period of delay on the alternative routes will be in the period before midnight.

We are letterboxing more than 25,000 households around the closed entrances and exits. Our variable message signs [VMSs] will start to carry information on alternative routes from this afternoon. We will be advertising the changes on the radio and in the newspapers. All relevant groups are being notified. This is especially important for emergency services, police and ambulances, with the Ambulance Service perhaps being the most important stakeholder, given the proximity of Gore Hill Freeway to the Royal North Shore hospital. There are protocols that apply to manage these situations. The RTA will make information available to the travelling public. Again, my message is: be patient. There will be delays for a couple of weeks. This is the first time the Gore Hill Freeway has been closed in 14 years and the benefits will be significant. This is part of improving Sydney's road network. With the opening of the \$1.1 billion Lane Cove tunnel and the expanded Gore Hill Freeway and Falcon Street ramps, the Government will be providing a massive improvement to the Sydney road network.

#### **JUNEE DISTRICT HOSPITAL**

**The Hon. DAVID OLDFIELD:** My question is directed to the Minister for Health. How frequently is the Junee District Hospital placed on bypass so that emergency patients are sent to Wagga Wagga Base Hospital due to no doctors being on duty or on call? Is it correct that this crisis is a product of the inability or unwillingness of four of the hospital's five doctors to work to a roster system? What will be put in place to restore the confidence of Junee's residents in their local hospital?

**The Hon. JOHN HATZISTERGOS:** I am not aware of the situation at the Junee hospital. I will obtain some advice and report back to the House.

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

**The Hon. CATHERINE CUSACK:** My question without notice is directed to the Minister for Juvenile Justice. Is he aware of confrontations between staff and middle management at the Baxter detention centre that involve yelling and bad language being broadcast across the centre's radio communications system? What is the cause of the morale problems at Baxter that have led the acting centre manager to formally request staff to consider resigning, saying, "If people do not want to be part of this team then leave. Please leave. You will be doing everyone a favour, including yourself."

**The Hon. TONY KELLY:** Obviously I am not aware of the incident referred to by the honourable member. I will ascertain the details and report back to the House.

#### **CHILDREN'S HEALTH**

**The Hon. CHRISTINE ROBERTSON:** My question without notice is addressed to the Minister for Health. What is the latest information on children's health?

**The Hon. JOHN HATZISTERGOS:** I thank the Hon. Christine Robertson for this important question because this week is Children's Week and today is Universal Children's Day. It gives me great pleasure to outline to the House the Iemma Government's commitment to children's health. The Government has a proven track record of investment in much-needed services for our sickest children. In May this year the Premier and I announced an immediate \$8 million funding boost for equipment for paediatric critical care in our three children's hospitals, the Children's Hospital at Westmead, the Sydney Children's Hospital and the John Hunter Hospital. On top of this, the Government increased its funding to the Children's Hospital at Westmead to \$197.6 million, which is an increase of more than \$22 million on last year's budget. The budget investment is all about making sure that our children continue to have the very best health care available. Last Sunday it was my pleasure to announce further Government funding to help the State's sickest children.

While attending the annual Teddy Bears Picnic at Rosehill Gardens, run by the Children's Hospital at Westmead, I announced that the Government has invested \$300,000 in a single-head gamma camera that uses the latest technology to measure bodily functions of children ranging from newborn babies to adolescents. The single-head gamma camera will scan approximately 1,200 young patients every year, assisting doctors to study the function of the brain, kidneys, liver and thyroid. For example, the new camera is invaluable in the treatment of children who have had a liver transplant. Those children can now be assessed using the camera as soon as 12 hours after their transplant and in the crucial days following to see if their transplanted liver is functioning properly and has an adequate blood supply and to check that there are no life-threatening complications.

Honourable members may have read in last Sunday's *Sun-Herald* of 11-year-old Billy Scott, who received a liver donated from his mother. Using the camera, doctors could tell that Billy's initial transplant using a donated organ had failed, and so his mother offered to donate part of her own liver. The purchase of the single-head gamma camera represents a significant boost to the services that the Government is able to offer sick children across New South Wales. It is that kind of investment that enables the Children's Hospital at Westmead to maintain its world-class service and reaffirms the Government's commitment to provide the best possible care to the children of this State. On Sunday I announced also that the Government would invest more than \$230,000 for multifunction physiological monitors for mobile intensive care transport used by the Newborn and Paediatric Emergency Transport Service [NETS].

NETS is a wonderful service that provides lifesaving interventions by bringing intensive care to children and babies, stabilising them and transferring them to hospitals with specialist intensive care units. NETS retrieves, on average, 2,000 critically ill babies and children every year from across New South Wales. The new equipment has been designed specifically for the requirements of critically ill children, built in-house by biomedical engineers. The Iemma Government is committed to caring for our kids, providing them with world-class equipment and services. I commend the Children's Hospital at Westmead, and indeed all our children's hospitals, for the important mission they undertake.

#### **BARRICK GOLD LAKE COWAL WATER USE**

**Ms LEE RHIANNON:** I direct my question to the Minister for Mineral Resources. Given that goldmines are among the highest users of water of all mining operations, and that central New South Wales is in the grip of its worst drought ever, what will the Minister do in response to reports that there has been a major drop in the underground water level near Barrick Gold's Lake Cowal goldmine, which has fallen up to 35 metres in 2½ years? Will the Minister move to bring in a moratorium on goldmining operations at Lake Cowal until Barrick Gold ends its damage to local waterways? How much damage needs to be inflicted on local properties before the Minister judges that operations at the Lake Cowal goldmine should be curtailed?

**The Hon. IAN MACDONALD:** As honourable members know, Barrick Australia Limited has established a goldmine on the edge of Lake Cowal, near West Wyalong. Barrick Gold is constrained to a maximum of 3,650 megalitres per annum from the Bland Creek paleochannel by the conditions of its development consent. The paleochannel falls within the Upper Lachlan groundwater management area and the current groundwater extraction, which supplies irrigators and the goldmine, is known to cause groundwater levels to decline—there is no question about that. The Department of Natural Resources has a responsibility to protect the groundwater resource and maintain supply for stock and domestic users, and to ensure this situation is properly managed.

The Department of Natural Resources is monitoring the situation closely, and Barrick has undertaken groundwater modelling to determine the depth at which the water level will stabilise. The department has monitoring bores in place with shut-off levels designed to protect stock and domestic supplies having been

agreed to. Barrick has also reached agreement with impacted landholders to maintain their stock and domestic supplies from Barrick's bores as required. If the extraction of groundwater were to cease in the Bland Creek paleochannel, it would have significant implications for the operations of Barrick and the local and State economy.

I point out also that legislation ensures that stock and domestic groundwater users have a higher priority of access to the resource than either irrigation or industry users. That is a basic right enshrined in legislation. Claims that Barrick is getting its water for a ridiculously low price are absurd and demonstrate the Greens lack of understanding on water pricing that was made in the past week or two. Barrick is no different from other water users; it pays for the water it pumps from its bores. It pays also an annual fixed entitlement charge, based on the amount of its licensed entitlement. Those charges are determined by the Independent Pricing and Regulatory Tribunal [IPART], which is a completely transparent and independent process, and apply to all bulk water users.

I advise Ms Lee Rhiannon that Barrick is in the process of securing a water access licence to enable it to purchase surface water through the market, and supply it to the mine site. That will ease the impact on the groundwater resource. I stress that this would not involve additional water extraction from the Lachlan River, which is embargoed from further licensing, and represents existing entitlements that would be purchased from a willing seller. The Department of Natural Resources will continue to work with Barrick and its neighbouring landholders to ensure sustainability of the resource for all users through this dreadful drought. Ms Lee Rhiannon can rest assured that the Government will not take precipitous action to try to close down the mine, which is so important to the regional economy.

#### LANE COVE TUNNEL EARLY COMPLETION BONUS

**The Hon. DON HARWIN:** My question is directed to the Minister for Roads. Is the Minister aware that the bonus payable to Thiess John Holland for early completion of the Lane Cove Tunnel is included in schedule 6 of the Lane Cove Tunnel Project Deed? Given that the Roads and Traffic Authority has been notified by Connector Motorways that the Lane Cove Tunnel will open in December of this year, five months ahead of schedule, what will be the total bonus paid to Thiess John Holland?

**The Hon. ERIC ROOZENDAAL:** Connector Motorways continues to advise that it hopes to open the Lane Cove Tunnel and the expanded Gore Hill Freeway by the end of 2006. As I have reported to the media, Connector Motorways has advised the Roads and Traffic Authority of an estimated completion date, as it is required to do under the contract with 90 days notice. That is not an opening day; it is an estimate of the completion date, subject to the progress of construction. The company has repeatedly stated publicly that it hopes to open the tunnel by the end of 2006. Connector Motorways has provided an estimate of completion of about 10 December, which is not an opening day. The company continues to advise that it hopes to open the tunnel by the end of this year. Obviously the Hon. Don Harwin would be well aware that all details of the contract in relation to the Lane Cove Tunnel are available to the public.

#### CLIMATE CHANGE

**The Hon. TONY CATANZARITI:** My question is addressed to the Minister for Natural Resources. Will the Minister update the House on what the New South Wales Government is doing about climate change?

**The Hon. IAN MACDONALD:** In recent times there has been a huge amount of debate about the cause of the worst drought in living memory. There is a school of thought that the current drought is all part of the cyclical nature of Australia's boom and bust weather pattern. On the flip side, there is a growing awareness of the new threat, known as climate change. On the subject of climate change, Dr Geoff Love, the Director of the Australian Bureau of Meteorology, said:

I expect climate change to affect all Australians. It is the Bureau's responsibility to provide decision makers and the general public with accurate observations and information about our changing climate.

Climate change cannot be ignored. We have to consider it, and be proactive about addressing it. On the home front, the past 60 years has seen an increase in the frequency of heatwaves and a decrease in colder than average days. There is evidence to suggest that there have been rainfall pattern changes. For instance, the north-west of Australia has seen an increased rainfall over the past 50 years, while eastern and south-western Australia are drier on average. That means we need to think about the future. In saying that, I am not suggesting that the Government has a locked-in approach; we have to be proactive and think about how to handle the issues.

I am pleased to advise that the State Government, through the Department of Natural Resources, will lead the first systematic study into the potential impacts of climate change on the New South Wales coast and estuaries. That groundbreaking study will assess the environmental and economic impacts of potential coastal erosion, coastal inundation and degradation of estuaries as a result of climate change. The study will provide sound scientific data to inform decision making by the Government, industry and the broader community.

Dr Rosh Ranasinghe of the Department of Natural Resources Coastal Unit will lead the study, which will bring together scientists from CSIRO's Marine and Atmospheric Research Centre, and Risk Frontiers, formerly the Natural Hazards Research Centre, as well as our scientists from the Department of Natural Resources. A combination of field data analysis, sophisticated computer modelling and socioeconomic modelling will be used to measure potential climate change impacts and adaptation measures for the Clyde River-Batemans Bay system and the Woolli Woolli River system. The findings of the two selected study sites will be used to determine potential climate change impacts on estuary and beach systems along the entire New South Wales coastline. It is vitally important to make plans to adapt to any potential change in the future in order to minimise risk.

According to some models, the value of coastal properties in New South Wales potentially at risk from coastal erosion and inundation in the next 100 years is estimated to be about \$1 billion. Degradation of our priceless estuaries would have a devastating impact on our recreation, tourism, fishing and oyster industries. The New South Wales Government intends to plan for and manage these potential impacts through careful decision making, informed by the best available science. The study is anticipated to be completed by the end of 2008 and is funded through the Climate Change Impacts and Adaptation Research Program administered by the New South Wales Government.

Earlier this year I also announced that the State Government was undertaking the first large-scale investigation into the risk of coastal erosion and inundation caused by severe storms in Australia. Once completed, a model will be applied to selected sites along the New South Wales coastline to estimate likely or possible coastal erosion and inundation caused by a range of historic and anticipated storm conditions. Both of these studies will contribute greatly to our scientific knowledge about coastal erosion and climate change in New South Wales. I should add that the New South Wales Government has spent more than \$50 million addressing risks through the preparation and implementation of coastline management plans.

### **CRONULLA RIOTS MEDIA REPORTING**

**The Hon. Dr PETER WONG:** My question is directed to the Minister for Commerce, representing the Premier. Given that the report of Strike Force Neil states that the media were involved in inciting the Cronulla riot, what does the Government intend to do to ensure that the media never incite another riot? Furthermore, given that there are laws that clearly prohibit racial vilification and inciting riots, why have no media commentators been charged by police?

**The Hon. JOHN DELLA BOSCA:** I thank the Hon. Dr Peter Wong for his question, in which he agitated several issues that require a response. The first issue is the honourable member's suggestion that it would be possible or appropriate for the Government to control the media during events such as the Cronulla incident, similar incidents or, for that matter, at any time. I think the honourable member knows that it is fundamentally impracticable to suggest that the State Government should take action to limit or censor the media—and I do not think anyone would support the Commonwealth Government taking such action either. So one of the principal assumptions in the question is fundamentally flawed and, frankly, unacceptable.

The Hon. Dr Peter Wong also implied in his question that some media reports were of a florid nature, as has been reflected upon in the Neil report and in other commentary. He then went a step further and suggested that some of those florid remarks constituted racial vilification in a legal context. I will seek advice from the Premier and the Minister for Police and I will get back to the honourable member and the House with further details on the matter. But, for the same reasons that I outlined earlier, action on the issue would seem to be impracticable.

### **GREATER WESTERN AREA HEALTH SERVICE PATHOLOGY SERVICES**

**The Hon. JENNIFER GARDINER:** My question is directed to the Minister for Health. Is the Minister aware that a man from Gilgandra was forced to wait nine weeks for a pathology result for prostate cancer and that, when asked for an explanation about the delay, the Greater Western Area Health Service said



that there was "a huge volume of tests to be reviewed and only one pathologist"? Will the Minister advise the House of the extent of the pathology services backlog in Dubbo and in the greater west? Does the Minister think it is acceptable for patients to wait months for test results when, according to the NSW Health web site, "early detection of cancer improves the chances of successful treatment and cure"?

**The Hon. JOHN HATZISTERGOS:** I am not aware of the circumstances of that particular case. It may surprise the Hon. Jennifer Gardiner to know that there are some 27 million patient episodes involving NSW Health annually, and they include a large volume of attendances at emergency departments and various other treatment facilities. It is absurd to expect me during question time, with no notice, to be familiar with the circumstances of each individual case.

**The Hon. Melinda Pavey:** Something like this should have been brought to your attention.

**The Hon. JOHN HATZISTERGOS:** Cases such as this can be brought to my attention in the proper manner. Members of Parliament are criticised from time to time for their entitlements, but they receive stamps and envelopes and equipment to enable them to communicate.

**The Hon. Duncan Gay:** You don't give replies; that's the problem.

**The Hon. JOHN HATZISTERGOS:** The Deputy Leader of the Opposition can say that as much as he likes, but I reply directly—not through a bureaucrat or someone else—to about 99 per cent of the correspondence that I receive from members of Parliament.

**The Hon. Melinda Pavey:** Or the Parliamentary Secretary, and that's not worth it.

**The Hon. JOHN HATZISTERGOS:** The Parliamentary Secretary does a lot of work himself. I take the view that I will reply to members either directly or through one of the assistant Ministers. I am happy to respond to the Hon. Jennifer Gardiner's question if she puts the circumstances of the case in writing. I believe it is inappropriate for Opposition members to engage in their traditional practice of constructing a few titbits into a question and throwing it to Ministers in the knowledge that they could not possibly know the details. That is not an appropriate utilisation of question time.

**The Hon. Greg Pearce:** Point of order: The Minister for Health has been debating the question for more than two minutes. I ask you to direct him to answer the question.

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

**The Hon. JOHN HATZISTERGOS:** If the Hon. Jennifer Gardiner gives me the details of that particular case, I will be more than happy to respond. I might add that Opposition members should be careful about throwing patient's private information into the public arena. As a matter of interest, a couple of weeks ago—

**The Hon. Melinda Pavey:** You're debating the question.

**The Hon. JOHN HATZISTERGOS:** No, I am not debating the question; I am making an observation about another matter. An allegation was made in this House and in the other place that a woman gave birth on a Royal Flying Doctor Service plane with no midwife present. Andrew Stoner, the Leader of The Nationals, traipsed all over the place saying that it was an outrage that a woman had to deliver her baby on a plane without a midwife. The Royal Flying Doctor Service debunked that claim as a load of rubbish. Has Andrew Stoner apologised about that allegation? Has he apologised for that extraordinary unprovoked attack upon the Royal Flying Doctor Service? No, he has not. Similar allegations have been made against services in Lightning Ridge.

### **BRAVEHEARTS NEW SOUTH WALES**

**The Hon. HENRY TSANG:** My question is addressed to the Minister for Justice. Will the Minister advise the House of the latest improvement to the support available to victims of child sexual assault in New South Wales?

**The Hon. TONY KELLY:** I am pleased to advise the House that Australia's leading child campaigner, Hetty Johnston, will be opening a Bravehearts New South Wales head office in Sydney with the support of the

Iemma Government. This morning in Parliament House Hetty and I launched Bravehearts New South Wales. Hetty Johnston is regarded as Australia's pre-eminent child rights campaigner, and the New South Wales community will be pleased to know that the Bravehearts organisation will now have an office in the heart of Sydney. The office will offer assistance to victims of child sexual assault and their families, and provide school-based personal safety education programs to children. I am pleased to advise that the Iemma Government was able to play a role in the establishment of the office by offering a start-up grant of \$35,000, which I gave to Hetty Johnston this morning.

Ms Johnston is a fierce and passionate advocate for children who are victims of sexual assault and she deserves our support. The office was kindly donated to Bravehearts by the chief executive officer and general manager of Ord Minnett, Mr Karl Morris, and will be open by December this year. It is a very exciting step for Bravehearts, which began its life more than nine years ago in Hetty Johnston's home study. It began with White Balloon Day in September 1997 and it has now grown to become a major registered charity with branches in Brisbane, the Gold Coast and Western Australia, and now in New South Wales. Every year Bravehearts receives an increasing number of calls from people in New South Wales. It has become clear that it is time to have a presence in New South Wales.

Bravehearts is now also heavily involved in policy development and will work with the Government on new policies in this area. Bravehearts provides healing and support for child victims of sexual assaults and their families. It engenders child sexual assault prevention and protection strategies, and it advocates for understanding and promotes increased education and research. I understand that it reaches about 12,000 children each year in schools. I am also pleased to report that Bravehearts supported the Government's laws on continuing detention orders and extended supervision orders for repeat sex offenders announced by Premier Iemma in March 2006.

Bravehearts activities in the community include a counselling and support program, which provides counselling and support to children and adolescents and adult survivors of child sexual assault, as well as their non-offending family members. Ditto's Keep Safe Adventure CD-ROM addresses the issue of protective behaviours for children and young people. Ditto's Keep Safe Adventure [DKSA] education program, an interactive personal safety education program based on a DKSA CD-ROM, sees Ditto travelling to schools and to child care centres. The Child Protection—Its Everybody's Business Program provides training and awareness workshops on risk management for staff and volunteers in schools and child care centres.

The White Balloon Awareness Campaign held annually since 1997 was labelled by senior police as a phenomenon when the 1999 campaign resulted in a staggering 514 per cent increase in disclosures. Other programs include advocacy, lobbying and campaigning, which advocates for survivors on individual issues and concerns and, more broadly, through participation and legislative review and reform. The Sexual Assault Disclosure Scheme encourages survivors to disclose and, as such, stands to protect thousands of children from known predators. Finally, the crisis information pack is a publication produced to provide information to parents and family members where there are concerns about child sexual assault. It also includes information for adult survivors and contains an extensive list of contacts. I encourage other companies in New South Wales to help support this very worthy cause.

## RENEWABLE ENERGY

**Mr IAN COHEN:** My question without notice is directed to the Treasurer, representing the Minister for Energy. Today's media carried reports that New South Wales is facing an energy crisis. The newspapers also carried a report on a joint venture between the Victorian and Federal governments that involves the construction of a solar power plant. Given that climate change guarantees that new coalmines are not an option, will the Minister outline what energy alternatives the Government has planned for New South Wales, apart from the gas-fired power stations as announced? What plans are there, if any, for renewable energy generation, especially wind and solar power? Are there any plans for a joint venture in New South Wales such as the venture to be found in Victoria?

**The Hon. MICHAEL COSTA:** I will refer the honourable member's question to the Minister for Energy for a detailed answer. I have to say that it has already been made clear, both by the Minister for Energy and by the authors of the report this morning, that the report is inaccurate. New South Wales is not in a position where it will be facing energy shortages. In fact, from my reading of the report and from my understanding of the issue, we are in a better position this year than we were last year. The other ridiculous component of what was just said was that we were not in a position to have new coalmines.

**Mr Ian Cohen:** Coal-fired power stations, I said.

**The Hon. MICHAEL COSTA:** The honourable member said that coal-fired power stations were not an option.

**The Hon. Duncan Gay:** What about the Federal Government announcement about solar? It was clean coal.

**The Hon. MICHAEL COSTA:** That is exactly what I was about to say. A lot of work is being done with clean coal. It is nonsense for the honourable member to rule out coal-fired power stations without acknowledging that clean coal is an option. That statement by the Greens does not surprise me. Earlier in the day I heard one of the Greens making the comment that their policy was not to have a moratorium on new coalmines. It is precisely that. I have their policy in front of me, which states:

The New South Wales Greens oppose the development of any new coalmines or the expansion of existing coalmines.

That is not what Greens members said earlier. It is a ludicrous policy, a nonsense policy and a ridiculous policy. The Greens policy also seeks to ensure that we do not export coal. Their policy is so ridiculous that they do not even want us to export coal. They think we contribute to global greenhouse gas emissions because we export coal. They have no conception of the value of the coal industry, certainly to New South Wales and to the Hunter. Over 12,000 jobs in New South Wales are related to coal, with 8,000 direct jobs in the Hunter. And that does not take into account the multiply effect. If we take a fairly conservative multiplier—and the Greens can invent whatever multiplier they want, which is what they normally do when it suits them—we realise that tens of thousands of jobs in this State are dependent on coal. Yet these people continue to perpetuate a range of myths about coal. They are running a very silly campaign that is guaranteed to lead to energy shortages if we do not use coal. That is the irony of this issue. It does not matter how much is invested in wind power, solar power or any other power, as I said on a previous occasion, burning cow dung will not replace our coal generating capacity. We have to be realistic about that.

**The Hon. John Della Bosca:** Plus it is expensive.

**The Hon. MICHAEL COSTA:** Yes, the expense is extraordinary. The last figures I saw showed that the average cost of a megawatt of coal power was about \$35 to \$40. Wind power is over \$100 and nuclear power is \$80. Nuclear power is actually cheaper than wind power. Do honourable members know why it is expensive? It is expensive because it runs only 30 per cent of the time. Gas peakers have to be built next to them to keep the power going! This whole proposition is ridiculous. It shows how foolish and dishonest the Greens are. They should come clean and state that their policy is about turning off the lights in New South Wales.

#### HUNTER RIVER TOURLE STREET BRIDGE

**The Hon. ROBYN PARKER** My question without notice is directed to the Minister for Roads. Will the Minister inform the House when the Tourle Street Bridge will be replaced? Last week, in an answer to a question on notice, the Minister claimed that the Government had committed only \$5 million this year towards the \$37 million project. Is the Minister aware that planning for this project began as far back as 2004? Is it not about time that the people of Mayfield got their new bridge?

**The Hon. ERIC ROOZENDAAL:** I will take the honourable member's question on notice and come back to her with a very detailed response.

#### AUSTRALIAN RED CROSS AND BLOOD DONATIONS

**The Hon. PENNY SHARPE:** My question without notice is addressed to the Minister for Health. What is the latest information on the donation and supply of blood in New South Wales?

**The Hon. JOHN HATZISTERGOS:** Honourable members might have heard calls over the last 24 hours by the Australian Red Cross blood service urging people to donate blood as supplies had the potential to run out nationally in less than 36 hours. Consequently, at lunchtime yesterday the Parliamentary Secretary for Health and I made our way to the Clarence Street headquarters of the Australian Red Cross blood service and gave blood. It is important that others follow this lead. There is no substitute for blood. People with cancer, heart disease, kidney and bowel disease, and accident victims need to be able to access blood in order to survive.

Recipients of blood donations also include women with pregnancy complications, premature babies born with immune deficiency disorders, patients undergoing routine surgery and those battling long-term illnesses who require frequent blood products. I am advised that 15 per cent of donated blood helps people with heart disease, another 15 per cent goes to people with stomach and bowel disease, and 12 per cent of all blood donated goes to trauma and accident victims. People requiring chemotherapy are particularly at risk unless donors come forward urgently simply because 30 per cent of all blood donations go to people with cancer.

Blood donation is one of the simplest ways to give something back to the community. I am told that every donation can save up to three lives. While one in three people will need blood at some time in his or her life, only one in 30 actually gives it. Yesterday I was impressed by the number of people who lined up to give blood. I congratulate the people of New South Wales who heeded the call from the Red Cross and who contacted the service in great numbers to offer to give blood. However, I am advised that stocks are still low and more donations are needed in New South Wales.

I urge employers to allow staff time off to give blood. It only takes an hour. Perhaps they could even follow Ron Delezio's lead. He gave his employees an additional day's leave if they gave blood at least three times a year. I commend organisations such as the Australian Stock Exchange and PricewaterhouseCoopers, which encourage their employees to give blood during work time.

The Red Cross needs 21,000 donations each week to maintain an adequate blood supply. That is a thousand more donations a week than last year. I am advised that blood has a use-by date, in some cases as short as five days after donation, and that is why there is a constant need for new supply. I urge honourable members to do as I did and donate blood. They should contact the Red Cross blood service and make arrangements for a donation and also encourage others in the community to do likewise.

#### **ICE (CRYSTAL METHAMPHETAMINE) AND PSYCHIATRIC EMERGENCY CARE CENTRES**

**Ms SYLVIA HALE:** My question is directed to the Minister for Health. Yesterday the Minister, in reply to my question about crystal methamphetamine or "ice", referred to psychiatric emergency centres able to deal with the psychotic episodes, in particular, of ice users and stated that one of these centres will be established at Liverpool Hospital. Minister, is it true that none of these psychiatric emergency centres is designed specifically to deal with drug-induced psychosis and that all people who present with the psychiatric disorder are treated the same and that ice users are not likely to be recognised and treated as such? Minister, will the upgrading of Liverpool Hospital include funding for a specialist clinic for the treatment of amphetamine abuse?

**The Hon. JOHN HATZISTERGOS:** The honourable member learnt nothing from yesterday.

**Ms Sylvia Hale:** I am talking about psychiatric emergency centres.

**The Hon. JOHN HATZISTERGOS:** Yes, the member is talking about what she wants to talk about, and I am going to talk about what I want to talk about. Yesterday I said that two specialist—

**Ms Sylvia Hale:** I know there is St Vincent's and Newcastle—

**The Hon. JOHN HATZISTERGOS:** That is very good, that is a big improvement on what the member knew yesterday. Also there are a number of psychiatric emergency care centres—

[Interruption]

What does the member want? Does she want a psychiatric emergency care centre that has "Ice" written in brackets after its title? Is that what she wants? That proposal is ridiculous and absurd. Ms Sylvia Hale and the Greens have to tell us what their policies are because we all remember—

**Ms Lee Rhiannon:** Point of order: The Minister is again misleading the House. The Greens is the only party—

**The PRESIDENT:** Order! The member will resume her seat. The member knows perfectly well that is not a point of order. I remind members that the only basis of a point of order is that a member is being disorderly. An allegation of misrepresentation cannot be the basis for a point of order. The Minister has the call.

**The Hon. JOHN HATZISTERGOS:** We all know about the Greens policy on drugs. In fact, I was a member of the Legislative Council inquiry into Cabramatta policing that produced a report—

**Ms Sylvia Hale:** Point of order: My question related specifically to the treatment of methamphetamine abusers in psychiatric emergency centres and the Minister is not answering that question.

**The PRESIDENT:** Order! The Minister may make general comments about the subject of the question.

**The Hon. JOHN HATZISTERGOS:** In that inquiry the Greens submitted a minority report advocating harm minimisation proposals.

**The Hon. Michael Costa:** A drug bazaar!

**The Hon. JOHN HATZISTERGOS:** Yes, they wanted a drug bazaar at Cabramatta. They wanted some streets set aside so people could stand around dispensing drugs like confetti. The Greens have no credibility to talk about drug policy. I have given answers to all their questions on notice and all their press releases and I am quite happy to give Ms Sylvia Hale the Government's drug action plan over the next four years—if she wants to read it. When she has read it she should ask an intelligent question, not a stupid question like the one she just asked.

#### YARRANBAH CAP AND PIPE THE BORES SCHEME

**The Hon. RICK COLLESS:** My question is directed to the Minister for Natural Resources. Why have landholders on the Yarranbah Cap and Pipe the Bores Scheme been lied to by his department? The landholders were promised in June, following a forced mediation, that the sum of \$1 million would be placed in an interest bearing account to assist them in their program, which was delayed by his department with a cost blow out of more than \$1 million. Why has the money not been paid as it is now October, some four months after the event?

**The Hon. IAN MACDONALD:** I am sure the Department of Natural Resources has not lied to anyone. I believe the honourable member will find that there were a series of issues that needed to be addressed in this mediation?

**The Hon. Duncan Gay:** Will you follow up on this?

**The Hon. IAN MACDONALD:** I am quite happy to follow up on this issue. But for the honourable member to suggest that the department has lied is grossly inflammatory, inaccurate and misleading. I hope that he uses better language in future.

#### MOBILITY PARKING SCHEME

**The Hon. AMANDA FAZIO:** My question is addressed to the Minister for Roads. Will the Minister provide the House with the latest information on efforts to combat abuse of the Mobility Parking Scheme?

**The Hon. ERIC ROOZENDAAL:** The Mobility Parking Scheme [MPS] is designed to make life easier for people with disabilities. To be eligible for an MPS card, a person must have a disability. Under legislation this means someone who is unable to walk due to the permanent or temporary loss of use of one or both legs or other permanent medical or physical condition; whose physical condition is detrimentally affected as a result of walking 100 metres; or who requires the use of crutches, a walking frame, or other similar mobility aid. All renewals or applications for new MPS cards must be signed by a doctor. The Roads and Traffic Authority [RTA] issues a licence-style card that includes the cardholder's photograph, and other security features such as a hologram and a ghost photo image.

The MPS scheme is not for parking cheats who do not have a conscience. People who cheat and misuse MPS cards are making life harder for people living with disabilities. That is why I asked the RTA to conduct a number of enforcement blitzes in relation to the MPS scheme. I have previously informed the House of the first of those. I can further update the House that as a result of two weeks of joint covert operations between the RTA and the Council of the City of Sydney in August and September, rangers interviewed a total of 129 people and confiscated 31 permits. At the time, I stated my intention to keep the House informed of further developments. However, I did not anticipate the disgusting and disgraceful behaviour that I would have to report.

After the successful operations in the Sydney central business district with the Council of the City of Sydney, the RTA launched a new joint covert operation earlier this month in North Sydney in co-operation with North Sydney Council. During this latest MPS enforcement operation, 155 MPS permits were checked and 19 people were caught abusing the system. To learn that 12 per cent of the permits checked were being misused was disappointing. To learn that four of them actually belonged to dead people was disgusting. Honourable members would agree this is perhaps the most outrageous abuse of the scheme possible. I have asked NSW Police to investigate whether charges under the Crimes Act might be initiated of dishonestly obtaining a financial advantage by deception.

I have said it before: The Mobility Parking Scheme is designed to make life easier for people with disabilities. These crackdowns will continue and the Government has backed them up with tougher penalties for the offences that involve deliberately abusing the scheme, to reflect community anger at abuse of the system. The fine for those offences, which involve a conscious abuse of the system, recently increased from \$384 to \$461. Through these blitzes, the Government is sending a strong message to able-bodied people who obtain MPS cards fraudulently or borrow ones issued legitimately. Cheats are making life harder for people with disabilities. Cheats will get caught and cheats will face the consequences.

I commend council rangers of both councils involved who have worked co-operatively with the RTA and NSW Police to enforce this scheme. Once again I look forward to informing the House of further developments in relation to this issue. I look forward to expanding the continuation of this blitz through the State to ensure that people who attempt to cheat the MPS system will be caught. It is reprehensible and disgusting that some people attempt to exploit the system to gain a benefit through parking and deny genuinely disabled people parking spaces that they deserve for a better lifestyle.

#### **MOOLARBEN COAL PROJECT**

**Reverend the Hon. Dr GORDON MOYES:** I ask the Minister for Mineral Resources a question without notice. Is the Minister aware of the proposed Moolarben coal project near Mudgee that would include one underground coalmine and three open-cut coalmines spanning 3,450 hectares of sensitive bushland and river systems? Is the Minister aware that the proposed mine will take 6.9 million litres of water per day out of local water sources to wash coal when the region is already enduring one of the worst droughts in recorded history? Is the Minister aware that the coal mined from the project will continue to emit 330 million tonnes of carbon dioxide over and above the 14 to 20 year lifespan of the mine? Is the Minister aware that the exploration licence allows for a purpose-built coal-fired power plant to be constructed to power the mine which will itself emit 382 million kilograms of carbon dioxide? Will the Minister consider reserving extensive time for detailed scrutiny and re-assessment of this proposal and the potential environmental impacts of such a major development?

**The Hon. IAN MACDONALD:** I thank the honourable member for his question. This matter is in the province of my colleague the Minister for Planning under part 3A of the Environmental Protection and Assessment Act. I am sure all of the issues that the honourable member raised will be considered within the context of the assessment that is required for any mine proposed by Felix Resources at Moolarben.

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

#### **GREATER WESTERN AREA HEALTH SERVICE PATHOLOGY SERVICES**

**The Hon. JOHN HATZISTERGOS:** In response to the question asked by the Hon. Jennifer Gardiner about pathology, I am able to provide the following additional information for the edification of the honourable member. There are 27 accredited pathology laboratories in Australia. The majority are in New South Wales and Victoria. National reports identify that there were 1,290 specialist pathologists practising in Australia in 2003, with 36 per cent working in New South Wales. In 2003 a self-appointed medical survey showed that 236 doctors in New South Wales identified their main area of practice as pathology, an increase of 42 over the 1993 figure.

New South Wales has a higher ratio of pathologists per 100,000 compared with Victoria and Queensland. In 2005 the Royal College of Pathologists reported that New South Wales had 114 pathology trainees, and that the next largest number of trainees in Australia was 62—we had 52 more pathology trainees than anyone else. It should be noted that a large proportion of pathology services are provided in the private sector, but the vast majority of the early years of pathology training is done in the public sector. In recognition

of this, the States pressured the Commonwealth in 2004 to support more funding of pathology training in the public sector. The Commonwealth has only injected funding in the private sector, with 10 places nationally, four of which were allocated to New South Wales.

The Commonwealth did not provide any funding for places in the public sector, leaving the States to shoulder the burden of training specialists, who will no doubt move into the private sector as soon as they are qualified. I am advised that New South Wales has provided central funding for four additional trainee pathologist positions, at \$120,000 each per year. This means an extra trainee doctor will be employed at Hunter New England, South East Sydney, Sydney West and Sydney South West, commencing 2007.

The New South Wales Peak Pathology Council comprises eminent heads of pathology departments across the State. The council has been working for some time to agree on a sustainable model for staffing and costing pathology practice. Doctors will complete their training under a new model, with further positions agreed. The council has already determined that three of the new trainee doctors will specialise in anatomical pathology, and the fourth in haematology.

### DEFERRED ANSWERS

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

#### THIRD-PARTY INSURANCE BENEFITS

On 19 September 2006 the Hon. Dr Arthur Chesterfield-Evans asked the Minister for Finance a question without notice regarding third-party insurance benefits. The Minister for Finance provided the following response:

The table below provides information compiled by the Motor Accidents Authority on the number of claims for benefits in the New South Wales Motor Accidents Scheme for the accident years 1998-2005 inclusive.

	<b>ACCIDENT YEAR</b> <b>ending 30 September*</b> <b>(*note: Accident Year 1999 ends 4 October 1999 and Accident Year 2000 commences 5 October 1999)</b>							
	1998	1999	2000	2001	2002	2003	2004	2005
Number of claims* for benefits (*includes an estimate of incurred but not reported (INBR) claims)	16006	16578	16787	15346	13780	12489	12333	11840

#### JOHN LEWTHWAITE PAROLE

On 20 September 2006 the Leader of the Opposition asked the Minister for Justice a question without notice regarding the parole of John Lewthwaite. The Minister for Police provided the following response:

NSW Police has advised me:

Mr John Lewthwaite was visited by NSW Police several times during 2006 as part of the monitoring process due to his registration on the Child Protection Register. He was not visited as a result of being suspected of committing any crime and did not come under adverse police attention prior to his arrest at Miranda on 19 August 2006.

#### SEXUAL ASSAULT PROSECUTION RATE

On 20 September 2006 Reverend the Hon. Dr Gordon Moyes asked the Minister for Commerce, representing the Attorney General, a question without notice regarding sexual assault prosecution rates. The Attorney General provided the following response:

In December 2004 I established the Criminal Justice Sexual Offences Taskforce to examine issues surrounding sexual assault in the community and the prosecution of these matters. It was one of the most comprehensive reviews of the law in this area in the last 20 years.

The Taskforce was particularly concerned with the high rates of attrition in sexual assault cases and examined the experience of other jurisdictions including those who use a specialised court system.

The Taskforce concluded that "specialised or specialist courts are not a magic panacea" and did not recommend the introduction of a specialist court. They did however recommend a comprehensive change to the management and administration of courts in order to give rise to a specialised scheme to deal with sexual assault cases more effectively. This included sexual assault matters being subject to a call-over and specialised case management hearings and for courts, equipped with the appropriate technology, to be set aside and available for hearing sexual assault matters. This recommendation is currently being considered by an Advisory Panel chaired by my Department.

#### **WATER RESOURCES**

On 20 September 2006 the Hon. David Oldfield asked the Minister for Natural Resources, representing the Minister for Water Utilities, a question without notice regarding water resources. The Minister for Water Utilities provided the following response:

I refer the honourable member to the Government's detailed plans outlined in the Metropolitan Water Plan 2006.

#### **TOTALLY AND PERMANENTLY INCAPACITATED VETERANS ASSOCIATION OF NEW SOUTH WALES BELMORE UNITS**

On 27 September 2006 Ms Sylvia Hale asked the Minister for Disability Services a question without notice regarding the Totally and Permanently Incapacitated Veterans Association of New South Wales Belmore units. The Minister for Disability Services provided the following response:

This is a matter for the Commonwealth Minister for Veterans' Affairs, Bruce Billson.

#### **BATEMANS MARINE PARK PRESS RELEASE**

On 28 September 2006 the Hon. Jon Jenkins asked the Minister for Primary Industries a question without notice regarding a Batemans Marine Park press release. The Minister for the Environment provided the following response:

The creation of a new marine park on the far south coast (that is, in the Batemans Shelf marine bioregion) was flagged in 2001 in the Government's Action for the Environment Statement.

Batemans Marine Park was declared on 7 April 2006, some 14 months after the press release, and following the completion of detailed bioregional and socio-economic assessments.

The related reports; Broad-scale Biodiversity Assessment of the Batemans Shelf and Twofold Shelf Marine Bioregions, Socio-Economic Assessment of the Batemans Marine Park, and Estimated Impact of Batemans Marine Park on Commercial Activities can be accessed from the Marine Parks Authority website ([www.mpa.nsw.gov.au](http://www.mpa.nsw.gov.au)).

#### **Questions without notice concluded.**

### **CRIMINAL PROCEDURE AMENDMENT (SEXUAL AND OTHER OFFENCES) BILL**

#### **CHARTER OF BUDGET HONESTY (ELECTION PROMISES COSTING) 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.**

*[The President left the chair at 1.05 p.m. The House resumed at 2.30 p.m.]*

### **NSW OMBUDSMAN**

#### **Reports**

**The Hon. John Della Bosca** tabled the following reports:

- (1) Firearms Amendment (Public Safety) Act 2002 and the Ombudsman Act 1974—Report entitled "Firearm and Explosive Detection Dogs: Review of the Firearms Amendment (Public Safety) Act 2002", dated April 2006.
- (2) Police Powers (Drug Detection in Border Areas Trial) Act 2003 and the Ombudsman Act 1974—Report entitled "Review of the Police Powers (Drug Detection in Border Areas Trial) Act 2003, dated January 2005.



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

**Government Business Orders of the Day Nos 2 to 7 postponed on motion by the Hon. John Della Bosca.**

**STATE REVENUE LEGISLATION AMENDMENT (TAX CONCESSIONS) 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) [2.32 p.m.], on behalf of the Hon. Michael Costa: I move:

That this bill be now read a second time.

As the second reading speech is lengthy I seek leave to have it incorporated in *Hansard*.

**Leave granted.**

The State Revenue Legislation Amendment (Tax Concessions) Bill 2006 implements land tax changes announced in the 2006-2007 Budget.

The bill also clarifies and extends a number of concessions from State taxes.

The bill makes amendments to the Duties Act 1997 the Gaming Machine Tax Act 2001, the Land Tax Management Act 1956, the Valuation of Land Act 1916 and the Taxation Administration Act 1996.

I will deal first with amendments relating to land tax.

In September 2005 the High Court ruled that in most unit trusts a unit holder is not the owner of the land held by the trust.

This decision means that the unit trust and not the unit holder is liable for land tax at the flat rate applying to special trusts with no entitlement to the threshold.

Measures were announced in the 2006-2007 Budget to provide relief for certain family unit trusts and for unit trusts that restructure into fixed trusts.

The amendments contained in this Bill implement these measures with effect from the 2006 land tax year.

The amendments set out the eligibility criteria for family unit trusts to continue to receive the benefit of the tax-free threshold.

The amendments also allow unit trusts that elect to restructure into fixed trusts to do so without incurring State taxes on the restructuring transactions.

Three-year averaging of land values was announced in the Budget to reduce the large variations in tax assessments that can occur from year to year.

The Bill includes some minor amendments to the averaging legislation.

One amendment simplifies the system of averaging values of land subject to a protected tenancy and land subject to a heritage restriction under an environmental planning instrument.

The amendments will provide for the last three concessional land values to be averaged rather than having to average the land values before the reduction applies.

This is consistent with the way land values are averaged where the land is subject to a heritage order under the Heritage Act.

The Bill also includes a statute law amendment relating to the land value of crown land, where the lessee is liable for land tax.

The amendment will provide for the land value of a parcel of crown land that is part of a larger parcel to be separately recorded in the Register of land values.

The Bill makes minor amendments to the valuation objection provisions of the Valuation of Land Act.

Amendments contained in the 2006 Budget measures legislation gave taxpayers a right to object to all three land values that make up the average value of a parcel of land.

In effect, this extended the time for taxpayers to lodge objections against prior year values.

Taxpayers will be able to object to prior years' valuations, provided those valuations have not already been the subject of an objection.

The amendments do, however, provide discretion for the Valuer-General to consider a second objection against a prior year valuation if the taxpayer can demonstrate special circumstances.

A consequential amendment is made to the Taxation Administration Act.

When an objection is made to a prior year land value used to determine the average value that objection does not affect the validity of the land tax assessment for the prior year.

The Bill makes a number of amendments to the Duties Act primarily for the purpose of providing or extending concessions and exemptions from duty.

A recent decision of the Administrative Decisions Tribunal highlighted some anomalies in the application of a provision that aggregates transactions for duties purposes.

The provision effectively imposes a higher rate of duty on multiple transactions as part of one arrangement subject to a discretion for the Chief Commissioner not to aggregate.

The Tribunal decision has added uncertainty as to when the discretion should apply.

A review by the Office of State Revenue found that although the aggregation provision can apply to some transactions that are outside its intended scope the discretion is rarely applied.

In particular aggregation can apply to arrangements where separate vendors play no part in that arrangement, such as where a developer purchases blocks of adjoining land from unrelated vendors.

The Bill therefore removes the redundant discretion and adds another limitation to the aggregation provision so that it only applies if the transferor is the same person or the transferors are associated persons.

The Bill also adds a specific exception for purchases of multiple lots by home builders.

These amendments will improve taxpayer certainty, reduce compliance and administration costs, and reduce the duty payable in some cases by builders and developers.

Call option assignment duty prevents avoidance of transfer duty by the use of options.

Since this duty was introduced in June 2005 the Office of State Revenue has held discussions with the Property Council of Australia, the Housing Industry Association and the Urban Development Institute of Australia.

Although those bodies acknowledge the need to address duty avoidance practices they have identified what they consider to be unintended consequences of the provisions.

The Bill clarifies the definition of a "call option" to ensure it does not include an agreement for sale and introduces two new exemptions.

The first is an exemption for assignment of options by home builders.

Developers and builders use put and call options as a means of allowing the builder to construct a home for sale on land owned by a developer.

The builder enters into a building contract with a home buyer and subsequently assigns the option over the land to the home buyer.

This Bill exempts this assignment from duty.

The second is a specific exemption for intra-group transfers of call options where the assignee and assignor are corporations that are members of a group.

Although these assignments may be eligible for an exemption as a corporate reconstruction that exemption requires an application to the Chief Commissioner for approval of each transaction.

The new exemption will therefore remove an unnecessary administrative and compliance burden.

The Bill extends a duty concession that applies to a home equity release scheme, which allows the home owner to access part of the value of their home without affecting their rights as owner.

Many older people have valuable homes but little cash on which to live. A home equity release scheme provides home owners with cash in exchange for the right to a specified percentage of the future sale proceeds when the home is eventually sold.

The minimum age for this scheme was originally set at 65 years.

Following further representations the age has been reduced to 60 years.

The Bill also clarifies a provision that potentially imposes an unintended nominal duty on certain documents that establish or govern a managed investment scheme. The Bill removes that liability.

A duties exemption applies to transfers of land used for primary production between family members.

The Bill adopts for duties purposes the same definition of land used for primary production used in the land tax legislation.

This will ensure consistent treatment of primary production land for State tax purposes.

The exemption also defines family members by reference to various relationships by blood or marriage.

An anomaly has been identified whereby the former spouse of a deceased family member would not be eligible for the exemption despite being considered part of the family conducting the farming business.

The Bill confirms that the former spouse of a deceased family member is part of the family for the purposes of the exemption.

When assessing a liability to land rich duty there has been a longstanding practice that the liability to duty arising from an agreement to purchase shares occurs on completion of the agreement.

A decision of the Supreme Court stated that that the liability arises on registration of the transfer.

This decision would have the effect of deferring liability to duty or even allowing avoidance of that liability in some circumstances. The Bill restores the previous practice.

Finally the Bill contains a statute law amendment to the Gaming Machine Tax Act to correct a minor drafting error.

This Bill is more good news for the New South Wales economy from the Iemma Government.

This is the Government that in just over twelve months has abolished Vendor Duty, lifted the land tax threshold, cut Workers Compensation premiums for business by 15%, cut payroll tax for companies locating or expanding in areas of higher unemployment and solved the pokies tax issue with the Clubs.

This Bill demonstrates the Iemma Government's determination to continue building a strong New South Wales economy, an economy with unemployment at its lowest levels in 25 years, the economy of a State that continues to be awarded the highest credit rating of Triple A.

Compare the Government's sound financial management to the Opposition and its scary PeterMeter—now up to more than \$25 billion of unfunded commitments.

The Opposition is promising everything to everyone. They'll either break their promises or send New South Wales broke.

Given their recent public pronouncements, they are a genuine risk to our Triple A credit rating.

After all let's not forget they have form. The last time the members opposite were in Government, New South Wales was placed on credit watch.

The risk that they'd bankrupt New South Wales is real.

While they're busy announcing their latest crazy spending proposals, the Iemma Government is getting on with further strengthening the New South Wales economy.

I table a summary of the Bill for the assistance of Honourable Members and seek its incorporation into Hansard.

I commend the Bill to the House.

**The Hon. GREG PEARCE** [2.33 p.m.]: The State Revenue Legislation Amendment (Tax Concessions) Bill is a bit of a misnomer. It seeks to put out a message that the Government is interested in giving tax concessions when, in fact, since the elevation of Morris Iemma to the Premier's position, the Government has increased taxes by more than \$700 million, an extraordinary amount at a time when the State's economy is rapidly spiralling downwards because of the mismanagement of the Government over the past 12 years and its failure to come up with solutions. Instead, it has come up with lots of excuses. The Opposition does not oppose the bill because it deals with a number of longer-term tax problems and anomalies that were created in recent years as the Government introduced tax after tax with a view to clawing every possible cent out of the community to pay for its incompetence and profligacy.

The 2006-07 State budget announced various changes to land tax, some of which were overdue. The major change was to valuations by averaging over the previous three years. The Opposition agrees that attention needed to be given to the valuation process, but there is a great deal of concern with the option that the Government has adopted: that is, to take an average of the previous three years because that may well have adverse consequences for people in a property market that is declining fairly rapidly. That can be contrasted with the Queensland process where the lowest of the previous three years valuations is taken as the value.

The long overdue changes to the fine details of the Duties Act and the Land Tax Management Act will return only a paltry \$10 million to hard-hit New South Wales taxpayers. Over the past 12 years the Government has failed to provide any significant relief to New South Wales taxpayers. I am told by the shadow finance Minister, the honourable member for Southern Highlands, that during her briefing from Government officials they admitted that the State Revenue Legislation Amendment (Tax Concessions) Bill would have "virtually no effect", with "negligible benefits" in many of the amendments. As I said earlier, the total tax concessions would be around only \$10 million.

The Iemma-Costa Labor Government has dragged in hundreds of millions of dollars in the past two years from land tax and payroll tax and enjoyed the revenue from punitive and unfair tax extensions, but it is now expecting a pat on the back for giving back just \$10 million in so-called concessions. We need significant tax reform in New South Wales on a scale that benefits the thousands of families and businesses that need that sort of relief. The Government has admitted that changes to unit trust land tax measures will produce only \$5 million of savings compared with additional revenues received from the original High Court decision of \$20 million. The High Court decision was made earlier this year, so the Government could have made those changes in May and avoided imposing those tax costs on investors that are now being reversed.

The aggregation provisions under the Duties Act are also expected to return about only \$5 million. Many other concessions are admitted to affect only a handful of people and even fewer now because of a cooling property market. The bill attempts to clarify and extend a number of concessions for State taxes. It amends the Duties Act 1987, the Gaming Machine Tax Act 2001, the Land Tax Management Act 1956, the Valuation of Land Act 1916 and the Taxation Administration Act 1996. One measure contained in the bill involves the land rich duty provision, and gives a mildly positive revenue of \$1 million.

The bill is yet another attempt by the Government to paint the impression that it is doing positive things for the State. Indeed what the Government has done can be contrasted with some of its current advertising. This morning I saw the Government is advertising that it has 500 new trains on the way. That contract is still out to tender! The Government is good at fudging the truth, but not too good at delivery. As I said earlier, the Opposition will not oppose this bill, because it deals with a number of long overdue adjustments and it rectifies some anomalies in the legislation. Those changes should proceed.

**Ms LEE RHIANNON** [2.40 p.m.]: The Greens do not support the State Revenue Legislation Amendment (Tax Concessions) Bill. The Greens are concerned that the net effect of this bill will be to extend tax exemptions and reduce land tax revenue. The Government claims that this bill mainly removes anomalies. The Greens do not oppose many of these changes, but we are concerned that the devil is hiding in the detail of this bill. We are concerned that the Government is trying to sneak through a number of important amendments in this bill, which will subsidise its developer mates and create loopholes for the big end of town to evade taxes.

The second reading speech delivered by Mr McLeay in the lower House provides no information on the revenue implications of the bill, which is extraordinary. This bill is called the State Revenue Legislation Amendment (Tax Concessions) Bill, but those details are not provided. We have been given no information about how many taxes and tax savings are involved in each case. Presumably Treasury has made those estimates, but they have not been presented in this Parliament. I cannot help but note the timing of this bill. Is this a timely roll-out of extensions to tax exemptions in the lead-up to the State election? The track record of the Government certainly makes one think that something like that is going on.

The Government should design a tax system that is fair, progressive and efficient, not introduce another grab-bag bill of amendments that will further complicate taxation in New South Wales. The Greens believe that land tax is an important source of State revenue. We think it could well compromise a larger proportion of total revenues, so long as the land valuations on which the tax is based are consistent and fair. The Greens are concerned about the proposed amendments in this bill to extend land tax exemptions to multiple lots held by home builders. Is this another subsidy to developers? Is this some kind of pay-off to developers who donate to the current Government? The Government has not provided a sensible justification for this amendment.

We are concerned about the proposal in the bill to extend tax exemptions related to trusts. The use of family trusts to escape income tax liabilities is notorious. The Federal Government has not moved on this issue because many Liberal and Nationals parliamentarians have family trusts. The Greens are concerned that this bill might extend the possibility of trusts being used as a focal point to avoid land tax as well as income tax. The Australian Labor Party Government has handled land tax pretty badly in the past few years—an issue on which I

believe many members would agree. Land tax under the Australian Labor Party has been a meandering story of mismanagement, poor judgment and bad policy.

Mr Egan, the former Treasurer, made some hurried changes—changes that I think he found quite embarrassing at times. He abolished premium property tax after introducing it with great fanfare. It was a galling move by a Labor Government to abolish a highly progressive tax. His successor, Mr Andrew Refshauge, then felt compelled to reverse some of Mr Egan's changes. At a time when our funding for public schools is dropping—

**The Hon. Michael Costa:** No it is not; it is going up. Acknowledge that interjection!

**Ms LEE RHIANNON:** I acknowledge that interjection. Once again, the Treasurer has got it wrong because he does not understand how much money is being sent off to private schools. Our hospital system is in crisis and our public transport system is limping along. The Greens question the motives behind a bill that will decrease tax revenue. We do not need another bill that makes even more concessions and exemptions. We do not need tax concessions made on the fly in the lead-up to the next election.

What we need to do is remove the loopholes and iron out the inconsistencies in the taxation system in New South Wales. We need to make the system clearer, simpler and more comprehensive, and we need a sensible debate on progressive tax reform. This Government is keen on calling summits. Perhaps it should call a summit on this issue. That is about the only way it will get some wisdom because of the hard-nosed way in which this Treasurer behaves. The current bill contributes nothing to that goal and the Greens do not support it.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [2.43 p.m.]: The Government introduced the State Revenue Legislation Amendment (Tax Concessions) Bill to implement its budget changes. Obviously the bill contains tax concessions for land tax, an extremely unpopular tax because it caught people by their asset base. If older people had built up an asset base in their family property it was hard hit by the premium property tax. Of course, that is one of the concessions that has been removed. It reflects on the whole economy and the preferential treatment of land, which distorts investment in Australia.

I remember an article in the *Australian Financial Review* that stated that the Federal Government should have introduced premium property tax to take the emphasis away from speculation in land, which, of course, damages our ability to borrow. Australians are very risk averse; they would rather put their money into property than develop industries that are needed to compete in the world. The emphasis on property resulted in our borrowing so much that we doubled the value of our properties without having any more assets. We merely doubled our private debt. If the world economy were ever corrected it would leave us in a very vulnerable position. Premium property tax certainly knocked that away. High land taxes discourage land speculation.

Ms Lee Rhiannon said that no figures were ever given in bills such as this. When the Government introduces revenue bills it never includes any numbers. Presumably those numbers are readily available because the economic implications of all these bills are included in Cabinet statements. The statements that tell the Cabinet as a whole the economic impact of every bill never get to this Parliament, which, in a sense, is an insult to this Parliament. However, that is par for the course with this Government. The Parliament is conned and bludgeoned into doing what the Executive wants. With the party discipline the way it is, the Executive usually gets what it wants.

The other interesting issue relates to property taxes. I have consistently asked the Government what is the value of the tax concession to church property, but I have never received an answer to my question. I challenge the Treasurer to answer a question that I have asked on a number of occasions. While we are talking about property tax concessions perhaps the Treasurer could tell us how much revenue is foregone by churches not paying land tax. I recognise that this bill was introduced merely to implement budget changes and that these tax concessions have been given merely in the lead-up to the next election. The Government has shown its true form by the lack of information relating to how much revenue is being giving away. We do not know what are the tax concessions for church properties, but that is just par for the course.

**The Hon. MICHAEL COSTA** (Treasurer, Minister for Infrastructure, and Minister for the Hunter) [2.47 p.m.], in reply: I thank honourable members for their contributions to the debate on this bill. I did not hear some honourable members' contributions, but I assume that the Hon. Greg Pearce was very supportive of this bill so I will not respond to any of his comments. I heard the contributions of Ms Lee Rhiannon and the Hon. Dr Arthur Chesterfield-Evans, the last of the Australian Democrats in this House. I assure honourable members that

it is never my intention to insult the Parliament. However, some honourable members often put forward views that do not command much respect. That applies to the contribution of the Hon. Dr Arthur Chesterfield-Evans and, in particular, to his reference to church properties.

**The Hon. Dr Arthur Chesterfield-Evans:** You will not answer it, will you? You never do answer it.

**The Hon. MICHAEL COSTA:** I have often said to the Greens and the Australian Democrats that they would be better off pursuing a mainstream religion—a tried and tested religion that has been around for 2,000 years—rather than their environmental nonsense. If somebody worked out how much we poured into their projects at the end of the day it could be argued that the churches were not doing too well out of the process. The purpose of the State Revenue Legislation Amendment (Tax Concessions) Bill—

**The Hon. Dr Arthur Chesterfield-Evans:** You can't answer it. You don't want to know, do you?

**The Hon. MICHAEL COSTA:** We will miss the honourable member when he goes off into the sunset with Natasha, like Shane and the horse. I am sure honourable members know who the horse is. The bill also provides concessions and clarifications of duties and gaming machine taxes. The bill amends the Land Tax Management Act 1956, the Duties Act 1997, the Taxation Administration Act 1996, the Gaming Machine Tax Act 2001 and the Valuation of Land Act 1916. The bill clarifies and extends a number of concessions or exemptions from State taxes, including implementation of concessions for family unit trusts and for unit trusts that are restructured to be eligible for land tax concessions; simplification of the system of averaging the value of land subject to heritage restrictions or heritage orders; clarification of the right of taxpayers to object to land values used to arrive at an average value; exemption from duty aggregation provisions purchases of multiple lots in managed investment schemes; provision for exemptions from call option assignment duty; and a reduction in the minimum age for the home equity release duties exemption—this is an important measure—from 65 to 60.

The remaining provisions in the bill improve and clarify administrative provisions relating to State taxes. This will make compliance with State tax law easier for taxpayers. The amendments in the bill complement last week's good news about the state of the New South Wales economy, particularly the budget. Last week I confirmed that we would see a final budget result for the financial year 2005-06 of more than \$1 billion, which confirms the Iemma Government's sound financial management. The Government has a solid record of meeting its fiscal targets and is on track to achieve its savings target for forward estimates. The budget discipline demonstrated over the past decade is why the ratings agencies recently confirmed the State's triple-A credit rating.

The Government is committed to sound financial management and a strong balance sheet. Contrary to what the Greens have said, this has meant that we have been able to maintain and increase expenditure on vital services. For the information of Ms Lee Rhiannon, in the 2006-07 budget expenditure on education increased by 4.4 per cent, and now totals more than \$10 billion. The Health budget increased by 7.6 per cent and expenditure on mental health increased by 11 per cent. The Transport budget increased by 14 per cent, and expenditure on rail increased by 18.2 per cent. The Police budget increased by almost 8 per cent—and I could continue.

**The Hon. Greg Pearce:** This is not a speech in reply.

**The Hon. MICHAEL COSTA:** Ms Lee Rhiannon raised the issue. The Government is clearly able to afford the changes to land tax arrangements. They are fair.

**The Hon. Greg Pearce:** They're miserly.

**The Hon. MICHAEL COSTA:** On the one hand the Greens tell us that we are throwing away revenue that we should spend on services and on the other the Opposition claims that we are miserly. That means that we have probably got it right—all the sensible people think so. The Housing Industry Association and the Property Council of Australia support a number of these measures, which indicates that we have the clear support of those with detailed knowledge of such matters. These measures are additional to a number of extra tax concessions offered by the State Government, which total about \$4.4 billion.

**The Hon. Greg Pearce:** That's not a tax concession.

**The Hon. MICHAEL COSTA:** I said that there were a number of additional concessions in the State budget. For the benefit of the Greens—who do not seem to read the budget papers—land tax averaging was

worth \$57 million, and will total up to \$395 million over four years. Lifting the land tax threshold was worth \$53 million. Over four years, as was outlined in the budget, it will be worth \$234 million. The abolition of vendor duty has been worth \$1.6 billion over the past four years. Payroll tax concessions are worth \$95 million. There is a poker machine tax reduction of \$233 million and a commitment to abolish a range of taxes—hire on goods, leases, unlisted market securities and mortgage loan securities—worth \$622 million over four years. The changes to the taxation on family-held unit trusts are worth \$12 million over four years.

All this information was available to the Greens, but they chose to misrepresent the situation and to claim that the Government had not outlined the relevant costs. I also put on record the fact that, contrary to the allegations made in this place today, the Government provides a comprehensive set of transfer and mortgage duty concessions for first home buyers, which cost us \$437 million in 2006-07. That is a very generous array of tax cuts—delivered at a time when the Government was increasing expenditure on vital services—that has the support of major interest groups with detailed knowledge of these areas. I commend the bill to the House.

**Motion agreed to.**

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

### **POLICE AMENDMENT (MISCELLANEOUS) BILL**

#### **WESTERN SYDNEY PARKLANDS BILL**

**Bills received.**

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

**Motion by the Hon. Michael Costa 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.**

### **DEER BILL**

#### **Second Reading**

**The Hon. MICHAEL COSTA** (Treasurer, Minister for Infrastructure, and Minister for the Hunter) [2.57 p.m.], on behalf of the Hon. Tony Kelly: 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.**

The Deer Bill introduces new legislation to clarify the ownership of deer. It also regulates the keeping and management of captive deer. Further, it prevents the release of deer from captivity and introduces mechanisms to control deer that are not captive. The difficulties in managing deer have led to significant public safety, environmental and agricultural impacts. The bill will help manage deer to mitigate these impacts. As honourable members would know, deer are not native to Australia. However, they have a long history in New South Wales when viewed from the perspective of European settlement. The first deer are believed to have been imported into New South Wales in 1803 and have since established in the Australian bush, particularly in Victoria and New South Wales.

Two hundred years later those deer populations are flourishing and today we understand much better the perils of not managing introduced wild animals. Introduced animals are well known for the environmental damage they cause when present in large numbers. Deer are no different, and excessive deer populations can destroy native vegetation and damage sensitive areas in our fragile Australian landscape.

The New South Wales Threatened Species Scientific Committee has recently recognised the impact of deer on our environment. The committee has listed the degradation of vegetation and environment caused by feral deer as a key threatening process under the Threatened Species Conservation Act 1995. I am aware that this decision remains somewhat controversial but there seems to be no doubt that excessive numbers of deer in the wild can damage the environment. Nor is there any doubt about the agricultural harm they cause by competing with grazing livestock and damaging crops. Deer are also becoming an increasing hazard for motorists outside towns and cities. At about 5.30 a.m. when I was on my way to Parliament House I drove down a back road past the Yengo National Park and I saw this animal jump out. I thought it was a horse. It was a deer the size of a horse with huge antlers that almost took up the front of the car. Deer are a hazard.

**The Hon. Robert Brown:** Did he you get a GPS location for them?

**The Hon. MICHAEL COSTA:** Do you want a GPS location for it? Can I have the head? Can I mount the head? Deer wander onto roads and because they are flighty, their behaviour can be unpredictable. It sounds like the Greens! These are all good reasons for better managing captive deer and for stronger control of wild deer. While deer in the wild can cause significant harm, captive deer remain a legitimate industry for farmers. Deer farming is well established in New South Wales. This State has nearly a quarter of Australia's dedicated deer farmers. Deer products from captive deer fill an important niche market both at home and overseas. There is a steadily increasing demand from overseas markets for products such as venison and velvet antler. For example, 90 per cent of Australian venison production is exported.

While the development of the commercial deer industry is worthwhile, it is also important to recognise that the control and management of deer presents unique challenges. The Deer Bill is the culmination of a number of years of consideration of the unique issues concerning deer and consultation with stakeholders. The Government has made every endeavour to take into consideration the needs of the deer industry, as well as the needs of other farmers and public land managers in New South Wales. The Deer Bill addresses the range of different issues and stakeholder needs that arise with respect to deer. First, the bill clarifies the issue of ownership of deer. Second, it regulates the keeping and management of captive deer. As part of this, it puts in place measures to help prevent the release of deer from captivity. And, third, the bill provides for the control of wild deer. There are complex legal issues surrounding the ownership of deer that do not apply to other stock animals, and there is no simple solution to these matters. I commend the bill to the House.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [3.03 p.m.]: If I cannot congratulate the Minister on his content I can certainly congratulate him on his brevity. I thank the Leader of Government Business, the Minister for Justice, for allowing this bill to be introduced today; some deer farmers are present in the gallery today and have been here on several other occasions waiting for this bill to be introduced—for some, quite a significant imposition.

I lead for the Opposition on the Deer Bill and state from the outset that we have some serious concerns about it—concerns that are well known to the Minister and his office. In early September this bill was introduced in the Legislative Assembly, a few days before which a copy of the bill was available from the Clerks. My office then requested a briefing note from the Minister's office. The Opposition had very little time at all to consult and form a position on the bill. Since then the Opposition has had a large amount time to consider the bill before its introduction in this Chamber today. During that time I have consulted with the Deer Industry Association of Australia and the New South Wales Farmers Association. Both have concerns about the bill. I have tried to put politics aside on this issue to arrive at a reasonable resolution. I have worked closely with the Minister's office and his staff to get a workable solution for the deer industry while satisfying the Government's quite proper desire to control feral deer.

The Opposition supports any move to control feral deer. Deer were introduced into Australia during early European settlement. Feral deer are becoming an increasing problem in regional areas and in national parks. It is estimated that 200,000 feral deer are in Australia, 85 per cent of which were originally released by acclimatisation societies, 6 per cent through escapes and releases from deer farms and 9 per cent by translocation. But there is a right way and a wrong way to go about controlling feral animals. The Government states that the purpose of this bill is to clarify the ownership of deer, to regulate the keeping of deer, to prevent the release of deer from captivity and control deer that are not captive. We must remember that this legislation is about feral deer. Those points will become even more important in Committee. It needs to be said that deer farming is a legitimate industry for farmers and the industry is well established in New South Wales. Frankly, it is of great economic importance.



I will start with the provisions relating to the ownership of deer. The bill provides that a deer that is held in captivity may be bought, sold or otherwise dealt with or disposed of; if a deer ceases to be held in captivity, all property in the deer is immediately extinguished; and if a person captures a deer that is not held in captivity, the person becomes the owner of the deer. I can understand why those provisions cause great angst amongst deer farmers. It means that if deer escape or are purposely released from captivity the farmer is no longer classified as the owner, and anyone, be it a commercial competitor or a hunter, for example, can claim automatic ownership of the deer. The Minister has said that this matter cannot be resolved any further because under common law deer are considered wild animals and not domestic animals.

I have met with the Minister's departmental advisers in his office about the matter and my staff and I have had numerous telephone conversations to resolve this issue. We put forward several options, including time frames and borders, and after they were flatly rejected I suggested that the Tasmanian regulations should be reviewed by the Minister. Unfortunately, the Minister wrote to me on Friday 15 September indicating that the Government was unable to amend the bill to ensure deer farmers do not immediately lose their property rights to escaped deer. The Opposition was sorry to hear that because it had hoped that the issue could have been resolved for the industry. However, the Opposition continued to work with the industry and the New South Wales Farmers Association behind the scenes. When the suggestion of a boundary around properties was rejected, I foreshadowed an amendment relating to the ownership of deer allowing a period of 48 hours for owners to recapture escaped animals. Under this legislation once a deer is not in captivity it is considered wild and, as a result, the farmer is no longer its owner; the deer farmer holds no property rights in the animal. This is outrageous and unworkable, and it could set a worrying precedent for all other agricultural industries—although the Minister no doubt will strongly refute this. Wild pigs and goats, for example, cause enormous damage to the environment, and pig and goat farmers could also be slapped with similar legislation in the future.

**Reverend the Hon. Dr Gordon Moyes:** And dairy farmers.

**The Hon. DUNCAN GAY:** Dairy farmers and, dare I say, alpaca farmers, Shetland pony farmers and even mountain cattle farmers might face the same situation in the future if we target deer with this legislative provision. It is estimated that feral pig populations vary between 13 million and 23 million and that feral goat populations are at 23 million, while deer numbers are estimated at a meagre 200,000. The mentality has been adopted that the blame for the feral animal problem in this country lies solely with contemporary industries, despite the fact the animals were introduced by European settlers. The deer industry is being burdened with this overregulation and tedious red tape. The New South Wales branch of the Deer Industry Association of Australia says that the ownership issue will create business risks and uncertainty in the industry.

The Opposition had planned to move an amendment that would allow a deer farmer a reasonable period of time to recapture tagged deer that had escaped or were released by another person. The amendment would have allowed a deer farmer 48 hours to recapture deer. The industry and the Opposition considered that a reasonable outcome after the Minister's office told us that a boundary or exclusion zone around properties would not be workable. The Opposition believed that such an amendment would have allowed deer farmers sufficient time to recover deer that escape as the result of a storm, for example. We thank the NSW Farmers Association for its good work and for its support of the industry and the amendment. I have a letter from the association's president, Jock Laurie, clearly outlining that support.

A deer farmer whose deer had escaped or had been released from captivity would have had responsibility under the Opposition amendment to alert the owner or occupier of adjoining land, NSW Police, the Game Council of New South Wales and the local rural lands protection board. Our amendment clearly stated that those provisions would apply only to deer that were clearly marked with a tag, label or brand. Almost the entire deer industry, if not all of it, practises tagging. Wild deer could therefore still have been effectively controlled.

The Minister's office has often been contradictory about ownership. On the one hand it has said that deer that escape or are released from captivity contribute to the growing problem of wild deer. On the other hand, the Minister's office told me that deer that escape or are released often hang around the fence line, and all that is required is for the gates to be opened and the deer will return. For example, in the second reading speech in the other place, it was said:

Farmed deer belong to their owner for a short time after they have escaped. That ownership exists for as long as the deer may return to the herd, but as soon as this tendency to return ceases, ownership is lost.

Yet the Minister says this legislation "clarifies the common law position". It does not do any such thing. Instead, it provides that deer farmers have no property rights in the deer once the deer is out of captivity. At times the

Minister's office has simply made statements to try to convince us that what the Government is trying to do is right. However, it is evident that the Minister and even his own staff have questioned the reasoning behind this ownership issue and finally have realised that that provision of the bill is absurd.

The fact remains that where deer escape due to a fence coming down in a storm, or where they have been released through a cut fence, farmers should have the opportunity to recover their property. Sheep and cattle producers are afforded this opportunity. The Minister has failed to address this ownership issue; he seems to have his head in the sand. An ordinary person can see that such legislation could probably harm the deer farming industry in New South Wales, while the industry continues to grow and prosper in other, more competitive States. More and more we are seeing industry leaving New South Wales because of the pigheadedness of our Government and our bureaucrats. The Minister's bill effectively legislates the saying "finders keepers, losers weepers". In the meantime an amendment has been put forward by the Shooters Party to clarify the ownership issue. That amendment will be considered in detail in Committee. Amendment No. 2 of the Shooters Party reads:

Page 3, clause 4. Insert after line 18:

- (4) Despite subsections (2) and (3), if a person other than an authorised officer captures a deer within 2 kilometres of the enclosure or other place (not being a vehicle) in which the deer was last held in captivity, property in the deer is not extinguished.

We congratulated the Shooters Party and the Government on that amendment. Originally the radius suggested was 1 kilometre, but our request to have it extended to 2 kilometres was agreed to by the Government and the Shooters Party. We indicated we would support that amendment—as we will. But we were shocked by a literal interpretation of the phrase "if a person other than an authorised person captures a deer". We believed the Government and the Shooters Party had overlooked the circumstance that someone who shot a deer belonging to a deer farmer where the deer was within 2 kilometres of the farmer's property would not be regarded as having committed an offence. Bear in mind I am talking about a tagged, marked deer belonging to the farmer. The amendment certainly reads that way.

We drafted an amendment, which we will move in Committee, to add after the word "captures" in that amendment of the Shooters Party the words "or kills". Because I believed this was an oversight I approached the representative of the Shooters Party and indicated that we had discovered an oversight in what we thought was a well-meaning amendment, designed to help the industry and the farmer. But the member of the Shooters Party tells me it was not an oversight; that shooters actually want to kill deer that belong to deer farmers. So we will move an amendment to that amendment. We challenge the Government, the crossbench and every member of this House to say whether they will support shooters in their aim to kill everything they can, even domesticated and farmed deer that range outside the owner's property, whether within 2 kilometres of that property or not.

The Opposition will be taking up that challenge on behalf of the industry. We believe that feral deer should be captured and/or killed where they are doing harm. We do not believe that this legislation should enable members of the Shooters Party to go out and shoot the property of deer farmers. The Shooters Party should remember that many of the shooters in this State are also farmers. They too own stud stock. They would find it abhorrent that the Shooters Party is putting forward an amendment—which I thought originally was an oversight, but which the Shooters Party member of Parliament now tells me is deliberate in its intent—to permit shooters to shoot the property of genuine deer farmers in this State. I congratulate Tony Hewson, chief of staff of the Hon. Ian Macdonald, on the work that he did with the Opposition to try to find a solution to this issue. I suspect the Minister for Primary Industries would have many more problems than he already has if he did not have such a capable chief of staff. The Opposition will prosecute the case in Committee to protect the property of the people of this State.

**The Hon. ROBERT BROWN** [3.19 p.m.]: I thank the Deputy Leader of the Opposition for his contribution to the debate. Some of the things he said were not correct, and I will seek to address those during my speech and in Committee, when some amendments will be moved. The Deer Bill 2006 was introduced to clarify the ownership of deer, to regulate the keeping and management of captivity, to prevent the release of deer from captivity and to introduce mechanisms to control deer that are not captive. That last point is very important; one of the main points of the bill—to control deer that are not captive. The bill sits alongside existing legislation that also deals with the management of wild and captive deer, such as, the Rural Lands Protection Act 1998 and its attendant regulation, the Game and Feral Animal Control Act, the Prevention of Cruelty to Animals Act, the National Parks and Wildlife Act and others.

In general, the Shooters Party supports the legislation. The bill confirms the common law position that ownership of deer is extinguished when deer escape captivity. That is sensible and provides certainty for those

wishing to control deer. However, the bill also needs to ensure that deer farmers have the right to recapture deer that escape their property, and to ensure that the reasonable exercise of that right is not put at risk by others who might wish to capture their deer. Honourable members should bear in mind that one of the aims of the bill is to control deer that are outside the farmer's premises, deer that have escaped or are wild. It is in the best interest of the community that deer farmers be encouraged to recapture their escaped deer so as to prevent dispersal of the deer into the environment. A lot of statements have been made over the years about hunters releasing animals and looking after their own private interests in that regard, but that is mostly smoke and mirrors.

I foreshadow that I will move some amendments during the Committee stage of the bill that I believe will improve the operation of the legislation. In his second reading speech in the other place, the Parliamentary Secretary, the honourable member for Campbelltown, introduced the bill by referring to the history of this introduced species in Australia and New South Wales. He was correct in pointing out that deer have been part of the Australian ecosystem since shortly after European settlement. As pointed out by the Minister in his second reading speech in this House, several deer—believed to be chital or spotted deer—were introduced in 1803. The records indicate that they were introduced by Dr John Harris, surgeon to the 102 Regiment Afoot, New South Wales Corps.

The Deputy Leader of the Opposition gave the House a broad-brush comparison of the spread and number of feral pigs and feral goats compared to deer. Deer are a nuisance; a small pest problem at the very worst. To give honourable members an idea of the current spread and status of wild deer in New South Wales I quote from the submission made in December 2003 to the New South Wales Scientific Committee by eminent scientist and recognised deer expert Dr Tony English. I understand that Dr English is or has been a consultant to the Deer Industry Association. He stated:

The presence of at least 5 deer species in the wild in New South Wales is not in question (hog deer almost certainly do not now occur), with acceptance by the Scientific Committee that they have a patchy distribution in forest and woodland in eastern New South Wales.

There are populations of red deer and fallow deer west of the Great Dividing Range. The most recent survey conducted by West and Saunders (2003) on the distribution and density of wild deer in New South Wales reveals that deer collectively inhabit about 5% of NSW and the ACT, compared to 2% in 1996.

That indicates an increase in their distribution. Dr English stated further:

Despite this change in the situation, the authors noted that a majority of respondents to their survey—

Most of the respondents to the survey were Rural Lands Protection Board officers—

did not perceive wild deer to be overly abundant, compared to the many other introduced species in NSW.

And the Deputy Leader of the Opposition expanded upon the point. I quote further from the same document by Dr English:

In looking at the current status of wild deer in this country it is striking just how little research has been conducted on their distribution and impacts, despite their presence over almost 200 years.

It is reasonable to assume that this is due in large part to perceptions about their low pest status relative to species like feral pigs, feral goats and foxes.

Indeed, in a recent review of pest animal management in Australia (Hart 2002), deer are not even mentioned in the list of species labelled as "minor or non-pest" (which included European brown hares and brown rats).

It is noteworthy that this paper emanates from the Bureau of Rural Sciences [BRS] National Feral Animal Control Program [NFACP], which is the peak national body in the area of pest animal management.

The New South Wales Agriculture Pest Animal Survey 2002 involved analysis of pest animal distribution in abundance across New South Wales, and involved rangers and field staff from the rural lands protection board system, most of whom had long work experience in the area and had spent most of their time engaged in pest animal management issues. When asked to estimate the severity of impacts associated with wild deer, 46 per cent of the respondents perceived the agricultural impacts of deer, and 33 per cent perceived the environmental impacts of deer, to be low. As a matter of interest, that survey found that foxes, rabbits and feral pigs were perceived to be the most abundant pest animals in New South Wales.

I also note the reference in the Parliamentary Secretary's second reading speech in the other place to the listing of wild deer by the New South Wales Scientific Committee in 2004 as a key threatening process under

the provisions of the Threatened Species Conservation Act 1995. With regard to recent comments on other matters, I note that the Treasurer and the Deputy Leader of the Opposition are both openly sceptical about the New South Wales Scientific Committee and its findings. That scepticism is not without merit, particularly when one examines the motives, process and findings of the Scientific Committee in relation to the listing of deer in New South Wales. Honourable members may not be aware that the former Scientific Committee that served from 1996 to 2002 under the chairmanship of Dr Chris Dickman had declined to make a declaration on rusa deer, that is, one species only, in the Royal National Park, that is, one location only.

Similarly, the Victorian Scientific Committee more recently declined to make a listing for sambar deer under that State's threatened species legislation. Therefore, the listing of deer in New South Wales becomes even more curious when one considers that the same or similar scientific material was utilised in all three cases. It is the story of the sharks again, I guess. I have spoken with Dr Andrew Moriarty, who was widely quoted by the New South Wales Scientific Committee, about his work on this issue. He stated to me that he does not believe his research supported the conclusions of the Scientific Committee to list all species of deer as a key threatening process statewide. To emphasise the point, I quote again from the relevant submission by Dr English. It states:

To extrapolate the results of a study of one species in one place (rusa deer in the Royal National Park) to all 6 deer species across the whole State is simply not valid.

Taking all this into account, there would seem to be no rational basis for the scientific committee to proceed to a final determination at this time, nor would the cost of developing a TAP [threat abatement plan] be justified.

Honourable members may well agree with Dr English's logic and ask how a declaration that relates to all six deer species in New South Wales could be made on a statewide basis when an identical process in relation to only one species in one specific location, in two separate jurisdictions, had declined to list deer as a key threatening species. I would call that wishful extrapolation gone mad. I would also like to respond to an assertion made by the honourable member for Miranda in another place during debate on this bill that:

Deer can spread weeds such as blackberry and are also a risk in the spread of exotic and endemic livestock diseases.

I would like to inform the House more thoroughly about the facts, to avoid alarming honourable members and the general public about exotic diseases in wildlife or farm animals such as deer. Again I turn to Associate Professor English from the University of Sydney, who is an acknowledged expert in this field. This is his opinion as expressed in a letter to the Scientific Committee in June 2003:

It is a matter of record that cervids can and do have the potential to acquire a wide range of the diseases of domestic animals, although the expression of these diseases may vary from species to species.

It is not appropriate to then extend this fact to a conclusion that wild deer automatically pose a serious risk to the livestock sector in terms of the potential transmission of many of these pathogens.

Factors such as species, density, distribution and the degree of direct contact with livestock would all need to be taken into account in any risk analysis.

There has been no diagnosis of any strain of Johne's disease in a wild deer in this country, including negative results from a series of wild fallow deer shot on OJD-affected sheep properties around Lake George.

There have only been a handful of cases of Johne's disease in farmed deer in Australia to date. It is also worth noting that there has been only a single episode of tuberculosis in owned deer in this country, on a hobby farm with fallow deer in South Australia in 1985.

There has been no diagnosis of TB in a wild deer in Australia.

This is in marked contrast to the situation in almost every other country with a farmed deer industry.

That, of course, is a credit to Australia's farm deer industry. Associate Professor English's letter goes on:

While deer do become affected with the foot and mouth disease virus, again the susceptibility appears to vary with the species.

In the most recent UK outbreak it was not thought that wild deer played any significant role in the transmission of the virus to livestock.

In looking at the risk of wild deer transmitting the FMD virus in any outbreak of the disease in this country, it must be said that a risk does exist, but at a very much lower level than would be the case for feral pigs.

The Minister stated in his second reading speech the extent to which this country is infested with feral pigs. There are approximately 20 million feral pigs, compared with 200,000 deer. The letter continues:

No species of deer appears to be capable of acting as an amplifying host to the extent that pigs are known to be.

With respect to the parts of the bill that relate to the farming of deer and the ownership of escaped deer farm animals, I will make some observations. Before I do so, I echo the expression of thanks of the Deputy Leader of the Opposition to the Government for rearranging the order of business so that representatives from the Deer Industry Association were not unduly inconvenienced by having to come down here on a couple of occasions to listen to this debate.

Deer farming and the control of wild deer present unique problems that are not common to most other forms of animal husbandry or wild animal control. The Deputy Leader of the Opposition and other interjectors compared deer to dairy cattle, but deer are nothing like cattle, particularly in terms of the ability of each species to be managed.

**The Hon. Duncan Gay:** You have not jumped on wild jersey bulls.

**The Hon. ROBERT BROWN:** The ability of deer to jump ordinary farm fences necessitates their being kept in high-wire enclosures or paddocks—although, in acknowledging the interjection, I note that there is an advertisement on television now showing a dairy cow doing some high jumps. Farmed deer will revert to a wild state over time once they escape farm enclosures. They have a very highly developed flight response, are easily frightened, and generally once outside the confines of properly designed handling facilities cannot be mustered in the same manner as horses, cattle, sheep or goats can.

Deer that have escaped from a deer farm will revert fairly readily to a wild state unless they are coaxed back into their enclosure from close proximity and within a relatively short of time, and they can travel easily across normal fenced paddocks and disperse. Hence, farmed deer are not easily impounded—at least, not by the usual methods—if they escape from deer farms and are allowed to remain free for several weeks, or are allowed to disperse too widely.

I understand that under the common law tenet of *ferae naturae*, there is no ownership in wild animals. However, in the case of escaped deer, as the honourable member who preceded me in this debate correctly stated, under the common law tenet of *animus revertendi*, ownership exists only for as long as the deer exhibit a tendency to return to the farm herd. But as soon as the tendency to return ceases, ownership in the deer is lost. I am sure all honourable members would agree that common law legal frameworks are at best tenuous and probably deserve some amending legislation.

Clause 4 of the bill seeks to clarify the ownership issue. I am aware that the Deer Industry Association of New South Wales would prefer to see some protection of ownership rights over newly escaped deer. The idea of a deer remaining the property of the deer farmer after escape is designed to provide the deer farmer with an opportunity to attempt recovery of the deer.

The Deputy Leader of the Opposition has correctly asserted that that approach has been taken in Tasmania where farmers are given 48 hours to recapture escaped deer. Deer that remain at large longer than 48 hours become the property of the Crown. For the information of honourable members, I point out that the Tasmanian deer farm industry was built on the capture of wild deer. When the wild deer were originally captured for deer farm stock, they were subject to a Crown royalty. The status of deer outside captivity in Tasmania is a little different from that encompassed in New South Wales legislation.

In Tasmania under the Wildlife Regulations 1999, wild deer are classified as "partly protected wildlife", as indeed are wallabies, mutton-birds, ducks and quail. The deer are protected except for a one-month open season when licensed hunters may take only specified numbers of animals. This is a reflection of the value the Tasmanian Government places on that State's wild deer resource. Farmers and graziers are able to manage wild deer outside the short open season only under a mitigation permit system.

In New South Wales, under the Game and Feral Animal Control Act 2002, farmers are able to apply to the Game Council for an exemption to a closed season when that has been applied to certain deer species. Under existing New South Wales legislation, the setting of a specified time, such as 48 hours in Tasmania, within which ownership is retained for the purpose of allowing recapture would be arbitrary and could restrict the

original owner's options for recapture. Moreover it would be difficult for anyone wishing to legally control deer to know how long deer have been out of captivity. It would be impossible for the original owner to prove when the deer originally escaped, other than by the introduction of some type of bureaucratic reporting system.

The Deputy Leader of the Opposition indicated that the Opposition had considered a time-based exemption, based on a certificate being issued by the local Rural Lands Protection Board. However, I am not convinced that a temporal provision is a workable option for New South Wales. I foreshadow moving an amendment to present a potential solution based on what I consider to be a more efficient, spatial provision.

The Deputy Leader of the Opposition has also referred to extensive discussion with the Minister's office. The issue seems to be a tricky technical one and has taken an immense amount of time to come to a resolution. I understand that the bill has been around since 2003, which seems to me to be sufficient time for everybody to have got their act together, consulted the relevant parties, and come up with a common ground solution. So many times in this Parliament it seems that matters become bogged down with petty politics or technical disagreements that cause people to dig in their heels. However, I foreshadow that I will move an amendment in Committee. Part 2 of the bill deals with deer control orders. The Shooters Party generally supports the concept of deer control orders as part of this bill, but we have some reservations concerning the wording. I will address those reservations as amendments at a later stage.

Part 4 of the bill deals with authorised officers. While I am generally in agreement with most of the provisions that appear to be consistent with other similar legislation, I understand that deer farmers have made some additional suggestions to the Government regarding clause 20 (2), which relates to the use of vehicles, horses and dogs on deer farms that have been entered by authorised officers. As I said, deer are extremely flighty animals. It is possible to kill a whole herd of deer by panicking them. I am sure that farmers wish to protect their animals from authorised officers who are using incorrect procedures, methods, and equipment while dealing with deer on a deer farm or outside a deer farm. Part 4 relates to the specialised nature of deer handling and is designed to cause minimum disturbance to these flighty animals.

Before concluding I will not do anything dramatic such as take exception to some of the comments made by the Deputy Leader of the Opposition. The Shooters Party's interest in this legislation is in finding a resolution that will allow wild deer to be controlled and will prevent the build-up of higher densities of wild deer as a result of farm escapes.

Perhaps the Greens are suspicious of the Shooters Party motives in that area. The Shooters Party would like deer farmers to have some legal structure whereby farmers are either encouraged to, or have an opportunity to, catch deer. Giving escaped deer protection within a zone, as has occurred, and then killing the deer legally—as proposed in the amendment by the Deputy Leader of the Opposition—may go against the intent of the bill. To my knowledge, controlling deer came to a head in the early 1990s with the escape of deer from a deer farm at Baerami Creek. The deer were not controlled because the rural lands protection board was concerned about being sued by the owner of the deer. Wine crops on the neighbouring property were severely damaged.

The Deputy Leader of the Opposition argued that deer farmers' rights must be protected; so too must the rights of the adjoining landholders, whether they raise cereal crops, lucerne or grapes. They should have the protection of the law. Preventing adjoining farmers from controlling deer lethally, and in a hurry, is not in the spirit of the bill. I commend the bill to the House.

**Reverend the Hon. Dr GORDON MOYES** [3.42 p.m.]: The objects of the Deer Bill include clarifying the ownership of deer, regulating the keeping of captive deer, preventing the release of deer from captivity, and controlling deer that are not captive. It seems to me that these are simple objectives, but there are extremely complex amendments regarding escaped deer and the ownership of deer. I have consulted with as many people as I considered helpful, yet some issues have not been resolved. Among the menagerie of animals introduced into the Australian landscape since colonisation, feral deer can be considered as one of the most damaging. Many in the community do not realise that feral deer present such a problem.

Honourable members may recall that General Purpose Standing Committee No. 5 conducted an inquiry into feral animals. The committee's inquiry addressed the usual feral animals, including goats, pigs and camels. The committee handed down its report in October 2002. Many submissions were received, including some about feral deer. Community concern is often mixed when it comes to managing infestations of animals that physically appear, for all intents and purposes, to be warm and loving. In the case of deer, the stereotype of Bambi comes to mind. Mr Brian Gilligan, Director General of the National Parks and Wildlife Service, noted that there are

problems with some people having an affinity with certain animals, including horses, that is brumbies, and deer, that is Bambies. Mr Gilligan said:

We believe that we must treat feral animals in accordance with our statutory obligation. Horses are feral animals in the context of our management of parks ... I would stress that we have had a fairly tough lesson in the Guy Fawkes experience—

That comment referred to the aerial shooting of wild brumbies, an operation the public wholeheartedly rejected. He further said:

We must acknowledge that the community, or significant sections of the community, feels significantly differently about feral horses than they may feel about many other feral animals. The only others that come anywhere near to feral horses are probably deer and maybe that is the big brown eyes and the configuration of the face, but whatever it is, there is certainly a strong affinity that we must acknowledge.

I suppose the affable and romanticised stereotype of feral deer is not accurate. It is one that needs to be abandoned and realigned to reality. As the second reading speech said, the "first deer were imported into New South Wales in 1803 and have since established in the Australian bush, particularly in Victoria and New South Wales". The Treasurer, the Hon. Michael Costa, had an experience with a deer one morning while driving from his home. The deer on the road, as he described it, was more like a moose. Little was it known that from the moment deer were introduced into this country the species would overrun segments of Australia to such a degree that it is now largely considered a pest in many areas.

The New South Wales National Parks and Wildlife Service report entitled "Pest Animal Management 2003" outlines some of the major impacts of feral deer in conservation areas, including "trampling, ringbarking and grazing of native vegetation, fouling of water holes, accelerating erosion, and potential for transmission of animal diseases". It comes as no surprise that the Threatened Species Conservation Act 1995 lists "herbivory and environmental degradation caused by feral deer" as a key threatening process. However, adverse impacts stretch beyond environmental concerns to socioeconomic impacts on local communities such as "damaging residential gardens and fences, attracting illegal hunting and carrying diseases and parasites that may be transmitted to humans". In fact, it has been noted that feral deer pose a significant traffic hazard and there is some community concern about collisions resulting in human fatality. Clearly, the presence of deer has brought detriment to New South Wales on a number of levels. There is a firm platform for concerted local and regional action to deal with feral deer.

A survey by the University of Western Sydney indicates that there has been a significant increase in the distribution and abundance of feral deer across New South Wales. In particular, the National Parks and Wildlife Service, the rural land protection boards, State Forests NSW, and NSW Agriculture have expressed their concern about the increase in the number of feral deer sightings, especially in coastal and tableland areas. In the Hastings area and the Port Stephens-Great Lakes area, peak organisations have put their heads together to form management strategies to tackle the problem of deer. Similarly, the Royal National Park has a major deer infestation. Attempts to relocate many deer have received a great deal of public objection.

Research indicates that the deer population has increased to such an extent in the Royal National Park that it is having "significant adverse impacts on native flora and fauna, especially vegetation communities currently under threat, such as littoral rainforest and coastal heathland". A working group composed of representatives from the University of Sydney, the Nature Conservation Council, the National Parks Association, the RSPCA, the New South Wales Animal Welfare League, Sutherland Shire Council and others has developed a deer management plan for the Royal National Park. According to the 2003 pest management report, culling under the plan "is now underway with the full approval of animal welfare groups who are auditing the web site". In evidence before the General Purpose Standing Committee's inquiry into feral animals, Dr Regina Fogarty from NSW Agriculture said:

The number of feral deer in the State is impossible to estimate but about five new wild herds, of various sizes, are reported to agencies such as NSW Agriculture every week. Feral deer tend to be located on the tableland and coastal districts of New South Wales with large colonies being found in New England, Port Macquarie, Royal National Park and Lake George Areas.

Clearly, feral deer present major issues to our environmental landscape and also to agricultural industries through the spread of disease. However, while feral deer can cause significant harm, captive deer remain a legitimate industry for farmers. According to the second reading speech in the Legislative Assembly:

Deer farming is well established in New South Wales and this State has nearly a quarter of Australia's dedicated deer farmers. Deer products from captive deer fill an important niche market both at home and overseas. There is steadily increasing demand from overseas markets for products such as venison and velvet antler.

In response to a call by landowners, rural land protection boards, local government and others, this bill has been developed to provide legislative support to better manage deer in the wild. First, the bill clarifies the ownership of deer; second, it regulates the keeping and management of captive deer; and, third, it provides for the control of wild deer. Although those statements are very simple, each of them is extremely complex.

I am amazed that the department and the Minister have not come up with better answers on each of these contentious issues, as we have already heard from the Deputy Leader of the Opposition and the Hon. Robert Brown. Legal uncertainty has surrounded deer ownership. One of the Minister's advisers only just reinforced that statement and indicated that no-one has the ownership of deer. I do not believe that is correct, but that is what I was just told. At common law, absolute property rights cannot be held over deer that are found in the wild.

**The Hon. Duncan Gay:** The problem is that they believe that. That is the problem.

**Reverend the Hon. Dr GORDON MOYES:** The Government certainly believes that and I was just advised that that is the case. However, as I said, I do not believe it is correct. If deer are captive, obviously property rights exist in them, but if they are released or escape there is no ownership in them. That is the issue we discussed with deer farmers. That is the case even if the deer have remained captive for a long time and they have been fed and nurtured by a deer farmer. Once the deer are released they might revert to wild type. The Government argues that the legislation serves to clarify the common law position. The legislation states that deer farmers will now have absolute property rights over deer provided they are kept in accordance with legislative requirements.

Ownership will cease if and when the deer escape, arguably giving certainty to those involved in deer control activities. I have consulted with farmers about the idea of having every deer tagged and making it illegal to destroy deer with tags, whether they are within or outside fences. Interestingly, even deer farmers do not agree with that proposition. If they cannot agree with propositions such as that, what can mere doctors of medicine and doctors of divinity do to provide wisdom to this House? Those in the industry dispute the effectiveness of that part of the legislation. The New South Wales branch of the Deer Industry Association of Australia expressed the view that the bill:

... will actually worsen the community problems with feral deer, by encouraging the deliberate release of farm deer from their enclosures by hunters.

I noted that the representative from the Shooters Party declared this was but an illusion and that in point of fact it does not happen. The bill allows any released deer to be lawfully shot by anyone with or without a hunter's licence, and any person who subsequently gains possession of deer is to be recognised in law as the new and rightful owner of that deer. A foreshadowed amendment provides for a two-kilometre radius from a deer farm to protect the ownership rights of deer. It seems to me that that amendment has some problems. First, Bambi does not know how far two kilometres is—whether it is as the crow flies or via the road. Second, once tagged deer have wandered more than two kilometres they become legitimate prey for shooters and others.

The bill does not and cannot distinguish between feral and farm deer. It seems that there is an incentive under the proposed regime for shooters seeking to expand wild deer herds on public lands as a public hunting resource. Livestock thieves could also exploit this scenario. I have been assured that all shooters have to book with the Game Council. In doing so, every shooter will be given a map listing each deer farm and its location, so they will always know whether deer in the bush are two kilometres or more away from a farm. This is really beginning to border on the ludicrous. This is not the stuff for making regulation and law in this House. Further, the Deer Industry Association of Australia states that the deer bill as it stands is:

bad for the environment because it encourages criminal release of farmed deer by unethical hunters, potentially increasing the distribution and number of feral deer in future. It is bad for all farmers because it creates new forms of red tape and compliance costs for farmers.

I agree entirely with that statement. The association also states:

It is bad for business because it establishes the principle that extinction of property rights is a legitimate means to obtain compliance.

The bill allows for the development of requirements for keeping captive deer. It is said that these requirements will reflect and reinforce the deer industry code on significant issues such as secure fencing. The second reading speech indicates that the regulations will be developed in conjunction with the deer industry. My observation is



that that is far from the truth. There seems to be little commonality of purpose between the Minister and his advisers and those from within the industry. Briefly, the legislation will make it an offence to release deer from an area fenced in accordance with the requirements for keeping captive deer. That should be an offence with any captive animal used for farming purposes.

Infringements will be difficult to monitor as it is envisaged that persons releasing deer into the wild will act at night. We are all used to the idea of people stealing steers and other property at night, and I imagine that it is a very real problem. The repercussions arising for both the farmer and the surrounding environment are adverse and arguably warrant a greater maximum penalty than \$5,500 for an individual and \$11,000 for a corporation involved in such illegal activity. It will also become an offence to release deer into an area not fenced in accordance with the legislative requirements. Notably, the maximum penalty is equivalent to that prescribed for releasing deer that are fenced in. This discrepancy is ironic and seemingly unfair as it potentially penalises those who are endeavouring to uphold the law, that is, the deer farmers, to the same degree as someone who is looking to release deer, for whatever reason, such as hunters or thieves.

The legislation will provide support to organised control programs by requiring owners and occupiers of land in particular areas to ensure that non-captive deer are eradicated. I urge the Government to consider those aspects of the bill that are to be amended. A large number of amendments will be moved in Committee. It is bad legislation when we have to have so many amendments and when all key players in the business—the Government, its advisers, the departments, the Shooters Party, and deer farmers—cannot reach logical and acceptable conclusions. It is ridiculous that others have to determine the law when no area of any party seems to agree. That being said, the Christian Democratic Party commends the measured initiatives to resolve the longstanding issues caused by the problem of feral deer in New South Wales.

**The Hon. JON JENKINS** [3.58 p.m.]: Reverend the Hon. Gordon Moyes said that horses were problem feral animals. There is a significant difference between horses and deer. Horses have viable alternative control measures. Horses predominantly are herd animals and can be driven, herded, and kept in herds by either mechanical or human means. So there is a viable alternative for controlling horses as opposed to controlling deer. I do not think anyone would suggest that deer can be herded and driven in the way that horses can.

I agree with Reverend the Hon. Dr Gordon Moyes about the main problem with the bill. The right of the deer owners to protect their property from either accidental or intentional release competes with the rights of an owner whose property or crops—I think grapes were used as an example during the debate—are damaged by released deer. This problem could be solved by the introduction of a strategy similar to the National Livestock Identification System [NLIS]. That would allow for easy identification of deer and enable owners to track their property. Although identification tags could be removed, even if injected, this would take away the attraction of releasing deer deliberately for the purpose of hunting them for their meat or skins. The sooner the deer industry implements its own form of the NLIS and electronic tagging, the better it will be for all involved.

**Mr IAN COHEN** [4.00 p.m.]: The Greens recognise the immense damage that feral deer cause to the environment as well as the safety problems they can pose to people on urban and rural roads and the harm they do to property and livestock. Therefore, we fully acknowledge that there is a need to control deer. The New South Wales Scientific Committee has listed deer as a key threatening species under the Threatened Species Conservation Act. The committee's main concerns about the impact of deer on biodiversity arise from the fact that deer consume native vegetation, thus endangering threatened plant populations and competing with wildlife for food, and cause land degradation. For example, research on the impact of feral deer in the Royal National Park conducted by the University of Western Sydney has revealed that the endangered Sutherland shire littoral rainforest has 70 per cent fewer understorey plant species in locations of high deer density compared with areas of low deer density.

The bill seeks to clarify the ownership of deer, giving farmers absolute property rights over captive deer but also extinguishing those property rights as soon as deer escape captivity. I understand that this clarification has arisen as a result of the common law position that deer are wild animals. However, I am advised that deer were gazetted as livestock in 1975. Other States recognise the property rights of deer farmers, but the bill's ownership provisions in regard to deer are problematic. I have spoken to representatives of the Deer Industry Association of Australia, which is the peak representative body for the deer industry, and it is certainly very unhappy with this aspect of the legislation.

According to industry representatives, deer are territorial animals and those that have been bred in captivity will seek to return there in the event of escape. It would also be in deer farmers' interests to recapture

escaped deer at the earliest possible opportunity. Extinguishing property rights in deer as soon as they escape does not give the farmer adequate opportunity to re-capture them, and could give rise to scenarios such as the sabotage of deer farms by recreational hunters or those seeking to steal deer from a property. While actions such as damaging a fence would not be legal activities, they could be encouraged if deer cease to belong to an owner as soon as they cross the property boundary—it would be a case of "finders, keepers". That is not inconceivable.

Deer could escape for a number of reasons—for example, a fence could be damaged by a falling tree, a violent storm or by fire. It is not uncommon for the Rural Fire Service to cut fences during fire events to enable trucks to pass through properties. In those circumstances deer could escape captivity and ownership would have to be resolved. Under the Tasmanian Wildlife Regulations, deer owners have 48 hours to recapture deer that escape. This would seem to be a reasonable option. Indeed, it is a somewhat beguiling option and I am confused as to why a similar provision could not be implemented in New South Wales. I understand that the Government has identified the problem that rural lands protection boards cannot discern whether a deer found wandering has been out of captivity for less than 48 hours. While I acknowledge that there could be some difficulties in this respect, I note that the difficulty has been resolved in Tasmania so surely some kind of compromise could be reached in New South Wales.

The bill also provides for the development of requirements for keeping captive deer. This will affect issues such as secure fencing and other appropriate standards for preventing deer from escaping captivity. The Greens support these measures, as those keeping deer have a responsibility to ensure that their deer remain in captivity and do not add to the feral deer population. The bill makes it an offence to release deer from an enclosed area. The Greens support that measure. It also provides for the introduction of deer control orders, which require property owners and occupiers to ensure the eradication of deer on their land. I give qualified support to this mechanism. It is important to eradicate feral deer that are causing problems on private property. However, I note that this provision could put a heavy burden on landowners who have feral deer on their property through no fault of their own. If they are forced to eradicate the deer, will they be provided with resources to enable them to do that? I note that quite heavy penalties will be involved for those who do not comply with such orders.

The bill contains provisions relating to consultation on deer control orders. However, a glaring omission from the list of those who need to be consulted is any environmental representative. The Greens will move amendments to include the Director General of the Department of Environment and Conservation and a representative of the Nature Conservation Council of New South Wales. Furthermore, in the interests of transparency, all deer control orders should be displayed publicly and made available on the department's web site. I foreshadow that the Greens will move an amendment to this effect in Committee.

The deer industry is also concerned about the provision that allows inspectors to use horses and dogs in the course of inspecting fences, and related matters. This is excessive and could cause stress and harm to deer. I understand that the Government will move an amendment in Committee to remove this provision, and I support that decision. According to its web site, the Australian Deer Association Incorporated is:

... a national hunting and deer conservation organisation established in 1969 specifically to promote our wild deer herds and recreational deer hunting. Australians would not enjoy the deer hunting opportunities that are available today without the efforts of groups such as the ADA.

Surely the promotion of wild deer herds is completely at odds with this legislation. I ask the Minister: What action will the Government take to prevent the Australian Deer Association from continuing the reckless practice of promoting wild deer herds? Will the association be liable for prosecution under this legislation?

The Greens are concerned that some of the ownership provisions in this bill may have resulted from pressure applied by the shooters' lobby. It is not inconceivable that hunters could tamper with fences on deer farms to release game to hunt. Moreover, irresponsible individuals could breed deer for the purpose of releasing them for hunting. I find it amazing that there are bag limits for certain types of deer, for example, and that different types of deer can be hunted at different times of the year. This seems inconsistent with the treatment of deer as feral animals and more consistent with maintaining stocks of deer in the wild for the purpose of game hunting.

Indeed, the Game Council New South Wales has been wielding a lot of influence of late, taking over State forests and other public lands. The Game and Feral Animal Control Act 2002 aims to control feral animals by giving hunters access to public lands under the guise of "conservation hunting". But rather than protecting the environment from feral pests, it is more likely to promote game hunting. This is in conflict with co-ordinated

and sustainable pest management and eradication strategies. Allowing the Game Council onto vast tracts of public land will cause problems for the environment, for the public and for native animals.

Hunting is now allowed on 1.39 million hectares of public land in New South Wales as a result of a policy that ignores the need for strategic, professional feral animal control in this State. It is not in hunters' interests to rid State forests of feral animals—if they did that there would be nothing left to hunt. In the past hunters have released pigs and deer, for example, into forests to boost their numbers for hunting. Hunters can use dogs as part of the hunt—and dogs do not always discriminate between feral and native animals. The Greens oppose the Government's policy of so-called "conservation hunting" and call on the Government to return public lands to the public so that people can use them for recreational purposes and not fear being shot. The second reading speech by the Parliamentary Secretary in the other place states:

The regulations will be developed in conjunction with the deer industry. The co-operation of industry will be important in ensuring the most appropriate standards are put in place.

If co-operation with industry is deemed so important, why was there inadequate consultation with the industry before the introduction of this bill? The Parliamentary Secretary said:

The Government has consulted widely on this legislation, and feedback from that consultation has been taken into account in the bill before the House.

Yet the peak body representing deer farmers found out about this bill on the day it was introduced. That is the kind of consultation we have come to expect from this arrogant Labor Government. The Greens do not oppose the bill, but I foreshadow that we will move a number of amendments during the Committee stage. The Greens see considerable merit in dealing with this issue and hope that the Committee stage will resolve some of the outstanding problems that have been debated so far.

**The Hon. Dr PETER WONG** [4.10 p.m.]: I will briefly comment on the Deer Bill. I listened carefully to the contributions of some honourable members and I was impressed by the arguments presented from both sides. They have taught me a lot about this issue. The objects of the bill are to clarify ownership of the deer, to regulate the keeping of captive deer, to prevent the release of deer from captivity and to control deer that are not captive. Reverend the Hon. Dr Gordon Moyes said there does not appear to be a sensible solution to satisfy all stakeholders. I do not know whether I would support an amendment that limits the distance or time frame of lost deer. A deer cannot answer the question "For how long have you been lost?" or "How far away from home are you?"

I understand from Tony Hewson, the Minister's chief of staff, that even though deer are territorial animals they only stay in an area for a while. They will wander off and become feral animals if they are not captive. I have spoken to a number of people and I understand that a solution needs to be presented in legislation because feral deer present a major problem for our native flora and fauna. I will support the Government's legislation.

**The Hon. IAN MACDONALD** (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [4.13 p.m.], in reply: I thank honourable members for their contributions to this debate, which was conducted in very good spirit. The two significant components to the Deer Bill address different aspects of deer management. First, the bill recognises the importance of ownership for deer farmers. It makes a significant achievement in clarifying what ownership means in what has been regarded as a grey legal area. Deer will not be deemed to be owned when kept in accordance with the legislation. This provision in the legislation provides certainty for deer farmers on the status of their deer. The legislation also provides for regulations to be made that set out how captive deer are to be kept. These will be developed in consultation with the deer industry.

Second, this legislation addresses the growing problem for farmers and regional communities of wild deer. Therefore it also provides for deer control orders to manage problem deer populations. There is a need to put such deer control programs in place. Deer in the wild cause environmental and property damage. They are also a threat to public safety, as people in some areas would attest, particularly the Royal National Park and areas along the North Coast. Deer are a threat to public safety, particularly drivers. Deer in the wild are growing in number. The Deer Bill reflects the culmination of many years of discussion. I advise that consultation continued during its development.

There has been an extraordinary amount of effort to accommodate the needs of deer farmers, the concerns of the Deer Industry Association and the broader concerns of stakeholders and the community. The

New South Wales Farmers Association, deer farmers and stakeholders affected by wild deer impacts at Port Macquarie, the Game Council of New South Wales and the Department of Environment and Conservation have also been consulted. The New South Wales Pest Animal Council and the Non-indigenous Animals Advisory Committee have provided input, as has every significant community sector with an interest in management of farmed and wild deer. This legislation clearly has been thoroughly and carefully put together to address complex issues in a complex setting.

I advise that the appointment of inspectors will be based on appropriate training and skills. This is consistent with the appointment of inspectors under other legislation. I also point out that the bill ensures that an inspector can be authorised to undertake specific functions and be precluded from others if that is considered appropriate. The Government recognises that the way inspectors approach entry onto deer properties can affect the wellbeing of deer. Authorised officers will only be able to use equipment that is reasonable in the circumstances when entering deer properties. This type of provision is consistent with similar legislation, such as the Stock Diseases Act.

Policy guidelines for authorised officers will be developed in conjunction with the deer industry to determine reasonable procedures for inspecting deer farms. These guidelines could cover matters such as appropriate equipment and appropriate times of day for inspections. These guidelines will take into account the unique characteristics of deer and ensure that inspections are carried out in a way that does not unnecessarily impact on the deer. The issues concerning the management of deer are not simple, but the Deer Bill introduces a suite of balanced measures to address them. At this point, I acknowledge input from the Deputy Leader of the Opposition on this bill. I also take this opportunity to correct some statements made in the media by the honourable member on ownership, perhaps before he was fully apprised of the complexities addressed in the bill.

Contrary to the assertions of the honourable member, the bill does not create any precedent for domestic livestock such as cattle, sheep, pigs or goats. The treatment of deer as wild animals under common law does not, and will not, apply to livestock as suggested by the honourable member. All of these animals are clearly recognised as domestic animals and so continue to be owned by the farmer if they escape. The Deputy Leader of the Opposition suggested that the bill creates business risks and uncertainty in the deer industry. The reality is that deer farmers are now, for the first time, being given a clear property right in their animals.

The Deputy Leader of the Opposition further asserted that boundary or exclusion zones around deer farms was raised by him and his office in the course of consultation on this bill. I advise that the concept proposed by the Shooters Party was not discussed in the course of this consultation. In addition, and contrary to the claims of the honourable member in this Chamber today, there is currently much uncertainty about the ownership of escaped deer. The fact is that under the current common law arrangements ownership in deer is lost when deer escape. This is the law as it currently stands. But it is more complicated than that. The common law also grants that ownership continues for so long as the escaped deer have a tendency to return to the fold, but no-one actually knows how long that is. Is it a day, two days or a week? It is in the realms of the arcane. It has never been tested in a court.

Deer farmers currently have no certainty about whether they own an escaped deer and for how long, nor do those who are required to control deer have any certainty about whether any deer at large can be legally controlled. The bill introduces ownership rights that do indeed clarify this common law position. These are considered to be minimal changes required to make the common law position workable. I also acknowledge the constructive input from the Shooters Party on this bill. I note that the Hon. Robert Brown will move amendments, such that the Minister replace the director general as the person responsible for decisions on matters like the making of control orders.

I understand the honourable member also will oppose an amendment to improve the rights of deer farmers to recapture escaped deer. I advise the House that the Government will support those amendments. At common law, all deer are considered wild. This is clearly not the case for deer contained and managed on deer farms. It needs to be recognised that genuine deer farmers own their deer, and the bill provides that recognition.

Uncertainty of ownership also impinges on people wishing to control wild deer on their property. Without this legislation, they have no way of knowing whether the deer are wild or owned. In addition, hunters acting in accordance with the Game and Feral Animal Control Act 2002 need to be certain that deer in the wild are truly wild or that they are owned. If ownership is not clarified, then deer control orders cannot be applied because farm deer will not be able to be differentiated from wild deer. Clarifying ownership through this bill

excludes deer farmers from the requirements of a deer control order. Some deer owners may be concerned that clarifying ownership of deer could provoke some people to maliciously damage fences to wilfully release deer. This is not the case. At the moment no specific provision provides a direct deterrent to such an act. However, under the Deer Act it will be an offence to release deer from captivity, thereby creating a legal deterrent.

The Deer Bill 2006 needs to balance the rights of deer farmers to recapture escaped deer with the rights of the community to manage the impacts of wild deer. It will do this by providing an exclusive right for deer farmers to claim ownership of their escaped deer while those deer remain within two kilometres of their farm. However, the bill also allows for deer that are not held in captivity to be controlled. In summary, the bill provides clarification on the ownership of deer, regulates the keeping and management of captive deer, and provides legislative support for the control of deer in the wild. It is necessary and sensible legislation that draws together the key interests and expertise in the management and control of the deer. I commend the bill to the House.

**Motion agreed to.**

**Bill read a second time.**

### **In Committee**

**Clause 1 agreed to.**

**Mr IAN COHEN** [4.23 p.m.]: I move Greens amendment No. 1:

No. 1 Page 2. Insert after line 6:

#### **3 Objects of Act**

The objects of this Act are:

- (a) to clarify the ownership of deer, and
- (b) to regulate the keeping of captive deer, and
- (c) to prevent the release of deer from captivity, and
- (d) to reduce the impact of deer on the natural environment, and
- (e) to eradicate where practicable, or otherwise control, deer that are not held in captivity.

This amendment seeks to insert objects into the bill. There are currently no objects in the bill. The amendment would clarify that the objectives of the bill are to reduce the impact of deer on the natural environment and to eradicate or control deer outside captivity. This may seem obvious, but it is necessary to avoid any misconstrued idea about this bill. I commend Greens amendment No. 1 to the Committee.

**The Hon. IAN MACDONALD** (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [4.24 p.m.]: The Government opposes Greens amendment No. 1. The title already clearly and succinctly explains the objects of the bill: to clarify ownership of deer, to regulate the keeping of captive deer, to prevent the release of deer from captivity, and to control deer that are not captive.

It is true that the bill will deliver greater certainty for deer farmers and those controlling non-captive deer. It will also help reduce the impacts of non-captive deer on agriculture, the environment and public safety. While the Greens amendment reflects the existing objects, it seeks to include as objects outcomes such as reducing the impact of deer on the natural environment. This is in fact just one of the broader outcomes that flow from the objects of the legislation. There is no doubt the bill will help reduce the impact of deer on the natural environment, just as it will help reduce the impact of deer on agriculture and risk to human safety.

But the bill has the potential to deliver so much more than this. For example, the provision of a clear property right in farmed deer and measures to protect this property right puts the deer industry on a more secure footing, and therefore makes it easier for the industry to reach its potential. This is another outcome that will flow from the bill, but it would be counterproductive to specify this and the many other outcomes as objects of the bill. Any attempt to specify outcomes will inevitably create a long list and add significant complexity. The alternative is that some important outcomes are not included. The Greens proposal narrows the focus of the bill and unnecessarily limits its potential to deliver a broader range of benefits.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [4.25 p.m.]: The Opposition agrees with the Minister on this amendment—probably the last time that we will agree on this bill. The rationale behind his disagreement with the amendment is correct. Not the least of those is object (e), which is not reflected in the overview of the bill. Proposed object (e) seeks to eradicate where practicable, or otherwise control, deer that are not held in captivity. Unfortunately, that provision flies in the face of amendments to be made to the bill. Whilst the Opposition has foreshadowed that it wishes to amend the Shooters Party amendment, that amendment must be moved so that we can seek to amend it and thus provide a proper measure to protect the rights of people in close proximity. I would be concerned that object (e) might preclude the Opposition moving an amendment to the Shooters Party amendment.

**Amendment negatived.**

**Clause 2 agreed to.**

**The Hon. ROBERT BROWN** [4.28 p.m.], by leave: I move Shooters Party amendments Nos 1, 3, 5, 6 and 9 to 24 in globo:

- No. 1 Page 2, clause 3 (1), line 9. Omit "Director-General". Insert instead "Minister".
- No. 3 Page 5, clause 8 (1), line 3. Omit "Director-General". Insert instead "Minister".
- No. 5 Page 5, clause 8 (1) (b), line 10. Omit "Director-General". Insert instead "Minister".
- No. 6 Page 5, clause 8, line 13. Omit "Director-General". Insert instead "Minister".
- No. 9 Page 5, clause 9 (1). Insert after line 35:
  - (a) the Department,
- No. 10 Page 6, clause 12 (1), line 20. Omit "Director-General". Insert instead "Minister".
- No. 11 Page 9, clause 17 (1), line 3. Omit "Director-General". Insert instead "Minister".
- No. 12 Page 9, clause 17 (2), line 6. Omit "Director-General". Insert instead "Minister".
- No. 13 Page 9, clause 17 (2) (e), line 13. Omit "Director-General". Insert instead "Minister".
- No. 14 Page 10, clause 21 (2), line 21. Omit "Director-General". Insert instead "Minister".
- No. 15 Page 11, clause 23 (1), line 32. Omit "Director-General". Insert instead "Minister".
- No. 16 Page 12, clause 23 (3) (c), line 7. Omit "Director-General". Insert instead "Minister".
- No. 17 Page 12, clause 24 (1), line 17. Omit "Director-General". Insert instead "Minister".
- No. 18 Page 12, clause 24 (2), line 19. Omit "Director-General". Insert instead "Minister".
- No. 19 Page 12, clause 24 (3), line 22. Omit "Director-General". Insert instead "Minister".
- No. 20 Page 12, clause 25 (1), line 26. Omit "Director-General". Insert instead "Minister".
- No. 21 Page 12, clause 25 (2), line 33. Omit "Director-General". Insert instead "Minister".
- No. 22 Page 13, clause 27, line 2. Omit "Director-General". Insert instead "Minister".
- No. 23 Page 15, clause 34, line 16. Omit "Director-General". Insert instead "Minister".
- No. 24 Page 15, clause 34, line 17. Omit "Director-General". Insert instead "Minister".

All of the amendments, with the exception of No. 9, are identical. Amendment No. 9 would follow consequently if the other amendments were passed. The amendments are simple: they all seek to make the Minister responsible for the issuing of control orders and other matters. Honourable members should note that, even as amended, clause 34 of the bill will still allow delegation of functions other than the making of control orders, so the amendment does not necessarily tie the Minister up in endless administrative work. Overall, these amendments will make the Deer Bill consistent with similar legislation, such as the Rural Lands Protection Act 1998, the Prevention of Cruelty to Animals Act 1979 and the Game and Feral Animal Control Act 2002.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [4.30 p.m.]: I do not have a problem with the change. I am, to repeat a word used by Mr Ian Cohen at another meeting earlier today, agnostic in

regard to this. I do not have a problem with it, but I still cannot see why the honourable member is moving the amendments. I was hoping that the member would provide the Committee with a definitive reason for the change. As I said, I do not have a problem with the change but, frankly, I do not understand the reason for the change.

**Mr IAN COHEN** [4.30 p.m.]: The amendments moved by the Shooters Party seek to replace the director general with the Minister as the decision maker in regard to certain actions set out in the bill. The Minister is responsible for both the department and the Game Council, therefore, the Minister may perhaps be swayed by the Game Council to make relevant decisions. The Shooters Party could possibly politicise the issue of orders and water them down to make them more hunter friendly, or to encourage wild populations of deer in certain circumstances. The Greens do not support the amendments.

**The Hon. IAN MACDONALD** (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [4.31 p.m.]: The Government is to some degree agnostic as well. I do not think I need any extra work, but we will go along with the honourable member on this.

**Amendments agreed to.**

**Clause 3 as amended agreed to.**

**The Hon. ROBERT BROWN** [4.32 p.m.]: I move Shooters Party amendment No. 2:

No. 2 Page 3, clause 4. Insert after line 18:

- (4) Despite subsections (2) and (3), if a person other than an authorised officer captures a deer within 2 kilometres of the enclosure or other place (not being a vehicle) in which the deer was last held in captivity, property in the deer is not extinguished.

This is the amendment that will take up most of our time, because it involves an issue about which there is the greatest divergence of opinion. I will attempt to be brief, but the issue is technical and I wish to speak to it in some detail and with some authority. The Shooters Party believes that the Deer Bill needs to balance the rights of deer farmers to recapture escaped deer with the rights of the community to manage the impacts of wild deer. I assure the Committee that it has nothing to do with hunters' rights to shoot escaped deer.

I believe my amendment will improve the capacity of the Deer Bill to deliver that balanced approach by adding the subclause as proposed in the amendment. The Shooters Party did give consideration to whether that balance could be improved by including a provision for deer farmers to retain ownership of escaped deer for a specified period, and some discussions took place with both the office of the Deputy Leader of the Opposition and the Minister's office. However, setting a specified time within which ownership of deer is retained for the purpose of allowing recapture could be extremely arbitrary. For example, a 48-hour moratorium could restrict the original owner's original rights, et cetera. That is what they do in Tasmania. I have therefore proposed an amendment that would allow only the original owner to reclaim ownership of escaped live deer by recapturing the deer while ever the deer remains within two kilometres of the original property boundary.

This amendment continues to allow control of escaped deer, and that is important, but it provides clarity for those involved in control operations and the deer farmer or the deer owner. At the same time it prevents others from capturing and claiming ownership of recently escaped deer. As this amendment is fairly technical I believe some explanation of deer behaviour is in order. I noted the following comment made by one speaker, "Well, Bambi does not know how far two kilometres is." In fact, Bambi generally does not know how far two kilometres is, or something approaching that distance. And that is because of the propensity of deer to stay within what is called a "home range". I have some experience in this regard. From 1987 until recently I was a shareholder in a conservation property in south-east Queensland upon which existed a herd of wild fallow deer whose original release date was in the mid-nineteenth century.

From my personal observation over about 15 years, the typical home range radius of fallow—"fallow" is a particular species of deer favoured by the deer industry, and "doe" means female—on extremely poor trap rock country is about 600 to 1,000 metres, and for mature bucks, that is males, it is one to two kilometres. My observations are supported by the limited literature available on deer movement in Australia and elsewhere that indicates that deer typically have a relatively small home range, particularly on improved pasture country. For example, wild deer in the Royal National Park studied by Moriarty had home ranges of between one and eight square kilometres, with the eight-square kilometre upper limit equating to a radius of about 1.6 kilometres.

Studies of fallow deer in Tasmania and New Zealand found similar home ranges, which would equate to a radius of about 1.7 kilometres. Even in Scotland researchers found similar sorts of home ranges.

It is important to appreciate that the size of deer home ranges reported in the scientific literature includes the tendency for home ranges to increase during winter, the period when food is usually in shorter supply. I note the comment by the Deputy Leader of the Opposition in relation to the location of most of the deer farms in New South Wales being in the highlands and not necessarily on cropping country. That is not strictly correct; there are deer farms down in the Riverina and close to the coast. But, generally speaking, given the opportunity, deer would always go to where the good feed is, as with any animal.

It is well known to those in the deer industry that deer that have been held in captivity will remain close to the property of origin when they first escape. Indeed, in my discussions with the Deer Industry Association—in fact, I think it was during that association's briefing of the crossbench members—we talked about the situations where deer escapes had occurred. The representatives of the Deer Industry Association said with regard to one incident, and I think it is probably correct, that of a herd of about 200 deer that walked through a fence that had been blown down, the great majority, 80 per cent or 90 per cent of them, were captured within a day, all but two were captured by the next day, and the remaining two were captured eventually. The reason for this is that deer will tend to stick around. The problem is, of course, if they are sticking around a neighbour's property that has a valuable grape or some other crop, there is going to be tension between the deer farmer and that neighbour. This amendment provides an incentive for deer farmers to prevent dispersal of their escaped deer by recapturing them. Responsible deer farmers already do so; there is no argument about that.

Neighbouring farmers would also know if there was a deer farm nearby—they could not miss it!—and they would certainly know that farm deer had escaped if those deer were tagged. I support the notion that, sooner or later, all deer should be tagged, perhaps using the national livestock identification system [NLIS] or something similar. In practice, recapturing escaped deer while they remain close by can be the most effective way of removing deer and preventing their impact on adjoining areas. Recapture is, I suppose, a method of control, and the intent of this bill is to make sure that deer that escape in large numbers are not dispersed, because that is where the problem arises.

In my view, the best way to encourage recapture is to ensure that deer farmers are able to make appropriate arrangements to capture deer without being hampered by an arbitrary time constraint and without the fear that someone else could step in and recapture the deer before they do. I note the comments of the Deputy Leader of the Opposition relating to people killing deer. I understand that will be the subject of an amendment that will be moved by him. There is logic in allowing a deer farmer the incentive to recapture escaped animals while they are still in relatively close proximity to the deer farm to prevent dispersed wild deer herds from becoming established. I am sure that even the Greens would support that.

Honourable members ought to appreciate also how difficult it is to muster or capture deer. The Hon. Jon Jenkins drew an analogy between the mustering of wild horses and wild deer, but I assure him that deer are not anything like horses. The activities of capturing and handling deer require specialised skills and equipment that are usually possessed only by deer farmers or perhaps by professional deer trappers. Given the available anecdotal and scientific information about the home range and the behaviour of deer, I believe that two kilometres is a practical distance. I do not believe that the Deer Industry Association contests the issue of distance. Having said that, I do not mean to suggest that recapturing ceases to be an option when deer have strayed more than two kilometres from their enclosure, but when deer have strayed further than that distance and have been at large for some time, recapturing becomes expensive and difficult.

I believe my amendment improves the balance between the rights of the deer farmers on the one hand to recapture escaped deer and the rights of the community on the other hand to manage the impacts of wild deer. I reiterate that the amendment has nothing to do with the rights or privileges of hunters to kill deer. The statement made to that effect was stupid. I believe my amendment is sensible and practical. It protects the rights of deer farmers without creating further ambiguity about the ownership of deer.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [4.41 p.m.]: I move:

That in Shooters Party amendment No. 2 insert after the word "captures" the words "or kills".

I indicate the Opposition's support for the Shooters Party's amendment No. 2 and most of the rationale underlying it. In fact, we are in agreement with the Hon. Robert Brown's justification for the two-kilometre



boundary and the home range. Deer farmers and others have informed the Opposition that deer tend not to move beyond that distance. When the Opposition first suggested that the boundary should be measured in distance, the Minister's adviser said that could not be done, so we researched the Tasmanian legislation, which provides a temporal boundary.

The Opposition does not have a problem with the Shooters Party's amendment. As I indicated during the second reading stage, the only concern the Opposition has with the amendment relates to what I assumed was an oversight with regard to an authorised officer capturing a deer. The Opposition wishes to extend the amendment to provide "captures or kills" a deer. The provision relates to deer within two kilometres from their enclosure. The Shooters Party's representative pointed out there was no such oversight. In those circumstances, one has to assume that the Shooters Party would agree that deer that are within two kilometres of their enclosures may be shot.

The Opposition is of the strong belief that it should not be legal to shoot deer that are within a two-kilometre boundary of their enclosure. The Shooters Party's representative indicated that recapture is control, and the Opposition agrees, but we also argue that killing is not control. During the second reading stage it was suggested that the Opposition's amendment is outside the scope of the bill. I remind the Committee that the objects of the bill, as stated by the Minister earlier, are to clarify the ownership of deer, to regulate the keeping of captive deer, to prevent the release of deer from captivity, and to control deer that are not captive. Nowhere in the objects of the bill is killing of deer referred to. This bill is all about resolving deer ownership.

As honourable as the Shooters Party's amendment seeks to be, without the Opposition's amendment it will fundamentally change the purpose of the bill and allow disreputable shooters to exploit the legislation. There are not many disreputable shooters, but there may be sufficient to form a basis of concern for people who own deer farms. Without the Opposition's amendment, the Shooters Party's amendment will create a situation in which disreputable shooters may shoot deer in an area within a two-kilometre home range. Deer found beyond a two-kilometre boundary is an indication that a farmer has not been diligent so far as enclosing his animals is concerned. I am not sure whether the Minister's advisers have been circulating the rumour that the Opposition's amendment will preclude the control of deer that stray onto a neighbouring property. Quite clearly, that is not the intention of the Opposition's amendment. The legislation is quite specific in relation to the powers of authorised officers.

If a rogue deer escapes and strays into a neighbour's wheat field, orchard or vineyard, authorised officers have the power under clause 22 to inspect and search premises and to "examine, seize, detain or remove any deer in or about those premises". The powers of authorised officers are specifically spelled out in the bill.

**The Hon. Jon Jenkins:** Can they kill them, though?

**The Hon. DUNCAN GAY:** Yes, they can. They can do what they need to do. Consider the situation of deer escaping from the owner's property into a neighbour's orchard. As a good neighbour, the first thing the neighbour should do is telephone the deer farmer. That is what we all do in the bush: we phone the bloke who lives next door to say, "You've got a couple of bucks at our place." Now, remember that deer are very expensive animals. I would imagine that the owner of the deer would be at the neighbour's place almost before the neighbour put his telephone down. In that case it would not be necessary to resort to an authorised officer for control. Consider also a deer farmer of the type that the Government seems to think exists everywhere: one who either does not care about his deer, or one who has deliberately allowed his deer to stray onto a neighbour's property. If the deer farmer's response to a telephone call to tell him that his deer has ventured on to a neighbour's property is to tell the neighbour where to put his grapes, the neighbour could immediately telephone to arrange for authorised officers to take control of the deer.

**The Hon. Jon Jenkins:** How long does it take them?

**The Hon. DUNCAN GAY:** How long is a piece of string? I cannot guarantee how quickly rural lands protection board officers or other authorised officers respond in this State, but I imagine that they would be very quick because they are very diligent and very enthusiastic people, as the Hon. Jon Jenkins well knows. Any proposition of a provision that will enable deer to be killed is a furphy. All I ask is for one small addition to the Shooters Party's amendment that will protect people's property. I think the Shooters Party's amendment is outstanding. It is better than a temporal provision. All it needs is the inclusion of the term "or kill" and all the Opposition's concerns would be overcome. If the Shooters Party's amendment could be rectified by acceptance of the Opposition's amendment, the Opposition would not need to worry much about anything else. The

Committee should try to concentrate on fixing up the amendment of the Shooters Party. The Minister for Justice, the Hon. Tony Kelly, is a farmer of note in New South Wales, as is the Minister for Primary Industries, the Hon. Ian Macdonald.

**The Hon. Rick Colless:** No, he is not.

**The Hon. DUNCAN GAY:** Some say that is not the case, but that would be very unkind. I believe that the Minister for Primary Industries is a farmer of note.

**The Hon. Dr Arthur Chesterfield-Evans:** He is the squire.

**The Hon. DUNCAN GAY:** The squire of the Central West. If his hairy, horned cattle or whatever it is that he runs now—

**The Hon. Ian Macdonald:** Murray Greys.

**The Hon. DUNCAN GAY:** He has always been into traditional breeds!

**The Hon. Ian Macdonald:** Come to the Kangaroo Valley show one day, mate, and see for yourself.

**The Hon. DUNCAN GAY:** I would love to go to the Kangaroo Valley show, after we have looked after deer farmers. The Minister for Primary Industries should support the Coalition on this and do the right thing by farmers and all will be okay. If the Minister's cattle were to escape and someone shot his hairy beasts, the Minister would not be happy, and honourable members would understand why he would not be happy. And that is the concern of the Coalition. Domestic deer stay within two kilometres of their farm, as a rule. Should the deer stray beyond two kilometres because someone has not been diligent, has not done his job properly, the deer can be shot or controlled and the owner could lose his property rights. The Coalition does not disagree with that provision, and neither do the representatives of the deer industry who are present in the gallery tonight.

However, if someone deliberately opens a fence on a property and deer escape, or if a farmer loses his stock because of an accident—perhaps a storm spooked the mob or brought down a fence and the deer have escaped to a neighbouring property—we object to any proposal that validates the shooting of those deer. I would hope the Government would say, "Hey, Dunc, you are right on this. We haven't listened. The advisers gave us a bum steer. What you say makes sense; it is sensible for the pastoral industry in New South Wales". If the Minister continues to go down the track he indicated earlier, he will create a nasty precedent in this State—one that I suspect he does not believe in.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [4.51 p.m.]: The Deer Bill is aimed at controlling deer. In many parts of the State wild deer have been domesticated, so the bill deals with the gap between domesticated deer—in which case a deer farmer should have property rights similar to those of a cattle or sheep farmer—and feral deer, which are fair game for shooting. Deer have a track record as a pest in some areas. Research shows that deer that are bred in captivity are territorial, relatively tame and herdable. They will stick to their home range should they accidentally escape or, perish the thought, escape by design. Accordingly, their owners should be given every opportunity to recapture them, and neighbours—who hopefully have some goodwill towards each other—should return any escaped stock to their home property. Stock on a property that borders a national park could become frightened during a storm and escape into the park. They could travel far from home and not be identified. I imagine that most farmers with stock of quite considerable value will go to quite considerable trouble to recapture their stock, and that should be facilitated. Therefore, the amendment moved by the Deputy Leader of the Opposition to the amendment moved by the Shooters Party seems eminently reasonable.

**Mr IAN COHEN** [4.53 p.m.]: The Greens appreciate and support the amendment moved by the Shooters Party. The deer industry has expressed concerns about the ownership provisions in the bill, and the amendment seeks to address those concerns in a manner that could be workable. The initial proposal of 48 hours to recapture deer was problematic as it would be difficult to ascertain when the period began. The Greens support the fact that the amendment refers to persons other than authorised officers, meaning that authorised officers can still eradicate deer within a two-kilometre boundary. The Greens support the amendment moved by The Nationals; we do not want hunters to be encouraged to jeopardise deer farms. Trained authorised officers should be able to use discretion to eradicate deer within the two-kilometre boundary; others should not be able to do so. The Nationals amendment is appropriate and worthy of support.

**The Hon. ROBERT BROWN** [4.54 p.m.]: Madam Chair—

**The Hon. Duncan Gay**: Are you going to support us?

**The Hon. ROBERT BROWN**: No, although I can see where the Deputy Leader of the Opposition is coming from and I understand the position of the Deer Industry Association. The Deputy Leader of the Opposition indicated that he had had discussions with the New South Wales Farmers Association and had received general support for the Opposition's position on this bill. I repeat a statement I made earlier. From my recollection the Deer Bill came about after a grape grower in the Hunter Valley, because of the question of ownership, could not, or would not, eradicate deer that had escaped from a deer farm and were eating his grapes, and could not get an authorised officer—at that time, from the rural lands protection board—to do so. Yes, the bill allows authorised officers to control deer by any means, although I advise that I propose moving an amendment about the use of poison for this purpose. The bill does not allow a farmer to control deer, other than by telephoning the rural lands protection board. That is where all this started.

In the developmental stages of the Game and Feral Animal Control Bill in 2002, named the Game Bill in 2001, the New South Wales Farmers Association and farmers generally were extremely worried about the imposition of licensing or any other strictures or controls on them being able to control feral animals, pest animals or wild animals on their land. Although there is a tiny bit of merit in the amendment moved by the Opposition, it probably will not be supported by farmers who may be the neighbours of deer farmers. Yes, a control order can be made and, yes, deer can be controlled or captured. However, a neighbour is highly unlikely to be able to control deer by any means other than by shooting or by getting on his tractor with his dogs and chasing them off his property—which is probably the first thing a farmer would do. But all that succeeds in doing is to disperse the deer. I retract that: the first thing a good neighbour would do, would be to telephone the deer farmer and join him in getting the escaped deer off his property. Of course, the Deer Bill cannot cover every contingency. The amendment to my amendment does not address the issue of allowing a farmer to immediately take measures to control deer, other than by means that may disperse the deer. I do not support the amendment to my amendment.

**The Hon. JON JENKINS** [4.57 p.m.]: It looks as though the Committee will be asked to divide on this amendment and I want to make sure that I understand the situation correctly before I vote. Let us assume that a property owner has deer on his or her property that may be doing damage. The differentiation in the bill between feral animals and domestic animals is contentious; the situation with domestic animals is clear. Because the deer is not classed as a domestic animal a difficulty arises. The Committee should adjourn for 20 minutes, and members should try to reach a solution that everyone can agree to. Then we would all be happy. But that will not happen.

A landowner may find a deer that has escaped from a neighbouring property damaging his grapes or his orchard. If the deer is a normal domestic animal, it could not be shot or otherwise damaged. The owner of the property that is damaged can sue the owner of the deer for the damage caused; he can recover for the damage done to his grapes or his orchard. However, if the deer is a feral animal, the owner of the property cannot recover damages. I am not a lawyer but I believe that is the case. Are there any lawyers in the House? No. If the deer are tagged, it will be pretty obvious where the deer come from. I do not know the common law position on this, but as I understand the law, the person whose property is damaged can sue. There do not appear to be any lawyers in the House. The situation remains unclear, although the animal is branded and the property owner knows where it came from.

**The Hon. Ian Macdonald**: There is a legal uncertainty.

**The Hon. JON JENKINS**: There is a legal uncertainty about whether the property owner can claim damages. For that reason alone the ability to control the deer immediately would take priority over the owners of the deer. However, this problem could be easily fixed. The deer control officer could be contacted, and if he or she was not able to attend the property immediately, he or she could delegate the property owner to control the deer by whatever means would normally have been used.

**The Hon. Duncan Gay**: They can capture it.

**The Hon. JON JENKINS**: Has the Deputy Leader of the Opposition ever tried to herd a cat?

**The Hon. Duncan Gay**: These are domestic animals.

**The Hon. JON JENKINS:** They might not be. A feral deer might be on the property at the same time; we do not know.

**The Hon. Duncan Gay:** You can shoot a feral deer.

**The Hon. JON JENKINS:** How do you know the difference?

**The Hon. Duncan Gay:** Because it is not tagged.

**The Hon. Ian Macdonald:** A feral animal can still have a tag.

**The Hon. JON JENKINS:** A feral animal can still have a tag. This whole problem could be resolved. I do not know whether the Minister can do this by regulation, but if the control officer were not able to attend a property immediately to resolve an issue, he or she could delegate a farmer to remove the deer by whatever means was legal.

**The Hon. IAN MACDONALD** (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [5.00 p.m.]: Honourable members have presented a passionate case. The Government does not support The Nationals amendment to Shooters Party amendment No. 2. The Nationals amendment would remove the right of farmers who are impacted by escaped deer to protect their property. It is totally impractical for an affected farmer to call an authorised officer every time there are problems due to an escaped deer. The deer may well be long gone by the time the authorised officer arrives.

It is not just that deer inadvertently escape; some deer farmers have deliberately released deer when times are tough. There are plenty of examples of this at Coonamble and Port Macquarie and, I am advised, most recently in the Riverina. The fact is that those who have suffered the impact of escaped deer have not been able to fully exercise their rights to control deer because of the legal uncertainty that existed in relation to this issue. Similarly, there have been serious motor vehicle accidents due to non-captive deer that could not be controlled. It is manifestly unfair to ignore the fact that deer are so different and so much more difficult to capture and control than traditional livestock.

Again, it would be unfair to further impede the capacity of landholders—farmers—who are impacted by escaped deer to control those deer. If a farmer saw some deer on his property and knew they were from a deer farm down the road, he would ring the owner and try to do something about them. If the farmer was unable to do that he should have the right to remove those animals from his property to prevent any damage that could occur—especially, say, in a vineyard, where a number of deer could do a considerable amount of damage in a very short time. This amendment puts the rights of deer farmers over and above the rights of the entire community because of the potential impact of non-captive deer.

It must be remembered that landholders who are impacted by escaped and wild deer already have the right to control those animals. The problem has always been the uncertainty about ownership of wild animals. In the past that has caused big problems. For example, in the late 1990s a deer farmer at Coonabarabran opened his gates and released deer and neighbours suffered the impact of them. Ownership of an escaped deer reverts to the original owner as soon as it is shot. This amendment would potentially create a situation where farmers protecting their property from an escaped deer could be committing an act of theft under the Crimes Act if they shot the deer and disposed of its carcass.

This amendment is not just impractical and unfair, it is totally unworkable. The amendment of the Deputy Leader of the Opposition would take away the rights of farmers and landholders who were uncertain about their right to control deer. The Coonabarabran problem was resolved only after the owner wrote a letter authorising neighbours to kill the deer and dispose of the carcasses as they chose. This provision would not have been needed if deer were legally able to be controlled—which is the point of this amendment. To clarify this issue, a landholder might have tried to obtain the services of an authorised officer and he might have given some thought to capturing deer. From my understanding of deer, it is pretty difficult to capture them.

A landholder might have taken all those measures but, in the end, he has a right to dispose of these animals by shooting them. I am advised that this amendment would place that landholder in contravention of the Crimes Act and expose him to all its potential penalties. I do not believe that this amendment is realistic, even though I can see what the honourable member is trying to do. In the end, it would take away the right of a farmer to take action on his property as he sees fit. In many parts of the State it would take authorised officers an

hour and half to reach some properties, and in some areas it might take longer than that. A farmer might not be able to get an authorised officer to attend.

This amendment would take away from a farmer the right to dispose of these animals as he saw fit. If farmers do not want these animals to feed on their properties, disappear into the forest, and become totally feral, they must, unimpeded, take all prudent steps to dispose of them by shooting them.

**The Hon DUNCAN GAY** (Deputy Leader of the Opposition) [5.06 p.m.]: We have heard a lot of rot about this issue in Committee. I ask honourable members who asked questions earlier: What are they trying to justify? People must have the ability to shoot feral deer. We must respect the fact that people who have bred valuable livestock have ownership of that livestock. The Minister said that it could take up to an hour and a half to get a control officer to a property. Imagine the devastation that one deer could do in an hour and a half. It could browse through a farmer's paddock, destroy hundreds of acres of crops, and kill fruit trees and grape vines.

Under this legislation farmers will be given permission to immediately shoot the most valuable deer in the herd of a farmer—someone who over generations has bred, culled and built up a deer herd. What are honourable members trying to do? Do they want a farmer to be able to kill a deer no matter what, or are they trying to resolve a problem that should not exist? This could be equated to sheep, cattle or any stud livestock in this State. Deer are very valuable. If my amendment to the amendment moved by the Hon. Robert Brown is defeated, people will be given cart blanche to kill animals on their properties that might have escaped accidentally.

Honourable members should think about what they are doing. They are trying to justify such an occurrence rather than rectify a problem that needs to be addressed. All legislation is not perfect. We can keep coming up with conundrums that cannot be addressed. Most of the issues that have been raised today can be addressed. Some honourable members asked what would happen if a deer escaped onto a neighbour's property. That is what this bill is about. It clarifies an issue that was not addressed before. The Minister and the Shooters Party said that this had happened in the past because the rural lands protection boards would not do anything.

The bill will clarify ownership and control orders and enable people to do something. This legislation is 1,000 per cent better than it was, and it will be 2,000 per cent better if my amendment to the Hon. Robert Brown's amendment is agreed to. The Minister said that deer escape all the time. There are two deer farmers in the House. When I asked them earlier how common these escapes were they indicated to me—

**The Hon. Christine Robertson:** Why are these gentlemen in the House?

**The Hon. DUNCAN GAY:** They are interested in the bill and they are listening to the debate. Is the honourable member seeking to preclude them?

**The Hon. Christine Robertson:** No. I am asking the honourable member a question. I am not being nasty; he is the one who is being nasty.

**The Hon. DUNCAN GAY:** I gave the Hon. Christine Robertson a very nice answer. We asked the two deer farmers how often deer escape from their properties and they said they have had only two escapes between them in the past 10 years. Deer do not escape all the time. Indeed, 98 per cent—I daresay 99 per cent—of the time those who find these valuable animals on their property simply telephone their neighbouring farmer and he helps to remove them. Farmers want their valuable animals back more than landowners want them removed from their property. The concerns expressed by the Hon. Robert Brown would be valid on a small number of occasions, but the bill contains provisions to address them. The Minister said it could take an hour and a half to remove deer from a neighbour's property, but that is not a long time.

The bill was prompted by an incident that occurred in the Hunter when a neighbour tried several times over a span of weeks to have deer removed from his property but could not get any action. The bill allows such removal to occur almost instantly. If this cannot happen it means that the Minister is not providing appropriate financial support to the rural lands protection boards or the authorised officers. If they do not receive sufficient support to enable the bill's provisions to work properly, the Minister should tell us now.

**The Hon. IAN MACDONALD** (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [5.11 p.m.]: The Deputy Leader of the Opposition is obviously not apprised of the fact that a significant number of deer escapes have been reported in the past few years. I mentioned several

in the second reading debate. Deer have escaped from farms at Orange, Coonamble, Coonabarabran, Port Macquarie and elsewhere on the North Coast. Mr Ian Cohen mentioned reports of escaped deer. These are real incidents. On most occasions deer escape in large numbers; they rarely escape alone.

The Deputy Leader of the Opposition made an impassioned speech but I point out that, despite his passion, if his amendment is successful, farmers who act to eradicate feral deer from their properties will be liable to prosecution under the Crimes Act. That is where the honourable member's argument falls down. His amendment would introduce that onerous repercussion in relation to the options that farmers have available to them. Farmers might take every reasonable step to handle the situation. However, if a number of deer are destroying paddocks or crops and farmers act to eradicate the deer, I am advised that the amendment of the Deputy Leader of the Opposition would make them liable to potential action under the Crimes Act.

**Mr IAN COHEN** [5.12 p.m.]: There appears to be a cross-over of issues in this discussion. The Deputy Leader of the Opposition referred to the escape of individual deer that are part of important breeding stocks and are thus significant assets. The Minister mentioned the escape of large numbers of deer. I wonder whether we can, or should, differentiate between escapes and deliberate releases of deer. In the past, entire herds of deer were released by farmers who had gone broke or whose property was in drought and therefore could not sustain their deer population. If those situations are different, they should surely be dealt with differently. We should revisit the issue and legislate for two very different sets of circumstances.

**The Hon. ROBERT BROWN** [5.14 p.m.]: Putting aside the common law aspects of the ownership of wild deer—it may not be clear whether deer are wild—farmers who have wild deer on their property have the right to kill them without recourse to a licence under the Game and Feral Animal Control Act 2002. An authorised officer also has the right to eradicate deer in the course of his or her employment. No other person has the right to do that unless he or she is licensed under the Game and Feral Animal Control Act. It has been suggested that my amendment would allow criminals to capture or kill valuable farm deer. We cannot put that burden on a farmer who has deer on his property—and it may not be just one or two deer, as Mr Ian Cohen indicated. The Minister referred to incidents involving the escape of hundreds of deer.

Escaped deer could damage an agricultural property adjoining a deer farm. However, if the situation is not handled quickly and properly, the deer will disperse and create an even bigger problem, particularly if they move into more rugged areas. I caution the Committee against attempting to define the law to the nth degree. While the amendment of the Deputy Leader of the Opposition is understandable, it probably creates more problems than it solves.

**The Hon. JON JENKINS** [5.15 p.m.]: I ask the Minister to clarify an issue. I remind him that my vote will decide the issue. Can a control officer delegate, under regulation or the director general's authorisation, his authority to control deer on private property?

**Progress reported from Committee and leave granted to sit again.**

## **BUSINESS OF THE HOUSE**

### **Postponement of Business**

**Government Business Order of the Day No. 9 postponed on motion by the Hon. Tony Kelly.**

## **ADOPTION AMENDMENT BILL**

### **Second Reading**

**The Hon. TONY KELLY** (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [5.18 p.m.]: 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.**

This Bill proposes a number of miscellaneous amendments to the *Adoption Act 2000*.

The Bill seeks to enhance the functioning of the Adoption legislation following on from extensive consultations held with the sector before the introduction of the Adoption Regulation 2003. These amendments are seen as operational amendments that do not alter matters of significant policy. The amendments are being made independently of the statutory review of the Act.

To this end the Bill proposes that new criteria are inserted after section 67 (1) (c) of the Act. These are to provide for the circumstances when a child has been in the care of authorised carers, has established a stable relationship with those carers and the interests and welfare of the child will be promoted by adoption by those carers.

At present the wording of the section only allows the Court to dispense with the consent of the parent or guardian of the child to the adoption where there is serious cause for concern of the welfare of the child.

In circumstances where a child has been in the long-term care of authorised carers, that criteria cannot be met as there will not be any serious concern for the child's current welfare.

The judiciary has expressed concern about its ability to dispense with parental consent to the adoption in those circumstances where such a dispensation may be necessary to enhance the child's sense of belonging and permanence in the carer's family but there is no concern about the child's current welfare as distinct from the child's welfare at the beginning of the placement.

Statistics show that in the past parental consent was dispensed with in 60 per cent of adoptions where the child was under the parental responsibility of the Minister. Most of these children were in long-term care. This would suggest that the dispensation provisions as they currently stand may well be a barrier for the majority of children to be adopted ... even if adoption is the most appropriate outcome for their long-term stability and care.

The amendment will allow the Court to make a "consent dispense" order where the authorised carers make an adoption application and the child has been in a long-term stable relationship with those carers. This will only happen where adoption by those carers will promote the child's interests and welfare.

It is also proposed to amend the Act to make it quite clear that the provisions set out in sections 134 (1) (a) to (c) relating to the distribution of certain original documents held in Departmental files override any provision of the State Records Act. The State Records Act prohibits the release of original records.

Section 134 (1) (a) to (c) of the Act provides that an adopted person may access certain adoption information including original documents. These documents may be intensely significant pieces of information such as an original birth certificate, letter from a birth parent, baby book or original photographs.

The State Records Act 1998 prohibits the release of original records that have been archived by the Department of Community Services even when those records are the subject of an Act enacted after the State Records Act.

Officers from the Department of Community Services and officers from State Records have worked diligently towards finding a way to provide original personal documents to adopted persons. These records are often significant personal mementoes. They may be the only link an adopted person has with a birth parent.

To overcome the inconsistency between the two Acts section 134 is proposed to be amended to explicitly state that the provision of original documents to adopted children does not contravene the State Records Act. Consequently original records can be released to an adopted person from archived files.

Copies of any original documents removed from a file will be made and retained on the archived file in accordance with section 75 of the State Records Act 1998. This provision will be sufficient for record keeping purposes and, provided the documents are certified, will be admissible in evidence in legal proceedings as if they were the original document.

The bill also seeks to amend section 46 (2) of the Act. The amendment seeks to make it a requirement that in those cases when an Aboriginal or Torres Strait Islander child is placed with non-Aboriginal or Torres Strait Islander parents the adoption plan must include the ways in which a child is to be assisted to develop a healthy and positive cultural identity. The adoption plan is also to indicate the way in which links to the child's heritage will be fostered.

Aboriginal groups and other stakeholders believe it is critical to both the child and the birth parents that these aspects be included in the adoption plan and that there should be no discretion about this. The amendment proposed will enshrine this principle in the legislation.

It is already mandatory in those cases where an Aboriginal or Torres Strait Islander child is placed with adoptive parents who are not Aboriginal or Torres Strait Islanders that the adoption goes before the Supreme Court for a preliminary hearing. The amendment proposes that it will be at this time that agreement is reached as to the way the child's cultural heritage will be protected and reinforced. This amendment is not about when an Aboriginal child can be adopted by non-Aboriginal people but rather, once that decision is made, to require recognition of the child's Aboriginal culture.

The bill also proposes an amendment to section 24 (2) (a) in relation to adult adoptions. The amendment relates to applications from adults requesting adoption. It seeks to clarify that the parent-child relationship between the adult adoptee and the proposed adoptive parents must have existed entirely during the adoptee's childhood commencing no later than when the adoptee was 13 years of age. This provides that the adoptee has been brought up, maintained and educated by the proposed adoptive parents for a continuous period of at least five years before the adoptee became an adult.

the reason for this proposed amendment is an important one which goes to the very heart of what adoption law is about. Adoption law is about the child and securing a stable, long-term, close relationship between that child and the adoptive parents. Adult adoptions can occur but only as a recognition of this relationship.

Where the purpose of the application does not appear to be about the need to enhance this parent-child relationship but concerns some other purpose connected with migration or succession or other non-relationship status issue then the Adoption Act should not be made to accommodate such requirements.

We want to be quite clear about our adoption laws. Adult adoptions are not for the purpose of circumventing some other laws of this country. They exist only to legitimise bona fide relationships, which are important and significant to both the adoptee and the prospective adoptive parents. For this reason we want the legislation to be very clear that there must have been a relationship while the adoptee was a child, it must have been of reasonable length and it must have been continuous for at least five years before the application was made.

In the unlikely event that there is a situation where the five-year criteria is not met but the court is satisfied that exceptional circumstances exist to justify making an adoption order, then an allowance has been included to provide for these circumstances.

The bill proposes to amend section 79 of the Act to give the Director-General the power to issue an administrative order and seek a warrant to enforce the order. This is specifically designed for a child or young person under the parental responsibility of the Director-General.

The Director-General has parental responsibility of a child once all the consents for an adoption have been either given or dispensed with. The difficulties which justify the introduction of this section occur when a pre-adoptive placement has been terminated by the Director-General and the prospective adoptive parents have failed to relinquish the care responsibility for the child.

The proposed amendment will give the Director-General the power to regain care responsibility of the child who is under his parental responsibility. Previously this power was contained under the Children (Care and Protection) Act 1987 in a way that also applied to adoptions. However this was lost when the care legislation was created as stand-alone care legislation. The former position is therefore to be restored in connection with the Adoption Act 2000.

A further amendment to the Act seeks to clarify the powers which the Department of Community Services and the police have in pursuing investigations under the Act or regulations. The amendments include powers to apply for search warrants to enable the entry, search and inspection of premises.

Finally, the bill proposes some minor amendments to assist in the smooth functioning of the legislation. These include the amendment of Chapter 4 and the Act generally to change the language of "guardian, guardianship, care, custody, and foster parent" to the more current terminology "parental responsibility, residence, care responsibility and authorised carer".

The amendments also provide that accreditation standards do not have to be prescribed by regulation but rather can be published in the Gazette from time to time, in the same way as selection criteria for prospective adoptive parents is published.

The amendments proposed in this bill will be of significance to those children in long-term relationships seeking to be adopted to those Aboriginal and Torres Strait Islander children whose connection with their cultural heritage will be safeguarded by the amendments, those adults seeking adoption into families they have been with for a period of more than five years and for those seeking access to their original records.

The New South Wales Government believes these amendments will modernise the language of the Act and clarify the powers available to the Director-General in investigations and in the regaining of care responsibility.

These are important amendments to a significant Act.

I commend the bill to the House.

**The Hon. CHARLIE LYNN** [5.18 p.m.]: I lead for the Opposition on the Adoption Amendment Bill, which makes a number of miscellaneous amendments to the Adoption Act 2000 and seeks to enhance the functioning of the Adoption Regulation 2003. The object of the bill is to amend the Adoption Act 2000 so as to clarify the circumstances that must exist before the Supreme Court makes an adoption order in relation to an adult; to require adoption plans for Aboriginal and Torres Strait Island children to make provision for certain matters; to specify the circumstances that must exist before an adoption order may be made so as to enable a child to be adopted by his or her authorised carers; to facilitate the return of children to the parental responsibility of the Director General of the Department of Community Services; to ensure that the provision of certain documents to adopted children does not contravene the provisions of the State Records Act 1998; to provide for the issue of search warrants to facilitate the investigation of suspected offences under the Adoption Act 2000 and the regulations under that Act; to enable the prescription of adoption services and accreditation standards to be effected by administrative order rather than, as is currently the case, by regulation; to enact savings and transitional provisions; and to align certain terminology used in the Adoption Act with terminology used in the Children and Young Persons (Care and Protection) Act 1998. I note that in her second reading speech the Minister advised:

These amendments are seen as operational amendments that do not alter matters of significant policy. The amendments are being made independently of the statutory review of the Act. To this end, the bill proposes that new criteria be inserted after section 67 (1) (c) of the Act. These will provide for the circumstances when a child has been in the care of authorised carers, has established a stable relationship with those carers and the interests and welfare of the child will be promoted by the adoption by those carers.



I advise that the Opposition will not oppose the Adoption Amendment Bill. However, some concerns about it in relation to Aboriginal and Torres Strait Islanders have been brought to my attention. I note the contribution by Ms Linda Burney, who in my opinion has great credence. I note a very important omission in the Minister's reply in the Legislative Assembly. Ms Burney is of Aboriginal descent and said during the debate that she did not meet her Aboriginal family until she was almost 28 years of age. I therefore believe she has a good feel for the provisions of this legislation.

Ms Burney referred to consultation with various organisations—such as Link-Up New South Wales and the Aboriginal Child, Family and Community Care State Secretariat New South Wales—which had been raised with the Government in the preparation of this amendment. Ms Burney said, "I am sure the Minister will speak about that in her reply," but the Minister did not. However, the Minister stated:

That is why my office is committed to providing information and briefings to the Aboriginal Child, Family and Community Care State Secretariat and Link-Up, and to ensuring that we can allay concern about the impact this legislation may have on indigenous children.

It is clear that the Minister has not consulted those two organisations to allay their concerns and I do not know why she would make such a statement to the Parliament. Today I received an email from Steve Larkins, a board member of the Aboriginal Child, Family and Community Care State Secretariat, New South Wales, and General Manager of the Hunter Aboriginal Children Services. He states:

We have grave concerns about the proposed amendments to the Adoptions Legislation, with particular regard to sections related to Aboriginal child adoption. This goes totally against the Aboriginal culture and needs some discussion before being passed into law.

Ms Glendra Stubbs, the Chief Executive Officer of Link-Up New South Wales, wrote this about the proposed amendment to the Adoption Act:

We disagree with these amendments. We do not want the continual break down of our families, community's culture through the adoption of Aboriginal children. Adoption can go ahead without the consent of parents.

- *How will the Aboriginal & Torres Strait Islanders child placement principles be implemented?*
- *Indigenous people not agree with adoption of Indigenous children.*

Some of the effects on those adopted:-

- \*Mental health issues
- \*Identity issues
- \*Drug & alcohol issues
- \*Unable or inability to form lasting relationships

Past practises of adoption of Indigenous children continues to cost the Government annually through related funding to Mental Health Services, D&A Services, Incarceration etc. ...

Link-Up already has 8,000 waiting to find their way back to family and community. Last year we had 78 reunions, 11 of which were graveside reunions where we were unable to find family before people passed away. Currently there is an over representation of adoptive people in the gaol system—30%.

Link-Up receives only \$52,794 annually from this state government to try and address these needs through our Link-Up program to address past history. Link-Up is struggling to reunite Indigenous people from the past with its meagre resources let alone the future influx of new clients that would result from your proposed amendments. Link-Up receives the rest of its funding from a Liberal Federal Government.

Glendra Stubbs then outlined her concerns regarding the proposed amendments. They are:

The Minister has completely circumvented the review process by proposing to introduce changes to the Adoption Act that intend to dispense with consent of parents in the case of children already in foster placements. It is an insult not only to those who made submissions, but also to open, transparent democratic process.

The Minister states "children in long term foster care could benefit greatly from the stability of adoption", yet she provides no evidence at all, let alone epidemiologically robust evidence to support this statement. Neither does she define what is classed as "long term foster care", neither does she provide any findings from the Review of the Adoption Act to support this legislative change. Does this mean children taken in temporary care could also be at risk of being adopted without their parents ever giving consent?

There is no explanation at any stage of why parents have not given consent. This issue has never been explained with any credible evidence to back up why the Minister has taken this extreme approach which, by dispensing with human rights. It also doesn't say much for Minister's faith in the Department's handling of issues where consent is not readily given.

The Minister has failed to inform major stakeholders such as Link-Up NSW, of the proposed changes to the Act. Yet stakeholders involved in meetings regarding the introduction of the Permanency Planning Bill were given guarantees by the Department of Community Services that would be informed of any proposed amendments to legislation and regulations that affected them as their clients.

This advice seems to be totally contrary to the statement made in the second reading speech delivered by the Minister in the other place. The fifth concern is:

There is no mention in the [Minister's] media release regarding the involvements of the Minister for Aboriginal Affairs in the decision making process and its outcomes. Yet during the meetings regarding the Permanency Placement Bill, it was agreed by the [then] Minister for Aboriginal Affairs, Andrew Refshauge, and the [then] Minister for Community Services, Faye Lo Po', that the Minister for Aboriginal Affairs must sign off on any adoptions of Aboriginal children into non Aboriginal families. Given the impact this change to legislation could have, the Minister for Aboriginal Affairs should be central to the decision making process to introduce the Legislation to parliament.

The media release makes no mention of the rights of extended family in relation to dispensation with consent. This is of critical concern as it is often extended family that takes a central role in raising and caring for children in Aboriginal families and this concern must be answered by the Minister.

The proposed change to the Adoption Act has taken place without consultation with key stakeholders, and completely contravenes Part 6, Chapter 2 of the Bringing them Home report ... [which stated]:

"Aboriginal traditional values and Law oppose adoption. It is 'alien to Aboriginal philosophies' [and] incompatible with the basic of Aboriginal society."

That quotation was drawn from the New South Wales Law Reform Commission 1994 report, at page 192. Glendra Stubbs continues:

Adoption is alien to our way of life. It is a legal status which has the effect of artificially and suddenly severing all that is part of a child with itself. To us this is something that cannot happen.

It is commonly recognised by the community that the adoption of Aboriginal children is alien to traditional Aboriginal child-rearing practices. It is also acknowledged that in the past numbers of Aboriginal children were removed from their families and adopted into white families. The Committee endorses the growing community belief ... that this practice should not continue.

The introduction of this new law will contravene recommendation 44-51 (National Standards for Indigenous Children) of the "Bringing Them Home Report". In particular, the new laws relating to dispensation with consent would contravene Recommendation 52 (National Standards 7) Adoption as Last Resort ...

The National standards legislation provides that in determining the best interest of the Indigenous child the decision maker must also consider:-

1. the needs of the child to maintain contact with his/her indigenous family, community and culture,
2. the significance of heritage for his/her future well-being,
3. the views of the child and his/her family and
4. the advice of the appropriate accredited Indigenous organisation.

The proposed changes would not allow for the child to be able to maintain these links with family, community or culture. The Hon. Reba Meagher in her press release states that it is proposed that adopted Indigenous children will be **encouraged** to maintain these links. How is it proposed that this is encouraged?

Again it will mean Indigenous children will be left to develop their culture through non-Indigenous carers. One of the strengths of Indigenous carers is that they **"live"** their culture, non-Indigenous people do not live Indigenous culture. **Adoption is a complete change of identity, down to name changes. Names in Indigenous culture are a tracking system for who you are.**

We cannot ignore the overwhelming evidence before the Human Rights Commission that for a century this Parliament supported laws which inflicted grief and will continue to inflict grief, suffering and humiliation on Indigenous people if this amendment is passed.

Currently the Government is reviewing child welfare legislation. An Aboriginal officer has been seconded to the Department of Community Services to ensure that Aboriginal communities are properly consulted in this process. An important part of this review is to ensure child welfare laws provide adequate support for Aboriginal communities and their children.

Our concerns revolve around the Minister Reba Meagher NSW Minister for Community Services apparent haste to initiate new laws through parliament without appropriate and respectful consultation. This consultation process was promised on record in NSW Parliament in June 1997.

The effects of the proposed changes without appropriate and respectful consultation will further damage the plight of Aboriginal children in New South Wales.

The letter is signed by Glendra Stubbs of Link-Up New South Wales. My concern is that this totally contradicts the statement that the Minister made in her second reading speech, and in her reply to the debate in the other

place, about consultation with key stakeholders. I have no doubt that both the Aboriginal Child, Family and Community Care State Secretariat and Link-Up New South Wales are stakeholders in this legislation. I place on record an urgent fax that I received at 3.05 p.m. today from Sister Aileen Crowe of the Franciscan Missionaries of Mary, in Marrickville. Sister Aileen states:

I am a member of an international religious congregation of women who have worked closely with Aboriginal women as well as refugee women in Australia and I feel that this is a racist, discriminatory piece of legislation.

We are presently supporting a case before the courts where a young refugee mother will lose the possibility of getting her child back. It is recognised that she was in no position to consent to an adoption at the time that DOCS persuaded her to sign the papers. She has spent more than two years—only a couple of months after the birth of the child—desperately trying to get her baby returned to her. She is an intelligent young woman and her cultural group are bewildered as to why she does not have her baby.

Section 67 enables the Supreme Court, when considering an application for an adoption order for a child, to dispense with the consent of certain persons (other than the child) in certain circumstances. Schedule 1 [6] amends section 67 so as to allow the consent of any person (other than the child) to be dispensed with in the case of an application made by an authorised carer if the Supreme Court is satisfied that the child has established a stable relationship with the authorised carer and the adoption of the child by the authorised carer will promote the child's interests and welfare. And the last paragraph of Section 24 (1) which says 'make an adoption order even if the child has been brought up, maintained and educated by the applicant **for less than that period.**'

This legislation was introduced hurriedly, specifically I believe, to block this process. It is seriously unjust and has nothing to do with the best interest of this mother and child. If you cannot have the Bill thrown out, could you **at least introduce an Amendment to the Amendment to ensure that it is NOT retrospective.**

Sister Aileen says she is sorry for the late submission but, as she said, she only "heard about it today". That puts the lie to the Minister's statements about consultation. My concern is that this amending legislation appears to have been put together in haste and rushed before this place before the Christmas recess. These issues need more time and more consultation. Opposition members certainly have not had time to do more than make a superficial examination of the implications of the bill. I am concerned that the Minister, in her reply in the other place to the second reading debate, said this about the Government's commitment to look after the needs of Aboriginal and Torres Strait Islander children:

To further ensure that the culture and heritage needs of Aboriginal children in care are met, the bill also includes an amendment to ensure that adoption plans for indigenous children must include provision for meeting those needs. Whilst I recognise that indigenous people have particular concerns about adoption, the Government is committed to supporting all children and will not support the exclusion of any group of children from the potential benefits of the provisions of this bill. I have great confidence in the Supreme Court making the right decisions for individual children based on the quality of their foster care arrangement and long-term interests.

My experience and the submissions the Coalition has received would indicate strongly that there needs to be special consideration for indigenous children because we are talking about children who come from a different culture and that culture has a totally different view of adoption. I believe the bill requires special consideration and a lot more consultation with key stakeholders. Their concerns could be addressed in this legislation, but it is quite simple: We do not sit for long enough in this Parliament to examine issues such as this in detail to do justice to them.

The haste with which this bill has come before the Parliament and the obvious lack of consultation by the Government with key stakeholders on this very important issue brings no credit upon the Government, and would not instil confidence in the community that the Government has got it right. The amendments have been moved independently of the statutory review of the Act, but when a review is undertaken I hope it will deal in much greater detail with concerns raised by key stakeholders. The Opposition does not propose to move amendments but I understand that the Australian Democrats will move an amendment to address that concern.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [5.42 p.m.]: This bill is a worry because it has been introduced at short notice, and this subject needs a great deal of consultation. I was a member of the Standing Committee on Social Issues that conducted an inquiry into adoption practices from 1950 to 1998. In December 2000 that committee produced its final report, entitled "Releasing the Past". Evidence presented to that committee could only be described as harrowing. Those witnesses from whom the committee heard evidence were given 10 minutes to sum up their lives and their quests to locate their children or their parents. Adoption practices of removing children were revealed as being cavalier, administrative, impersonal and unsatisfactory. The scars from that experience have lasted the whole lives of the people affected—indeed, beyond those lives. Many people did not learn the identity of their parents until after their parents had died.

It might be noted that at a Federal level a Senate inquiry entitled "Bringing Them Home", initiated by the Australian Democrat Senator Andrew Murray, about the same issue came to the same traumatic conclusion. Since then, of course, there has been an inquiry into the Department of Community Services [DOCS], which I initiated and which the Liberals eventually took up. That revealed that the department was quite dysfunctional, cavalier and chiefly active only in crisis situations. The department appointed inexperienced staff to try to resolve horrendous situations when there were no resources to allocate to prevention. Many cases that should have been dealt with were unallocated, which is one way of saying they sat on a desk while the urgent cases were handled and the others were not.

The Government responded with \$1 billion over 10 years and a great deal of fanfare to rebuild the Department of Community Services. It has reinstated a number of offices and increased its staff. During the course of the estimates committee hearings, we learned that DOCS is being rebuilt. One could argue that DOCS lost its middle management in the Greiner years and that it was all the fault of the Liberals, but, whatever happened, that is history now. The fact is that DOCS is rebuilding itself. It has employed large numbers of new staff. At first it had a problem with inexperienced staff. They were burning out and there was a high turnover. Now it is recruiting and has a lot of new staff. The fact that this department is now demanding a lot of power is quite worrying.

DOCS was trying to reduce its client base. After an adoption order is made, the department does not have to provide as much support as it would to a foster carer. Children with a foster carer need more support from the department, but once an adoption is finalised the parents have the child and they are on their own. That takes the pressure off the department's client base and DOCS is no longer responsible for that child. That suits DOCS. It lessens the costs and lessens the agency's supervisory role. There is something in this for DOCS, let us make no mistake about that.

The purpose of the bill is to clarify the circumstances that must exist before the Supreme Court makes an adoption order in relation to an adult. Schedule 1 [6] to the bill provides for an additional ground on which the Supreme Court may dispense with the consent of the parent or parents of a child who is the subject of an application for adoption. Currently, the Act allows the Supreme Court to grant an application for adoption of a child in circumstances without the consent of a person other than the child, such as the child's parents. The circumstances include when the person concerned cannot be found or identified, or if the person is a parent or guardian of the child and there is serious cause for concern for the welfare of the child and it is in the best interests of the child to override the wishes of the parent or guardian.

The bill adds another circumstance in which the court can dispense with the consent of the person other than the child, namely, if an application for adoption of a child has been made by the authorised carers of the child, the child has established a stable relationship with those carers and the adoption of the child by those carers will promote the child's welfare. The bill specifies the circumstances that must exist before an adoption order may be made to enable the child to be adopted by his or her authorised carers, and to facilitate the return of children to the parental responsibility of the Director General of the Department of Community Services. Sometimes authorised carers may not be willing to return the child, which is an additional problem.

The bill also provides for the issue of search warrants to facilitate the investigation of suspected offences under the Adoption Act 2000 and attendant regulations. The Minister's office further advised that, under the Children and Young Persons (Care and Protection) Act 1998, a decision to proceed to adoption on this basis is made only after a detailed assessment of the child's situation, his or her bond with carers and his or her psychological need for stability. The child's history, age at placement and length of time with present carers are all relevant considerations. In addition, such a decision is made only if the prospect of restoration to the birth family has been excluded and if the carers are able to provide the child with long-term family membership through adoption.

When the Supreme Court is asked to dispense with the consent, the parents will be served notice of a potential adoption and can be joined as a party to proceedings to put their views forward if they do not consent to the adoption. The bill will require adoption plans for Aboriginal and Torres Strait Islander children to make provisions for developing a positive cultural identity and establish links with their heritage. All this sounds very good, but the fact is that there are also cases where the onus of proof is reversed. If one child has been taken from the parents, the onus of proof is then on the parents to prove they are fit to look after the child.

Provisions to reverse the onus of proof are very rare. If the Government maintains its radical departure from accepted legal practice, it should thoroughly justify its decision. However, no such justification has been

forthcoming. In fact, the Government has not addressed the issue at all. Where are the letters from the Law Society, the Bar Association, Legal Aid, the New South Wales Association of Children's Welfare Agencies and the Children's Court indicating why such a radical change is necessary? Where are the letters from credible groups in support of the Government's contention that this bill is necessary? Those groups have not been consulted. It is as simple as that.

It is interesting to note that in the other place the honourable member for Canterbury, Ms Linda Burney, stated that consultation took place in 2000 and 2001. I ask the Government what is the use of a consultation process that occurred five years before the presentation of a bill? What sort of crazy arrangement is that? After all, over five years the office bearers, institutions and groups that were consulted probably have changed. Moreover, changing trends in society and changes in demographics reshape the whole context of the legislation. Given that a great deal of change takes place over five years, why would the Government base legislation providing for a radical departure from accepted legal practice on consultation that is five years out of date?

The Government has exploited the credibility of the honourable member for Canterbury, Linda Burney, by having her state during the second reading stage in the other place that consultation took place. I suggest that the Government twisted the arm of the honourable member for Canterbury to justify a fundamentally inadequate consultation process. Link-Up New South Wales was made aware of this legislation by a report in the *Daily Telegraph*, but otherwise would not have known of its existence. The group has 8,000 people from the Aboriginal stolen generation who are waiting to go home. The group is attempting to arrange reunions. In 2004 the group organised 85 reunions. Last year the group organised 78 reunions, but 11 of them were graveside reunions. In other words, the Aboriginal children found their parents after their parents had died. Link-Up has stated that 27 per cent of children in care, or 3,000 children, are Aboriginals, yet Link-Up was not consulted about this bill.

Link-Up is funded through the State's Community Service Grants Program to the tune of \$52,000, but receives \$460,000 from the Commonwealth Government. Perhaps the Commonwealth Government has provided increased funding as a result of the report initiated by the Australian Democrats, "Bringing Them Home—Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families". It is worth noting that the Federal Government provides funding on a dollar-for-dollar basis to linking-up projects. If the New South Wales Government applied, it would receive \$460,000 instead of \$52,000. Why is funding important in the context of this bill? The answer is that there is a shortage of Aboriginal carers. The secretary of the Aboriginal Child, Family and Community Care State Secretariat [AbSec], Danna Clarke, who attended the crossbench briefing, said that AbSec has greater credibility than other organisations in finding culturally appropriate Aboriginal families in which to place people. The group's credibility is greater than the credibility of the Department of Community Services [DOCS] in this regard. That is not surprising.

The Department of Community Services is regarded by Aboriginal people as the department that stole their children. Elders personally remember what happened when welfare agencies came to Aboriginal settlements. If they arrived after school and Aboriginal children were around, they rounded up the children. The determination of whether an Aboriginal child would ever again see its parents rested on whether the child could run away fast enough. Children who were too small to run were taken by welfare agencies. In some cases children who were hanging onto their mother's legs while their mothers hung onto posts had their arms prised apart and were taken away, never to be seen again. Against that background, it is not surprising that DOCS is having trouble recruiting Aboriginal carer families. However, if sufficient funding is provided to Aboriginal welfare groups, they will find appropriate carers, arrange placements and supervise reunions. If ever there were a need for a non-government organisation to bring its awareness of policy to bear, this bill would certainly be a prime example. In spite of that, the Government has adopted quite a niggardly attitude.

The Government responded to the incentive of providing permanent placements, but then washed its hands and failed to provide support for foster carers as opposed to adopting parents. It is worrying that a government department could be so inadequate, but it is equally disappointing that the Opposition points out the problems, and then says that it will not oppose the bill. What is the use of saying that the Government should govern, and never mind if the legislation is clearly not appropriate? What is the point of passing inefficacious legislation? I believe it is the role of parliamentarians to examine legislation, evaluate it critically, and either modify it or reject it. It is inappropriate for parliamentarians to adopt the attitude that if the Executive says the legislation is appropriate and as it is their turn to formulate legislation they will pass it because, hopefully, after the next election it will be their turn. That is not what the Opposition ought to do. The Opposition ought to be

actively involved in the process of formulating worthwhile legislation. The God-given Tweedledum, Tweedledee right of ruling parties to do as they like is really bad. This bill is a good example of how legislation should not be approached. I hope the Opposition will alter its position in relation to this bill.

One of the recommendations of the Standing Committee on Social Issues relating to past adoption practices was for the Government to ensure the provision of sufficient funding to facilitate reunions of Indigenous people who have been affected by past adoption practices. The extension of that proposition is that current adoption practices should maximise the engagement of Aboriginal families for Aboriginal people. Given the high percentage of Aboriginal children in care—a proportion that is far greater than their representation in Australia's population, particularly in certain geographical areas—the need for attention to be focused on this problem is obvious. I understand that there is a far greater shortage of Aboriginal carers in the western metropolitan areas of Sydney than is the case in some of the country areas of New South Wales where local Aboriginal groups have better kinship ties, thereby making it easier for long-term foster care arrangements to be made. A letter from AbSec states:

The Aboriginal Child Family and Community Care State Secretariat (NSW) Inc (known as AbSec) is a peak body funded by the NSW Department of Community Services to advocate on behalf of Aboriginal children and young people in the Out Of Home Care system of NSW. AbSec also deals with wider welfare issues for Aboriginal children and young people in NSW and nationally. AbSec is strongly concerned with the proposed amendments to the Adoptions Legislation. The NSW Government held discussions with members of AbSec a number of years ago and the strong comment made by AbSec is that the communities represented by AbSec strongly disagree with any form of adoption for Aboriginal children and young people. The current board wish to make it clear that this point of view is still a firm commitment by AbSec and the communities that it represents.

Past Government practices of removing children and having these children adopted by non-Aboriginal people is still a huge issue for Aboriginal communities today. The current Government is still paying for the costs of these past practices.

Stronger still is that Aboriginal people are still paying the cost of the loss of these Aboriginal children. There are still many thousands of Aboriginal adults still looking for their birth families, some of whom only find them through visits to grave sites. Another issue is that many thousands of children, young people and adults don't even know they have an Aboriginal background due to being removed.

We know these comments are nothing new to the Government, however they seem to be forgotten when we see amendments as those proposed which don't make special consideration for Aboriginal children and young people. We believe the amendment should be stopped until a discussion about Adoption for Aboriginal children and young people can be held.

The letter was signed by AbSec's Chairperson, Garry Matthews; its secretary, Dana Clarke; its treasurer, Glendra Stubbs; and its public officer, Steve Larkins. When AbSec attended the crossbench meeting, the group lobbied for the Aboriginal provisions to be deleted. I understand that Reverend the Hon. Dr Gordon Moyes has drafted an amendment that will do just that. I ask all honourable members to support his amendment. I certainly will support it.

Also disturbing is a letter from Sister Aileen Crowe, who does wonderful work for refugees and as a missionary overseas. The money that she receives from the sale of artefacts that she brings to Australia is ploughed back into the missions. I have known her for some years and I know she has not been involved in any legislation in this House. Today she was in great distress; she phoned me concerning this bill, and has written to all the members of the crossbench and the Opposition about the retrospective aspect of the Adoption Amendment Bill. She wrote:

I am writing in haste to ask if there could at least be an Amendment made to the Adoption Amendment Bill 2006 that is before the House today.

I am a member of an international religious congregation of women who have worked closely with Aboriginal women as well as refugee women in Australia and I feel that this is a racist, discriminatory piece of legislation.

We are presently supporting a case before the courts where a young refugee mother will lose the possibility of getting her child back. It is recognised that she was in no position to consent to an adoption at the time that DOCS persuaded her to sign the papers. She has spent more than two years—only a couple of months after the birth of the child desperately trying to get her baby returned to her. She is an intelligent young woman and her cultural group are bewildered as to why she does not have her baby.

Section 67 enables the Supreme [Court], when considering an application for an adoption order for a child, to dispense with the consent of certain persons (other than the child) in certain circumstances.

*Schedule 1 [6] amends section 67 so as to allow the consent of any person (other than the child) to be dispensed with in the case of an application made by an authorised carer if the Supreme Court is satisfied that the child has established a stable relationship with the authorised carer and the adoption of the child by the authorised carer will promote the child's interests and welfare.*

And the last paragraph of Section 24(1) which says "make an adoption order even if the child has been brought up, maintained and educated by the applicant for less than that period.

This legislation was introduced hurriedly, specifically I believe, to block this process. It is seriously unjust and has nothing to do with the best interest of this mother and child. If you cannot have the Bill thrown out, could you **at least introduce an Amendment to the Amendment to ensure that it is NOT retrospective.**

I am sorry this is late in coming, but we just heard about it today.

The bill has been hastily raced into this House, basically to overcome what seems will be the subject of a court decision. One of the great disgraces is that this Parliament, with considerable rhetoric, is being asked to make a general rule that overrides a court case. A most fearful situation. The judicial process comprises advocates from all parties, perhaps even some friends of the court, and a judge working for the best solution to a specific case. Without any knowledge of a particular court case—or in some cases without any knowledge of a case proceeding—we pass legislation to force a court to do what it otherwise would not have done. In other instances, we pass legislation that makes court decisions irrelevant to enable the Government to get what it wants.

The bill will completely trash the separation of powers—a decision not to be made lightly! The Government has acted quite underhandedly about the case I mentioned, which was the subject of a suppression order. So we could not read about it in the media. It would be rare for an adoption case to be reported by the media in any case. Even if the subject case were not suppressed, it may not have been mentioned in the media, so we may not have even heard about it. The Government is pushing through legislation to effectively override that particular case. It would be monstrously arrogant of this House to override the courts because the Minister said something needs to be done when we do not know what the courts are doing.

Members of Parliament are appointed to make general policy decisions, but how that policy is applied to individual cases must be a matter for the courts. That is the doctrine of the separation of powers—an absolutely critical doctrine for the operation of our political system. The retrospective provision in the bill is very worrying. I propose to move two amendments to delete two clauses, and will speak to them in Committee. I ask for support from the Opposition and the crossbench for those amendments. I hope the Government will support them also. If the amendments are agreed to, I would be extremely angry if the Government did not then proclaim them, but rather tried to sneak through other provisions.

That happens. If an amendment sneaks through this House that makes a change to a bill that the Government does not agree with, this arrogant Government will decide not to pull the bill. Instead it will let it pass but then will not proclaim the amendment. Effectively, anything this House does is negated by a nod and a wink between the Cabinet and the Governor. Let us call a spade a spade here. In her second reading speech the Minister gave a euphemistic account of this provision. She said:

These amendments are seen as operational amendments that do not alter matters of significant policy.

That is a disgrace. In the bill we are reversing the onus of proof in some cases and retrospectively overriding the courts in another, I do not understand how the Minister could have said that. I know Carl Scully is quite happy to tell the Parliament that he had not read a report when he had, but it is a bit rich to hear such words in a second reading speech—when very significant amendments are being slipped in as though they were a mechanical correction.

I see a lot of problems with this bill. I do not believe that it should be supported. Whether other aspects are as dire as the Minister claims is very difficult to assess. The bill seems to have enough wrong with it for it to be thrown out and reassessed. The case that I have referred to, as highlighted by Sister Aileen Crowe of the Franciscan Missionaries of Mary, was lost by the Department of Community Services [DOCS], which is currently appealing in the Supreme Court.

If all other amendments are agreed to, including those of the Christian Democrats that delete Aboriginal aspects, perhaps I will rethink my retrospective amendments. No evidence has been produced that the courts are not doing the right thing after receiving a reasonable application from DOCS. I believe there have been times when DOCS has had difficulty fulfilling the evidentiary requirements of the court. The solution to that is to ensure that DOCS is better prepared. I believe some efforts have been made by DOCS and by the Children's Court for better representation and better psychological reports on children and to improve the working courts in adoption matters—and I believe those things are improving. But I certainly do not believe that matters will be helped by the department being given a free hand, which is what this bill seems to be doing. There has not been sufficient time, there has not been sufficient discussion, and the bill needs to be further considered.

**Ms SYLVIA HALE** [6.07 p.m.]: The Greens cannot support the Adoption Amendment Bill because we feel there has been grossly inadequate time to consult affected community organisations and groups. The Greens and the crossbench have heard from groups strongly opposed to aspects of the bill. It is in everyone's interest that debate on the bill be adjourned until such time as there has been an opportunity for the people who will be most affected by it to appreciate its implications and ramifications, and to make their views known.

It seems to me that members of the crossbench could well be of a similar mind to the Greens on many aspects of the bill. I foreshadow that the Greens will move amendments to ensure that the bill's provisions are not retrospective and that the provisions relating to dispensing with the need of the consent of the biological parent or of a child under 12 years are eliminated from the bill.

Today and yesterday a great many bills were pushed through this House without an adequate opportunity for proper consideration of their provisions. Yesterday we dealt with the Ports Corporatisation and Waterways Management Amendment Bill; earlier today we dealt with the State Revenue Legislation Amendment (Tax Concessions) Bill; and tonight we are looking at amendments to the Adoption Act. In every case members of Parliament are being asked to accept Government bills that they have not had sufficient time to consider. I also find it particularly disturbing that my office was assured that the bill would not come before the Legislative Council until November. One of the Minister's advisers even offered to hold a meeting at some future time to discuss the bill further. Clearly, as indicated by so many of the Government's actions, such undertakings and assurances are virtually worthless.

The Greens have no quarrel with some of the features in the bill that appear, superficially at least, to be reasonable. They include provisions facilitating the return of a child to the care of the Department of Community Services when an unsatisfactory pre-adoptive placement has been terminated and the carer is not co-operating in the return of the child. Nor do we object to the safeguards surrounding the provision of original documents to adopted children, the gazettal of prescribed standards for adoption services and their accreditation, or the issuing of search warrants to assist the investigation of suspected offences that might have been committed under the Act. However, we have significant reservations about changes to the Act that dispense with the need for the consent of the biological parent, or that of a child under 12 years of age before an adoption order can be granted.

As I have already indicated, we will be seeking to amend those aspects of the bill. The Greens believe that, where a child is at severe risk from any person, whether it be a parent or guardian, the child should be removed from that dangerous situation as quickly as possible. No child should have to suffer abuse, neglect or violence because a parent or guardian is incapable of appropriately parenting the child. We have no problems with the contention that it is sometimes in the interests of the child to be moved from parental control and into foster care. When a court has issued a care and protection order there is an obligation to try to create some stability for the child. It is in no-one's interests for a child to be moved from one foster family to another if the child is happy in one placement and the foster carers are happy with the arrangement.

However, the bill proposes significant changes to current procedures. It would allow the court to permit an adoption, or it would permit an adoption to proceed without the consent of either the birth parent or the child when the child is less than 12 years of age. This provision relates only to children who have been in the continuous care of a foster parent for more than five years and there is no prospect of them returning to their biological parent or parents. A significant number of Aboriginal and Torres Strait Islander children under the care and protection of non-indigenous foster carers may be especially affected by these proposed amendments. It is not surprising, therefore, that Aboriginal organisations such as Link-Up New South Wales are particularly opposed to this aspect of the bill. I have received—and I am sure other honourable members have received—emails that have made a number of points. In her second reading speech the Minister stated:

Children in long-term foster care could benefit greatly from the stability of adoption.

Yet the Minister provided no evidence whatsoever, let alone any research, to support her statement. She did not define long-term foster care or instance any findings from the review of the Adoption Act to support the proposed amendments. The Minister failed to meet with stakeholders such as Link-Up or the Aboriginal Child Family and Community Care State Secretariat (NSW) Inc. [AbSec] to discuss proposed changes to the Act, yet stakeholders involved in meetings about the introduction of the permanency planning bill were given guarantees by the Department of Community Services that they would be informed of any proposed amendments to legislation and to regulations that would affect them and their clients. They are outraged that in formulating this bill the Minister has ignored them and their concerns.



The legacy of the Stolen Generation and the bitter experience of indigenous children being forcibly removed from their families, placed in institutions, and then farmed out as cheap labour has left many bitter memories in the minds of the Aboriginal community and has instilled in them an abiding distrust of government departments. This bill and the manner of its making has further cemented that suspicion and mistrust of the Government's motives. A letter from AbSec dated Tuesday 24 October testifies to that. The letter, which is addressed to members of Parliament, states:

The Aboriginal Child Family and Community Care State Secretariat (NSW) Inc. (known as AbSec) is a peak body funded by the NSW Department of Community Services to advocate on behalf of Aboriginal children and young people in the Out Of Home Care system of NSW. AbSec also deals with wider welfare issues for Aboriginal children and young people in NSW and nationally. AbSec is strongly concerned with the proposed amendments to the Adoptions Legislation. NSW Government held discussions with members of AbSec a number of years ago and the strong comment made by AbSec is that the communities represented by AbSec strongly disagree with any form of adoption for Aboriginal children and young people. The current board wish to make it clear that this point of view is still a firm commitment by AbSec and the communities it represents.

Past Government practices of removing children and having these children adopted by non-Aboriginal people is still a huge issue for Aboriginal communities today. The current Government is still paying for the costs of these past practices.

Stronger still is that Aboriginal people are still paying the costs of the loss of these Aboriginal children. There are still many thousands of Aboriginal adults still looking for their birth families, some of whom only find them through visits to grave sites. Another issue is that many thousands of children, young people and adults don't even know they have an Aboriginal background due to being removed.

We know these comments are nothing new to the Government, however they seem to be forgotten when we see amendments as those proposed which don't make special consideration for Aboriginal children and young people. We believe the amendments should be stopped until a discussion about adoption for Aboriginal children and young people can be held.

That letter is signed by Garry Matthews, Chairperson; Dana Clarke, Secretary, Glendra Stubbs, Treasurer; and Steve Larkins, Public Officer of AbSec. It is bureaucratically easier to treat in an identical manner all children under the care and protection of the State regardless of their cultural or ethnic backgrounds. No-one is denying that it makes for ease of administration if everybody is treated the same. But whether administrative convenience is an adequate excuse for introducing legislation that could well result in a child's permanent alienation from its original parent or the child's cultural history is another question indeed. As the AbSec letter indicates, the Aboriginal community is only too well aware of children who have been adopted by non-indigenous parents and who even now are unaware of their Aboriginal heritage. In that context it is interesting to establish whether there is a unanimous view in the community that adoption is a good thing. The AbSec letter states:

AbSec strongly disagree with any form of adoption for Aboriginal children and young people.

That organisation's opposition to adoption is clear. But there is a variety of attitudes towards adoption even within the non-indigenous population. This afternoon I was speaking to a foster carer who has had long-term care of two children. She believes strongly that foster children are entitled to retain their original name, to know about their background and to meet with their parents if they so wish. She believes the carer has a responsibility not to try to subsume foster children into the foster family but to let them know about their history and to allow them some autonomy as to the connections that they may wish to have with their birth parents or siblings.

But of course other people who have fostered children for lengthy periods may believe crimes committed by the parents against their children are so heinous and unforgivable that they strongly oppose children's retaining any connection with their birth parents. In fact, they may foster in those children a strong antagonism towards their parents. Such people may believe adoption is in the best interests of the child. The only thing we can conclude from these approaches is that we cannot claim that there is unanimity in the community that adoption is inherently good. The attitude that adoption is automatically and inherently a good thing underpins the provisions in the bill, and I believe that assumption should be challenged.

In the case of the Stolen Generation many church and welfare authorities might have genuinely believed that the removal of children from their parents was in the best interests of those children. History has, however, proved that they were often wrong. Yet the trauma and suffering inflicted not only on the children but on the parents and subsequent generations was done ostensibly in the name of the children's welfare. This bill raises a similar spectre of a paternalistic knowing about what is supposedly best for Aboriginal and Torres Strait Islander children. No wonder it rings alarm bells for many indigenous people who are already deeply mistrustful of DOCS.

Underlying many of the attitudes of the indigenous community is the fact that Aboriginal people do not share the focus of Anglo society on the desirability of the nuclear family. In Aboriginal society one is essentially a member of a group. This is signified by the importance that is attached to one's kinship relationships within very extended networks and the frequent use of the terms "auntie" and "uncle" to indicate the strong bonds that exist between various community members.

**The Hon. David Oldfield:** Do you mean people who are unrelated in any way by blood? Is that what you mean, Sylvia?

**Ms SYLVIA HALE:** No. Aboriginal people often have extended relationships that may be traced through the line of the father or of the mother. They are very conscious of those relationships, and knowledge of them is consistently passed down so that children, or indeed any member of the Aboriginal community, know where they stand in relation to the extended kinship lines.

**The Hon. David Oldfield:** But you are talking about bloodlines; you are not talking about people who are called "auntie" and "uncle" for tribal reasons.

**Ms SYLVIA HALE:** I am saying that within the Aboriginal community there is a strong sense of community. It is much stronger than in Western society, where—to the regret of many—our focus is now on the nuclear family. I believe people look back nostalgically to a former time when parents, grandparents and other relatives were considered to be constituents of the family group. That was the case only 100 or 200 years ago. Nursing homes and other aged care facilities are recent phenomena. They are a reflection of the fact that the nuclear family as it is now constituted is not able to provide care, protection and succour to older citizens. Institutions have also been established to care for disabled children. The focus has shifted to exclude from the nuclear family those elements that do not fit conveniently within it. I think our focus on the isolated, individualised nuclear family unit, comprising two parents and a number of children, is incorrect and works to the detriment of society. In that respect, I believe the way in which the Aboriginal community organises personal relationships is probably more desirable than the way in which many members of the non-indigenous community organise their relationships.

It is possible that the bill is a legalistic response to the ongoing problem of finding more Aboriginal and Torres Strait Islander foster carers to look after the approximately 3,300 Aboriginal and Torres Strait Islander children who are under the care of DOCS in New South Wales. If that is the intention of the bill, the Greens believe it is misguided. However, the Greens have sympathy with those carers who want to adopt a child who has been in their continuous care for five years or more. The Greens sympathise with carers and children in that situation, especially if the biological parent is deceased, has suffered severe brain damage or for some other reason cannot, or does not want to, relate at all to his or her biological child. Often, however, foster arrangements break down either because the child is not happy, makes allegations against the foster parents and must therefore be moved, or because the foster carers are unable to cope with the child.

Caring for children with behavioural disorders or children who have been abused is an extraordinary challenge. It is important to remember that, under the current Act, the consent of a child of 12 years of age or more who has been in the ongoing care of the prospective adoptive parents for at least five years must be obtained before an adoption can proceed. The Act states:

A child who is 12 or more years of age and of sufficient maturity to understand the effect of giving consent may give sole consent to his or her adoption by a proposed adoptive parent or parents if the child has been in the care of the proposed adoptive parent or parents for at least 5 years.

However, the Act also states that if "the court is satisfied that the child is in such a physical or mental condition as not to be capable of properly considering whether he or she should give consent", the child's consent may be dispensed with. When weighing up the issues raised by the bill two things have been at the forefront of our concerns. The first is maintaining children's right to their culture, and the second is ensuring that children are safe and not neglected or abused. The Greens do not want adoption to operate as a de facto means of removing children's access to their cultural heritage or as a way of compensating for a lack of resources on the part of DOCS. Admittedly a requirement is that any adoption plan must include specific details as to how the child can stay in touch with their cultural heritage, and a new subsection specifically relates to maintaining the culture of Aboriginal and Torres Strait Islander children. The prospective adopters must present a plan of how they intend to do this, but who will monitor what happens once the child has been adopted?

There is a possibility of a subsidised adoption for adoptive parents who have been foster carers. They are paid at the same rate by DOCS as they were when they were foster carers. The adoptive parents need to

apply for a subsidised adoption. One of the conditions to obtain that subsidy is that they consent to a yearly review of the placement. One of the difficulties with the subsidised adoption scheme is that it does put the onus on adopting parents to be proactive and agree to apply for the subsidy and then agree to the review. However, if adoptive parents are sufficiently well off not to need any subsidy from the department they are not subject to a review of the placement. As it were, they can buy their way out of the oversight by the department of their handling of the adopted child. What is worrying is that DOCS is already overstretched, and, understandably, a lot of its time and resources are focused on investigating reports of child abuse.

Can we accept on trust that DOCS will be given the resources it needs to monitor and ensure that undertakings are adhered to? What happens if adoptive parents move interstate or overseas or do not need or apply for, as I indicated before, a subsidy from the department? Such events would render somewhat irrelevant any undertakings given by the adopting parents in relation to plans. It might be better if adequate money were to go to the funding of indigenous foster care agencies that have a very real interest in ensuring that a child's cultural inheritance is preserved, and if the child were made aware of it. Although DOCS tries to place Aboriginal and Torres Strait Islander children with indigenous foster carers, it is not always possible to do so. There are simply not enough of them. There are only 11 such carers in Western Sydney, although in Kempsey, for example, there are 33.

Children placed with a foster carer may be separated from their biological family by hundreds of kilometres. It is inevitable that some will be placed with non-indigenous foster carers. No-one is saying that those foster carers are not going a good job, but that is not the point. The point is that the opportunity for them to be exposed to their cultural background may be severely curtailed.

**Debate adjourned on motion by Ms Sylvia Hale.**

*[The Deputy-President (The Hon. Penny Sharpe) left the chair at 6.35 p.m. The House resumed at 8.00 p.m.]*

## **CRONULLA RIOTS REPORT**

### **Production of Documents: Return to Order**

**The Clerk** tabled, pursuant to the resolution of 19 October 2006, documents relating to the police report into the Cronulla riots received on 25 October 2006 from the Director General of the Premier's Department, together with an indexed list of documents.

### **Production of Documents: Claim of Privilege**

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

## **DEER BILL**

### **In Committee**

**Consideration resumed from an earlier hour.**

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [8.01 p.m.]: I seek leave to withdraw The Nationals amendment to Shooters Party amendment No. 2.

**Leave granted.**

**Amendment withdrawn.**

**The Hon. ROBERT BROWN** [8.02 p.m.]: I seek leave to withdraw Shooters Party amendment No. 2.

**Leave granted.**

**Amendment withdrawn.**

**The Hon. ROBERT BROWN** [8.03 p.m.]: I move:

Page 3, clause 4. Insert after line 18:

- (4) Despite subsections (2) and (3), if a person other than an authorised officer captures a deer within 2 kilometres of the enclosure or other place (not being a vehicle) in which the deer was last held in captivity, property in the deer is not extinguished.
- (5) Despite subsections (2), (3) and (4), any of the following persons (but no other person) may kill a deer that is within 2 kilometres of the enclosure or other place (not being a vehicle) in which the deer was last held in captivity:
  - (a) an authorised officer, or
  - (b) an occupier of land, or
  - (c) a person authorised by a person referred to in paragraph (a) or (b).

The withdrawal of other amendments and the moving of this amendment is a compromise that has been hammered out between the Government, the Opposition and me, as suggested by Reverend the Hon. Fred Nile, to try to get over the impasse relating to this clause. I commend the amendment to the Committee.

**The Hon. IAN MACDONALD** (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [8.05 p.m.]: The Government supports the amendment and notes that it covers in effect the concerns of the Deputy Leader of the Opposition and other members.

**The Hon. Rick Colless:** You've capitulated.

**The Hon. IAN MACDONALD:** I certainly have not capitulated. The amendment precisely encapsulates our concerns and makes very clear the process that can evolve in the unfortunate circumstance that farmers suffer the escape of a number of deer from captivity onto their property.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [8.07 p.m.]: The Opposition supports the amendment. It is not perfect, but it takes us close to where we should have been in the first place. To that end, I thank honourable members for their negotiation. I received several telephone calls on this matter during the dinner adjournment. I am sure it would interest members to know that when we are discussing matters like this, particularly in the cut and thrust of Committee, people throughout the State are watching us live on the Internet. One of the people watching us on the Internet took the trouble to telephone me and talk through the situation we are presented with here tonight. I certainly appreciated the comments and advice from that person, who, like many others, was just bewildered by what is happening here. This amendment goes a long way towards fixing the problem. Sometimes it is imperfect and we do not get it 100 per cent right but this is probably as close as we are going to get in Committee tonight and I thank honourable members for it. However, I am somewhat bemused and I refer honourable members to clause 28 of the bill, headed "Authorised officer may request assistance". It states:

- (1) An authorised officer may request the assistance of any police officer if the authorised officer reasonably believes that the exercise of the authorised officer's functions under this Act will be obstructed.
- (2) An authorised officer may request the assistance of any person the authorised officer believes to be capable of providing assistance in the exercise of the authorised officer's functions under this Act.

**Reverend the Hon. Dr Gordon Moyes:** That is wonderful!

**The Hon. DUNCAN GAY:** It is pretty close to what we have just done. In part the bill already covered that concern.

**The Hon. Ian Macdonald:** It just reinforces it.

**The Hon. DUNCAN GAY:** You are right, Minister. This reinforces it, and to that end it is good to be doubly sure.

**Reverend the Hon. FRED NILE** [8.11 p.m.]: The Christian Democratic Party is pleased to support the amendment. Prior to the adjournment I read the Minister's mind and I could see the solution was there. The Deputy Leader of the Opposition referred to the powers of an "authorised officer", but the problem is that an authorised officer might not be available, or might not be available in time, and that is why the reference to

"occupier of land" et cetera is critical. We are pleased to support the amendment. I would have been happy to move it myself.

**Mr IAN COHEN** [8.12 p.m.]: This is an interesting compromise and it is good that everyone finds it acceptable. Certainly the Greens find it acceptable. I would ask one question relating to "the occupier of land": Does there not need to be some slightly more acute definition, in the context of this amendment, so that at least it clarifies that it is the occupier of the land that the animal is on, or any description that might lend itself to relevance?

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [8.12 p.m.]: Earlier I asked the Minister whether we should have the word "the"? My understanding from the Minister's grunts in regard to "the occupier of land" is that the inference is that it is "the occupier of the land that the deer is on". Perhaps the Minister would reinforce the fact that that is the correct interpretation. I am sure that would be enough.

**The Hon. IAN MACDONALD** (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [8.13 p.m.]: Yes, I am quite happy to do that. It is certainly not the occupier of land in Cammeray, Redfern or Parramatta, or indeed the occupier of land in Byron Bay. It is meant to be the occupier of the land where the deer have been spotted.

**Mr IAN COHEN** [8.13 p.m.]: Obviously, the clause is drafted appropriately. When you refer to the occupier of land, of course it is not in Cammeray or Byron Bay, but it could well be another neighbour, could it not? It could be the occupier of neighbouring land but not of the land the animal is on. I just wanted that small point clarified and I do not think it deserved the ridicule it received.

**The Hon. IAN MACDONALD** (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [8.14 p.m.]: It is the occupier of the land where the deer are. I make that clear. It is the occupier of the land where the deer are.

**Amendment agreed to.**

**Clause 4 as amended agreed to.**

**Clauses 5 to 7 agreed to.**

**The Hon. ROBERT BROWN** [8.16 p.m.], by leave: I move Shooters Party amendments Nos 4 and 7 in globo:

No. 4 Page 5, clause 8 (1) (a), line 7. Omit "eradicated, or otherwise controlled,". Insert instead "controlled".

No. 7 Page 5, clause 8. Insert after line 31:

(6) A deer control order must not specify the use of lethal poison as a manner in which deer are to be controlled.

I ask that the amendments be voted on seriatim. Amendment No. 4 amends clause 8 (1); it has to do with the language in the bill. The amendment removes the word "eradicated" from clause 8 (1) (a) and is required to prevent an unnecessary legislative burden being placed upon farmers, landholders or land managers in respect of whom a control order has been made. Under part 11, division 1, section 141 of the Rural Lands Protection Act 1998, the term "eradicate" is defined as follows:

"eradicate" means fully and continuously suppress and destroy

However, neither in clause 8 (1) (a) of this bill, nor indeed anywhere else in the bill, is there a similar definition of the term "eradicate". In other words, the term implies absolute liability. The Australian Oxford Dictionary defines the word "eradicate" as "destroy completely". Recent and current scientific literature on test animal control concedes that eradication of pest animals is not possible for mainland populations, and instead the words "control" or "management" are used.

I am sure the scientific advisers in the Department of Primary Industries will advise the Minister along similar lines. The use of the word "eradicate" in this legislation, therefore, may place an unrealistic legislative burden upon landholders. Further, under the amended clause, the Minister has almost unlimited flexibility to prescribe the manner and extent of control, and the time frame within which the control is to be carried out. I commend the amendment to the Committee.

**The Hon. IAN MACDONALD** (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [8.18 p.m.]: The Government supports the amendments.

**Mr IAN COHEN** [8.18 p.m.]: Amendment No. 4 removes the eradication of deer as the primary focus of deer control orders. Rather than eradicating or otherwise controlling deer, the amendment would see deer measures aimed at controlling deer. The Greens oppose this amendment because deer outside captivity should be eradicated.

**The Hon. ROBERT BROWN** [8.19 p.m.]: Amendment No. 7 adds a rider to clause 8 by the insertion of new subclause (6) to prohibit the use of lethal poison as a prescribed manner in which deer will be controlled. The amendment will bring the bill into line with part 1 of the Game and Feral Animal Control Act 2002. The amendment is necessary from the point of view of animal welfare, the environment and general public health because the size and body mass of deer and the consequent need for extended large doses of typical lethal poisons, such as 1080, that would be administered in a vegetable bait or as a foliate poses a high risk of poisoning non-target agricultural and native species.

In New Zealand, 1080 is used to control deer as well as possums. However, in New Zealand, which has nowhere near the land area of New South Wales, 1080 is measured in tonnes. It is measured in kilograms in New South Wales. If we begin to use lethal poisons on a large scale as a vegetable bait or a foliate spray to control animals the size of deer, enormous damage could be caused to non-target species.

**Mr IAN COHEN** [8.20 p.m.]: On behalf of the Greens, I strongly support the amendment moved by the Hon. Robert Brown and the position he has taken on this issue. The amendment specifies that a deer control order must not specify the use of lethal poison as a manner in which deer are to be controlled. The Greens support the amendment because poisoning can cause prolonged suffering, which can be an inhumane way to eradicate feral animals. Furthermore, non-target animals may be affected by poisoning, including native animals. As the Hon. Robert Brown has pointed out, this is particularly the case with poisons such as 1080 that are not very suitable for herbivores. Because the size of a mature male deer is significant, eradication should be undertaken professionally. I do not recoil from that: if eradication is effected by shooting an animal, the animal can be utilised by being consumed.

[*Interruption*]

Reverend the Hon. Fred Nile has misconstrued the point and is sidetracking me from the important point that we should prevent poisons from entering the food chain—especially 1080, which is biocumulative and is a particularly pernicious poison.

**The Hon. Rick Colless:** It is safe for Australia natives.

**Mr IAN COHEN:** I acknowledge the interjection by the Hon. Rick Colless, but the jury is still out on just how safe this poison is.

**The Hon. Rick Colless:** They are resistant to it.

**Mr IAN COHEN:** The Hon. Rick Colless will have his say shortly. I must state my case because as far as I am concerned this is a very important issue. I take seriously the interjection made by the Hon. Rick Colless. There is a great deal of misinformation about the impact of 1080 and I believe that the functionality of 1080 in the Australian environment is not fully appreciated. I have had similar discussions in relation to canines, which are very susceptible to 1080. It can be very effective.

[*Interruption*]

I acknowledge the interjection and make the point that foxes are canine creatures and are a major problem. I know the care that is taken by officers of the National Parks and Wildlife Service and rural lands protection boards in the administration of 1080. They set up bait stations and attract the animals to the bait station, but put the poison into the bait at a later stage.

**The Hon. Duncan Gay:** They do it scientifically.

**Mr IAN COHEN:** It is a scientific approach and it is carefully done. Great care is taken to ensure that a residue of 1080 is not left in the environment. Foxes and dogs are effectively controlled by 1080, but the effect

on animals that feed off them, such as eagles and carnivorous ground-dwelling animals—quolls in particular—is a great concern. The jury is still out on the secondary effects of 1080, but great care is taken when carnivorous feral animals are baited with it. The bait is buried deeply and only a fox would be able to smell it, dig it out, and take it back to its lair—there can be no doubt that that is an effective use of 1080—but if it is sprayed onto foliage on which deer graze, that is extremely dangerous. Having said that, I reiterate my support for the amendment. I appreciate the Hon. Robert Brown having moved it.

*[Interruption]*

What is the Minister's problem?

**The Hon. Ian Macdonald:** I am going to support you.

**Mr IAN COHEN:** What I am saying is very constructive. I am not even having a go at the Government.

**The CHAIR:** Order! Mr Ian Cohen will please not be distracted by other members.

**Mr IAN COHEN:** With the Minister jumping up like a jack-in-the-box, it is difficult to ignore him. I have one other point to make.

**The Hon. Duncan Gay:** He is bucking for promotion.

**Mr IAN COHEN:** Is that right?

**The Hon. Duncan Gay:** There is a vacancy, you know.

**Mr IAN COHEN:** I understand there are a significant number of opportunities for promotion. I also understand that a Minister of the upper House, the Hon. Eric Roozendaal, has been given a significant promotion as a junior Minister for Transport or something similar. In conclusion, I will make just one other point. It is important to treat as a separate issue the utilisation of sedatives and tranquillisers as an alternative to, for example, 1080 in getting rid of feral deer. I support the amendment moved by the Hon. Robert Brown.

**The Hon. IAN MACDONALD** (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [8.26 p.m.]: I support the remarks made by Mr Ian Cohen. I was not jumping around like a jack-in-the-box. I was anxious to support his views on this issue.

**The Hon. JON JENKINS** [8.26 p.m.]: I was interested to listen to Mr Ian Cohen's protestations about the use of 1080. However, I remind him that the protests against the use of 1080 as surface baiting for vegetarian animals in the Kosciuszko National Park were howled down by the Greens.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [8.27 p.m.]: Unlike the Minister, I support only part of the comments made by Mr Ian Cohen. I endorse his support for Shooters Party amendment No. 7, which relates to a prohibition on the use of 1080. I thought his comments were appropriate and supportable, except in relation to quolls. In that respect I think his views were a little jaundiced. It is difficult to reconcile his objection to the word "controlled" and his desire to replace it with "eradicate" with his opposition to the use of a lethal poison. If he supports an amendment to prevent the use of a lethal poison, he will make it very difficult to eradicate feral pests. The incongruity of the positions he has adopted seems to be fatally contradictory.

**Amendment No. 4 agreed to.**

**Amendment No. 7 agreed to.**

**Clause 8 as amended agreed to.**

**The Hon. ROBERT BROWN** [8.29 p.m.]: I move Shooters Party amendment No. 8:

No. 8 Page 5, clause 9 (1), lines 33–35. Omit all words on those lines. Insert instead:

- (1) Before making a deer control order the Minister is to consult with each of the following:

The amendment removes the requirement for the Minister to make a deer control order on the basis of an emergency without the consultation broadly described in the clause. During my contribution to the second reading debate I was at pains to inform honourable members of the low rank that deer present as a pest species and a vector for exotic disease from either an environmental, agricultural or public health viewpoint. The main thrust of the bill is to prevent the release of numbers of deer into the wild, particularly as a result of failure of an enclosure to contain farm deer.

Although very little research has been carried out to link deer densities to levels of damage, anecdotally most people would agree that the main impacts of deer outside the farm environment occur at high densities. The Royal National Park is an example of where the target of the deer management working group of the National Parks and Wildlife Service has managed to reduce the number of rusa deer to below 1,000 animals in the 132-square kilometre park. It is important to note that the rusa deer in the Royal National Park are not evenly distributed over the entire park; instead, they typically congregate where good feed, especially grasses, are in abundance. I cannot foresee any emergency that would require a deer control order to be made in such a short time frame as to preclude consultation, which, I am sure, would provide the Minister with expert opinion from a number of departments, authorities and other interested parties that are listed in the bill.

A previous amendment fixed the problem of a farmer having deer come onto his property and not being able to do anything about it. In the case of an outbreak of an exotic disease in the area, the Minister already has wide-ranging and absolute powers to act, irrespective of the type of animal or bird involved. The best result for the Minister and the community when considering normal deer control orders would be for the Minister to avail himself of the best advice available from the Department of Primary Industries, the Game Council of New South Wales, the rural lands protection boards and the other organisations prescribed in that clause.

Clause 9 (2) prevents the failure of any part of that consultation process from invalidating a deer control order subsequently made, thus allowing the Minister to act with certainty; in other words if the Minister acts he is assured that his action cannot be invalidated. Also, there is the desire for consistency across similar Acts. The amendment would align clause 9 (1) with the intent of clause 144 (3) of the Rural Lands Protection Act 1998, in which the Minister is required to consult with the Game Council of New South Wales before making a pest order under the Act in relation to game animals, including deer. I commend the amendment to the Committee.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [8.32 p.m.]: I was initially attracted to the amendment. However, as I carefully read it I am confused. The Hon. Robert Brown and the Minister might tell me if my interpretation is wrong. I am perfectly willing to accept that. Clause 9 (1) states:

Before making a deer control order, or if the deer control order is required as a matter of urgency, as soon as practicable after making the order, the Director-General is to consult with each of the following:

The Committee has just heard honourable members speaking for hours about not being able to get someone in time. Yet the Hon. Robert Brown wants to remove the speed for making a deer control order. He wants to omit the words "if the deer control order is required as a matter of urgency, as soon as practicable after making the order" and insert instead "before making a deer control order the Minister is to consult with each of the following", which refers to the State Council of Rural Lands Protection Boards, each rural land protection board constituted for a district in which there is land to which the order is to apply, the Game Council of New South Wales, and so on.

The amendment mandates that before the control order is made consultation must occur. Yet, the bill provides that in an urgent situation, and that is what we have been talking about, action can be taken and the order can be fixed up afterwards. That is the commonsense attitude the Coalition had hoped would have permeated the entire bill. I cannot understand why it is proposed that it be removed. I hope someone can explain that.

**Mr IAN COHEN** [8.34 p.m.]: Sitting on the sidelines as a little Green, I would not seek to explain it. I add to the confusion, because my understanding is as the Deputy Leader of the Opposition suggested: quite clearly the amendment makes the situation far more onerous. As far as I can see, clause 9 (1) ensures that the Minister must undertake consultation prior to making a deer control order, whether it is required urgently or not. The bill states that the Minister must consult prior to, or soon after, making a deer control order, if it is urgent. The Greens do not support that amendment, as in some circumstances time is of the essence to deal with a deer problem. While consultation is important, I would not like to see efforts to control deer hampered when waiting would mean their addition to the existing feral deer problem. I also am a little confused as to the stated intent and the real intent of the amendment. Perhaps it could be clarified.



**The Hon. ROBERT BROWN** [8.36 p.m.]: Very reasonable questions have been asked by the Deputy Leader of the Opposition and Mr Ian Cohen. A series of amendments have been moved to allow a landholder whose deer are causing a problem to take immediate action to control the deer—and bear in mind that the bill also binds the Crown. Given that trying to capture wild deer is a long and difficult process, and given that the deer farmer will not do anything about it, which is probably the only circumstance where someone would go to the trouble of making a control order, the only option is to shoot the deer. A clause in the Rural Lands Protection Act requires the Minister to consult with the Game Council when making a pest order on deer. The clause requires the Minister to consult with the Director General of the National Parks and Wildlife Service if a pest order is placed on Crown land.

That simply brings the bill into line with other bills, and in practical terms it does not create a problem. A proper order for the control of deer may well have a number of considerations regarding time to carry out the order and the methodology. We have struck out the use of poison, so it has to be capture or kill; or perhaps the use of soporifics, as mentioned by Mr Ian Cohen; or barbiturates such as diazepam in weed, which would take some time. Permission would need to be sought for the administration of those agents. Why would the Minister not take the time to seek expert advice from his department or from those other organisations?

In the case of a disease breakout, the Minister has wide-ranging powers, including the quarantining of areas, the killing of stock, or whatever he deems necessary. We have heard from the deer industry that in most circumstances the deer farmers are responsible enough, and the animals are valuable enough, to make every effort to reclaim their deer as quickly as possible. Given that that does not take place, and that there may be circumstances in which deer are on a property that another neighbour may complain about—for instance, wild deer—there would be a requirement for the Minister to consult in accordance with the first part of the clause. I do not see that the Minister necessarily needs those emergency powers. I may be wrong.

**The Hon. IAN MACDONALD** (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [8.39 p.m.]: This amendment has attracted a lot more interest than it probably should have. The Government agrees with the amendment because it is most unlikely that an emergency situation would arise when a control order was needed so quickly that consultation could not occur. The Exotic Diseases of Animals Act already contains all the necessary powers that are needed to control deer. More importantly, deer can still be controlled without a control order. So whilst the Government supports this amendment, the powers are already available to it in another Act. The amendment lines up this legislation with the Exotic Diseases of Animals Act.

**Mr IAN COHEN** [8.40 p.m.]: I appreciate the emphasis placed by the Minister on an exotic disease outbreak, but my understanding of the Hon. Robert Brown's amendment is that the Government is to consult with the Game Council before any control order is made. I would have thought the Minister's permission would not have been needed if rural lands protection boards or some other agency was involved. This amendment appears to tailor the legislation to suit the activities of the Game Council rather than involving bodies such as rural lands protection boards or other bodies that are more appropriate to deal with the shooting of feral animals.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [8.41 p.m.]: I am becoming more confused as time goes on.

**The Hon. Henry Tsang:** That is unusual.

**The Hon. DUNCAN GAY:** It is unusual for me. If the Hon. Henry Tsang had been listening to honourable members' contributions as I have done he would also be confused. The Hon. Robert Brown said earlier that deer would have to be shot. I am not sure how that equates with this legislation. The Minister then said that this amendment would assist in any outbreak of an exotic disease. As the Minister's department developed this bill in the first place he should explain what he means. I am concerned about some aspects of the bill, but I thought this provision had control orders nailed. In the event of an exotic disease outbreak the bill provides in clause 9 (1):

Before making a deer control order, or if the deer control order is required as a matter of urgency, as soon as practicable after making the order, the Director-General is to consult with each of the following...

Those bodies could issue a control order to help eradicate any exotic disease. The Hon. Robert Brown's amendment states:

- (1) Before making a deer control order the Minister is to consult with each of the following—

the Minister would have to ring, and he might not find some of these people at the weekend—

- (a) the State Council of Rural Lands Protection Boards.
- (b) each rural lands protection board constituted for a district in which there is land to which the order is to apply,
- (c) the Game Council of New South Wales.

In any emergency that is the process that the Minister has to follow to arrest any outbreak of an exotic disease. God help us if we had such an outbreak as we have a fool running the place. The provisions in this bill are better than the provisions in the proposed amendment. The Minister has it wrong again. He should admit that he has not read the amendment or the bill. The Minister should support the original bill rather than this misguided amendment.

**Reverend the Hon. Fred Nile:** There are three more.

**The Hon. DUNCAN GAY:** Reverend the Hon. Fred Nile said there are three more paragraphs over the page, which shows that I have not read the bill either. I thank Reverend the Hon. Fred Nile for pointing that out. Clause 9 (1) continues:

- (d) each local council for a local government area in which there is land to which the order is to apply.
- (e) each public authority that occupies land to which the order is to apply.
- (f) the New South Wales branch of the Deer Industry Association of Australia or such other body as may be prescribed by the regulations.

What a joke! Let us toss out this amendment.

**Mr IAN COHEN** [8.45 p.m.]: Whilst I have great respect for Hansard staff, one of the failings of the parliamentary system is that the record is simply in writing. If honourable members were to take one look at the Minister's face they would see that he had been caught out.

**The Hon. IAN MACDONALD** (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [8.46 p.m.]: I support the amendment moved by the Hon. Robert Brown. The Deputy Leader of the Opposition has missed the point. If we had an exotic disease outbreak I have all the powers under that Act to move quickly without consulting any of the groups referred to by him, or any of the groups referred to in debate by Reverend the Hon. Fred Nile. I support the amendment moved by the Hon. Robert Brown, which will assist in dealing with this issue.

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

**The Committee divided.**

#### **Ayes, 23**

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

#### **Noes, 17**

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

**Question resolved in the affirmative.****Amendment agreed to.**

**Mr IAN COHEN** [8.53 p.m.]: I move Greens amendment No. 2:

No. 2 Page 5, clause 9 (1). Insert after line 35:

- (a) the Director-General of the Department of Environment and Conservation,
- (b) the Nature Conservation Council of NSW,

This amendment seeks to add two persons who must be consulted before declaring a deer control order. Given the result of the division, the Committee should have no problem supporting my amendment. At present the persons who must be consulted do not represent environmental interests. This is a concerning omission, given the environmental ramifications of feral deer. The amendment includes the Director General of the Department of Environment and Conservation, who is responsible for the National Parks and Wildlife Service, and a representative of the Nature Conservation Council of New South Wales, which is the peak conservation organisation in the State, as persons who should be consulted when making a deer control order. The Game Council is consulted so it is appropriate that conservation representatives be consulted also. I commend Greens amendment No. 2 to the Committee.

**The Hon. JON JENKINS** [8.54 p.m.]: I move Outdoor Recreation Party amendment No. 1:

No. 1 In Greens Amendment No. 2 omit "the Nature Conservation Council of NSW," and insert instead "a person nominated by the Nature Conservation Council of NSW who has expertise in conservation and environmental science,"

Greens amendment No. 2 seeks to add the Director General of the Department of Environment and Conservation to the group of persons who must be consulted before declaring a deer control order. I agree with that. I think the relevant department and its representatives should be consulted about all conservation and environment matters. Unfortunately, the second part of the Greens amendment seeks to add—as usual—the Nature Conservation Council of New South Wales [NCC]. I have dealt with this issue before, but it is obvious that I am going to have to do so again now.

The amendment seeks to appoint another member of what I refer to as the "environmental KGB" to an advisory committee or council. This is another example of corrupting the function and purpose of an advisory committee by the fixed nomination of representatives of either the National Parks Association [NPA] or the NCC, or both. It is often argued that there is justification for groups such as the NPA or the NCC having dedicated seats on advisory committees. This justification is offered on two bases. First, it is argued that the NPA and NCC are peak environmental organisations; and, second, it is claimed that they represent a large section of the community.

One assumes that if advisory committees or councils are to perform their roles properly, they should comprise a balance of scientific and environmental expertise, local community and indigenous representation and representatives of peak user groups. I think most of us would agree that that is a good and desirable principle, and I concur with it wholeheartedly. If appointments were made on that basis, I would offer no argument. So I thought I should check on the validity of claims regarding representation by the NCC or the NPA, as the case may be. I sought initially to address why a group such as the NPA or the NCC has dedicated representation on any committee. Bear in mind that members of the NCC are not appointed by the Minister. The organisation is not accountable to anybody in Parliament or to the people of New South Wales in any shape or form. The sheer lunacy of allocating a position to a particular group or association with no qualifications attached is mind boggling.

**Reverend the Hon. Fred Nile:** It's accountable to the Greens.

**The Hon. JON JENKINS:** Yes, it is accountable to the Greens. Members of the NCC hand out Greens how-to-vote cards at polling booths. These groups are currently populated with left-wing political ideologues. What would happen if an organisation such as the NCC were taken over by an extreme right-wing group? It would have exactly the opposite effect because its members are appointed without qualification. Some honourable members might find this amusing, but I assure them that the people to whom I have spoken have done the numbers in terms of both people and dollars. They could easily have taken control of many so-called environmental groups.

**The Hon. Catherine Cusack:** Name them!

**The Hon. JON JENKINS:** It has already happened. The decision not to proceed was based on ethical grounds—something that some conservation groups would not understand. The salient point is that anybody with any intelligence whatsoever can see that allocating a position without qualification to a group or association is lunacy and blatantly ideologically driven. The conservation groups cannot claim to represent user groups because those positions are allocated already. NCC representatives claim instead that they are appointed to advisory committees for conservation reasons. However, NCC members are not required to have any qualifications in science or environmental studies or any other equivalent experience. They are not even required to show any history of service or any evidence of having made a contribution related in any way to their role. They need only to be members of the NCC—and they could have joined the organisation the day before their appointment to the advisory body. That is their only qualification.

If the NCC nominated a qualified person, such as an environmental scientist or a person with extensive experience in native vegetation, threatened species management, pest and vermin abatement and so on, it would at least constitute superficial acknowledgement that its nominee had something to contribute other than ideology. The Minister for Natural Resources is smiling but he knows it is true. He knows that these groups have him over a barrel. As a general rule, all other positions on advisory committees are specified according to the expertise that people bring to the table, not according to membership of a particular group that is not accountable to anybody, including Parliament.

**Reverend the Hon. Fred Nile:** Talk the Minister into voting for it.

**The Hon. JON JENKINS:** I am trying to talk the Minister into supporting me now. However, as all honourable members know, there is a much more sinister reason for the NCC nominations: it provides for a centralised but small and unrepresentative group of ideologues to decide what ideology is presented at these committees. In previous speeches I have likened the installation of the NCC and NPA representatives on advisory committees to the installation of NKVD and KGB representatives on similar community management boards in the dark old days of Soviet Russia.

The Greens castigated me for making this comparison, but as I stated then and will state again, I am not the first one to make it. In fact, Patrick Moore, the founder of the world's largest, oldest and most prestigious environmental organisation, Greenpeace, has already likened the incumbent extremist environmental movement to "eco-terrorists and communists". He has said repeatedly that the organisation he founded has been hijacked by extreme left-wing political ideologues who have little interest in environmental issues. The extremist conservation movement has specified and pre-allocated positions on advisory committees. Its function is purely to manage the ideology of the NPA and the NCC. These positions are not allocated even by some local or regional representative but are controlled by a centralised and unrepresentative body. This is not only similar to the old Soviet days of the KGB, it is absolutely identical!

Now let us look at the numbers of the NCC. I have previously addressed the question of just how many people the NCC represents. This is important because the NCC often claims to represent vast numbers of people—a matter that does not take much research of the so-called representative or peak organisation because, thankfully, most public organisations that receive government grants—and I note the vast bulk of funding for both the NCC and the NPA comes from the New South Wales Government, and I will talk about that later—have to publish financial audits. From these audits we have been able to ascertain the approximate number of members the organisation represents. The NPA's acknowledged membership for the whole of New South Wales is about 4,000. I will present a petition tomorrow morning in this House the number of signatures on which dwarfs that membership. In fact, the membership of any one of a number of Sydney recreational clubs would equal or exceed that number. Should the NPA and the NCC be able to claim representation on many boards simply because they represent large numbers of people?

The NCC's representative numbers are somewhat more difficult to obtain because of its complex scale of fees. However, from its audited reports we are able to ascertain that it obtains \$12,000 in membership fees. The reason for some uncertainty is that some of the member organisations, like the Australian Conservation Fund and the Wilderness Society, for example, do not release figures on their New South Wales membership, so I have assumed—somewhat generously—that about half their total Australian membership resides in New South Wales. Based on commonly known numbers for other major environmental organisations, such as the NPA, the Wilderness Society and Colong, we were able to ascertain that the total NCC representation is less than 30,000 people.

**Reverend the Hon. Fred Nile:** They may all be the same people too!

**The Hon. JON JENKINS:** I am coming to that. But this does not include people who are members of a number of organisations, as most of this ilk are. When that aspect is taken into account, it could be said that the NCC represents as little as 15,000 people. The NCC also represents the NPA, or so it says on its web site, so I have not included the numbers twice. However, they often have two seats on advisory committees—a case of two seats for the price of one set of preferences, I suppose. So this so-called vast representative organisation is not so vast at all. The total membership of the so-called self-appointed peak conservation movement is exceeded by the membership of just one of the large clubs of any of the four groups that I represent. When one considers the Government's figures of one million fishermen, the extremist conservation movement starts to look quite minor and insignificant. This is important to the Government as the State elections approach.

Next I will examine the stark conflict of interest that is created by placing the NCC on any government advisory committee. Over the past few years the Federal Government has been steadily withdrawing funding from lobby groups like the NCC and transferring it to pragmatic hands-on conservation groups. However, the New South Wales Government has been just as steadily secretly replacing the lost funding by both direct and indirect means. Last year, for example, the Minister for the Environment funded the NCC to the tune of \$20,374 to run a so-called community-based education campaign relating to marine parks. In other words, the Government is using taxpayers' money to fund the NCC to run its campaign. I wonder if this contract went to competitive tender? Obviously not! The NCC annual report shows the Government has provided funding approaching \$650,000. But this does not include funding for the Environmental Defenders Office or the free legal aid provided to NCC members to pursue legal action on its behalf. This amounts to much more in terms of indirect funding. But this is still only the tip of the iceberg of the hidden in-kind funding funnelled through other related environmental groups.

**The Hon. Duncan Gay:** Point of order: We are in Committee on this bill and the Hon. Jon Jenkins appears to be delivering a contribution to the second reading debate. Not to put too fine a point on it, it is a contribution in support of his own amendment, which seeks a nominee from the Nature Conservation Council of New South Wales, yet the member is delivering a soliloquy against the Nature Conservation Council. The speech is great, but the amendment is rubbish and the contradiction is gob smacking. I ask you to bring the member back to the amendment.

**The CHAIR:** Order! I note that the amendment of the Hon. Jon Jenkins seeks to qualify the representation of the Nature Conservation Council of New South Wales in the bill. Therefore the member's comments in relation to the Nature Conservation Council are in order.

**The Hon. JON JENKINS:** For the benefit of the Deputy Leader of the Opposition I will be very brief. In this year's Department of Environment and Conservation budget alone somewhere between \$6 million and \$20 million disappears into a black hole. I do not know how much of it goes the NCC, the NPA, the Environment Liaison Office, the TEC and other groups that happen to be sympathetic to a particular Minister's point of view.

**Reverend the Hon. Fred Nile:** Which Minister?

**The Hon. JON JENKINS:** The Minister for the Environment. The NCC should not sit on these committees, and I will explain why. Of all the reasons to exclude the NCC, the complete abuse of science is the most compelling. The current marine parks issue best demonstrates the NCC's willingness to deceive about the environment. Let us examine some of its recent efforts in deception. The granddaddy of all the current lies about marine parks is the NCC's claim that fish stocks are threatened—a claim it propagated in the public media. In fact, an NCC sponsored report, paid for by taxpayers' money I might admit, claimed that fish stocks are "in imminent danger of collapse." This report was spread across newspapers far and wide. It was reported on ABC television and in the *Sydney Morning Herald*; the report went across the world. I ask the Minister for Primary Industries, who looks after fisheries, whether fish stocks are in imminent danger of collapse. He has not answered.

**The Hon. Rick Colless:** He does not know.

**The Hon. JON JENKINS:** He does not know. Well, one of his chief scientists knows, because he said in the media that this report was rubbish. And we know it is rubbish. The report, which is entitled "Empty Oceans Empty Nets", was authored by Paul Winn, an NCC lawyer.

**The Hon. Ian Macdonald:** Point of order: This wonderful speech of the Hon. Jon Jenkins on the Deer Bill is being delivered inadvertently via his concerns about the Nature Conservation Council. The Deputy Leader of the Opposition has already adequately dealt with that. I cannot see how anything to do with marine species has anything to do with terrestrial deer, which are the subject of the bill. Accordingly, I call upon you to bring the member to order.

**The Hon. JON JENKINS:** To the point of order: I have shortened my speech immeasurably; it would, otherwise, have gone much longer. However, my comments go to the heart of why the Nature Conservation Council should or should not be represented on these committees.

**The Hon. Ian Macdonald:** You are saying they should be represented. That is the effect of your amendment.

**The Hon. JON JENKINS:** Wait until I finish.

**The CHAIR:** Order! There is a point of order before the Chair and members should not engage in argument across the table. In ruling on the point of order I make two observations. First, in relation to the point taken by the Minister I advise that I have seen television footage of deer swimming. Second, the Hon. Jon Jenkins is attempting to illustrate his concerns with the Nature Conservation Council and as that body is referred to in the two amendments before the Committee, I rule that he is in order. There is no point of order.

**The Hon. JON JENKINS:** I am almost finished, I promise. The fact is—and this is supported by commercial fishing records and by the Minister's own chief scientist—that not one single inshore targeted fish species is even under stress, let alone threatened. NSW Fisheries scientists took the brave step of coming out in public and completely denying the report's conclusions. But I am coming to the best bit. Perhaps the best comment is left to some of the foremost fisheries experts in the world, from the University of British Columbia. The comments by this prestigious body speak for themselves. I quote from the report—

**The Hon. Ian Macdonald:** Point of order: The honourable member's comments have no relevance whatsoever to the debate at hand. The matters he is talking about have nothing to do with the Nature Conservation Council or the Deer Bill. His comments have nothing to do with whether the Nature Conservation Council of New South Wales has expertise in conservation and environmental science issues relative to the Deer Bill. His remarks are entirely irrelevant. Madam Chair, if you allow him to continue in this vein you will turn every debate in this Chamber into a total farce.

**The Hon. Don Harwin:** Don't threaten the Chair! That is outrageous!

**The Hon. Ian Macdonald:** Duncan Gay does it every day. The remarks of the Hon. Jon Jenkins are totally irrelevant to the considerations of the Committee. If you allow him to get away with this, future debate in this Chamber will be a total farce. The honourable member can raise those matters tomorrow in another way.

**The Hon. Duncan Gay:** To the point of order: The Minister alleged that I behave badly every day, so he should be allowed to do likewise. Frankly, that is not a good enough reason to misbehave.

**The CHAIR:** Order! That was not a contribution to the point of order.

**Mr Ian Cohen:** To the point of order: I think the member is well within his rights. In fact, what he expresses reflects the feelings of many members of this Chamber. I think his clarifying, if not scarifying, experience should be on record. I absolutely support his right to express these positions, notwithstanding they are McCarthyist. I think it is important that we have the debate and have his remarks on record.

**The CHAIR:** Order! I appreciate the Minister's concerns about the wide-ranging nature of the examples being given by the Hon. Jon Jenkins. However, the member is providing background material to support his position on the amendments. The member may proceed, but I remind him that he must be able to directly relate any information he gives to the amendments before the Chair.

**The Hon. JON JENKINS:** I will be even briefer; I will read only the first paragraph of the quotation:

The report lacks both consistency and rigour, analytical methods are not clearly described, fisheries science is not appropriately applied and there is a failure to comprehend the management systems and responsibilities in Australian fisheries. In summary, the published report is so seriously flawed that it should not be used or quoted.

This comment is by one of the most prestigious fisheries research institutes in the world. There is a stack of other critical comments from the same people.

**Reverend the Hon. Fred Nile:** Whose report is this?

**The Hon. JON JENKINS:** The University of British Columbia.

**Reverend the Hon. Fred Nile:** Who produced the report that is criticised?

**The Hon. JON JENKINS:** Paul Winn from the Nature Conservation Council. I will not read all of the university's comments about that report. But here is the bit about the Nature Conservation Council that should be on the record. The Nature Conservation Council still uses this report—which has been nationally discredited by our fisheries department, and internationally discredited—to justify the marine park in its public media campaign. That is the level of science and the level of propaganda that the Nature Conservation Council is using in its current campaigns on environmental issues.

The Nature Conservation Council has no expertise in this regard. It represents a tiny part of the population and has a proven track record of using lies and deception to achieve its ideologically driven goal. It deserves no place on any advisory committee at all. But the reality is that the Nature Conservation Council is part of the political landscape. I accept that it does deals, and that Greens preferences get exchanged at election time as part of those deals. I do not like it, but I accept it. I urge the Government to concede, at least superficially, that this is not just an ideological appointment, and to qualify the appointment with some qualifications that are relevant to the particular issue at hand, namely some sort of environmental science.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [9.15 p.m.]: I thank the honourable member for his contribution, following which I am totally convinced not to support the amendment or his amendment to the amendment.

**The Hon. IAN MACDONALD** (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [9.15 p.m.]: The Government opposes both amendments.

**Mr IAN COHEN** [9.16 p.m.]: The tragedy of having my amendment opposed nevertheless prompts me to comment on the intellectually acrobatic dissertation by the honourable member. The amendment seeks to omit the Nature Conservation Council of New South Wales and to insert instead a person nominated by the Nature Conservation Council of New South Wales. What exactly does that seek to achieve?

**Reverend the Hon. FRED NILE** [9.16 p.m.]: In view of the presentation made by the Hon. Jon Jenkins, the Christian Democratic Party now opposes both amendments.

**Amendment of amendment negated.**

**Amendment negated.**

**Clause 9 as amended agreed to.**

**The Hon. JON JENKINS** [9.17 p.m.]: I move Outdoor Recreation Party amendment No. 5:

No. 5 Page 6, clause 10. Insert after line 15:

- (2) The Director-General of the Department of Environment and Conservation is to ensure that a deer control order is complied with to the extent that the order applies to land reserved or dedicated under the *National Parks and Wildlife Act 1974*.

I have never understood why land managed by the National Parks and Wildlife Service is exempt from rules, regulations and laws that apply, with benefit, to other landholders. Provisions for the removal and eradication of feral species, whether they are pigs, foxes, dogs, cats, deer or whatever, should be equally applied to lands managed by the National Parks and Wildlife Service. The environmental movement should support the amendment if only for the reason that it would enable it to claim more funding for these control programs. I urge members of the Committee and the Government to accept the amendment on that basis. I urge the Greens to support it on the basis that they could demand more funding from the rural lands protection board and the Department of Primary Industries for these eradication programs.

**The Hon. IAN MACDONALD** (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [9.19 p.m.]: The Government opposes the amendment.

**Amendment negatived.**

**Clause 10 agreed to.**

**Clause 11 agreed to.**

**Mr IAN COHEN** [9.19 p.m.]: I move Greens amendment No. 3:

Page 6, clause 12. Insert after line 23:

- (2) The Director-General is to establish and maintain a register that includes the particulars of each deer control order.
- (3) The Director-General is to ensure that the register is made available to the public, free of charge, at the Department's head office during ordinary office hours and that the information contained in the register is available to the public on the Department's internet site.

This amendment requires that all deer control orders will be made publicly available via a register and the department's web site to ensure transparency within the proposed system. Decisions on the management of deer should be available to all so that the public and stakeholders have faith in the system of operation. I think it is a reasonable amendment so far as transparency is concerned. I commend it to the Committee.

**The Hon. IAN MACDONALD** (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [9.20 p.m.]: The Government opposes the amendment. Orders, such as deer control orders, will be published in the *Government Gazette*. This is the standard way the Government publicises these things. It is also unnecessary and a most inappropriate way to publicise orders of this nature. For the information of the Committee, orders requiring compliance are already included on the Department of Primary Industries web site. There is no need to legislate for something that already occurs.

**Amendment negatived.**

**Clause 12 as amended agreed to.**

**Clauses 13 to 16 agreed to.**

**Clause 17 as amended agreed to.**

**Clauses 18 to 20 agreed to.**

**Clause 21 as amended agreed to.**

**Clause 22 agreed to.**

**Clause 23 as amended agreed to.**

**Clause 24 as amended agreed to.**

**Clause 25 as amended agreed to.**

**Clause 26 agreed to.**

**Clause 27 as amended agreed to.**

**Clauses 28 to 33 agreed to.**

**Clause 34 as amended agreed to.**

**Clauses 35 to 41 agreed to.**



**Schedules 1 and 2 agreed to.****Title agreed to.**

**The CHAIR:** A Government amendment was lodged before the Committee began its consideration but was not marked on the bill. The bill will have to be recommitted to deal with that amendment.

**Bill reported from Committee with amendments.****Adoption of Report**

**The Hon. IAN MACDONALD** (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [9.27 p.m.]: I move:

That the report be now adopted.

**The Hon. PETER PRIMROSE** [9.28 p.m.]: I move:

That the question be amended by omitting all words after "That" and inserting instead "this bill be now recommitted with a view to the further consideration of clause 20.

**Amendment agreed to.****Motion as amended agreed to.****In Committee (Recommittal)**

**The Hon. IAN MACDONALD** (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [9.29 p.m.]: I move Government amendment No. 1:

No. 1 Page 10, clause 20, lines 7–10. Omit all words on those lines.

This amendment deals with the powers of authorised officers who will be employed to inspect compliance with the legislation. The current "power of entry" clauses in the bill mirror the "power of entry" clauses for authorised officers under the Rural Lands Protection Act 1998. Clause 20 (2) of the bill allows an authorised officer to enter premises with such vehicles, horses, dogs or other assistance as the authorised officer considers necessary to exercise the function concerned.

It is appropriate for authorised officers to have this power to deal with the range of issues they are likely to face. The deer industry has expressed concern that the use of horses, dogs and motorbikes may cause unreasonable disruption if they are used on deer farms. It is very unlikely that an authorised officer would need to use horses, dogs and motorbikes when inspecting a deer farm. It is well understood that deer are flighty animals that are prone to stress and must be handled carefully. These measures are more likely to be used when tracking wild deer in an area which includes steep or rugged terrain, not on deer farms.

I have moved an amendment to the bill that addresses the deer farmers' concerns. The amendment will remove clause 20 (2) and have the effect of limiting the equipment that authorised officers will be able to use when inspecting deer farms. Authorised officers will be able to use only equipment and resources that are reasonable in the circumstances, consistent with similar legislation such as the Stock Diseases Act. It is very unlikely that it would ever be considered reasonable to enter a deer farm with horses, dogs or motorbikes.

Policy guidelines for authorised officers will be developed in conjunction with the deer industry to determine reasonable procedures to be applied during the inspection of deer farms. These guidelines could cover such matters as appropriate equipment and appropriate times of day for inspections. The guidelines will take into account the unique characteristics of deer and ensure that inspections are carried out in a way that does not unnecessarily impact upon the deer. It is a practical amendment that will provide all deer farmers with the assurance that their farming operations will not be unnecessarily disrupted.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [9.31 p.m.]: The Opposition thinks this is a good amendment and will support it. We congratulate the Minister and his staff on agreeing to move the amendment. In the Opposition's first day of negotiations with them, that was our only achievement, but to their

credit, they have followed through. I would not describe the process as Orwellian, but it may well be described as Scullyian, given the ineptitude that has been displayed.

**Reverend the Hon. FRED NILE** [9.31 p.m.]: The Christian Democratic Party supports the amendment. I seek clarification that it will not prevent authorised officers from using horses, dogs and motorbikes in wilderness areas to control wild deer. In those circumstances, authorised officers may need to use that equipment and resources.

**The Hon. IAN MACDONALD** (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [9.32 p.m.]: The amendment relates to their use on a property.

**Mr IAN COHEN** [9.32 p.m.]: In the context of a specific property that authorised officers would be entering, the Greens support the amendment as a very reasonable proposition.

**The Hon. ROBERT BROWN** [9.32 p.m.]: Given the remarks I made previously relating to the difficulties associated with farming deer, I welcome the amendment. The Shooters Party supports it.

**Amendment agreed to.**

**Recommitted clause 20 as amended agreed to.**

**Bill reported from Committee secundo with a further amendment, and passed through remaining stages.**

#### **RACING LEGISLATION 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.**

#### **CROWN LANDS LEGISLATION AMENDMENT (CARBON SEQUESTRATION) BILL**

##### **Second Reading**

**The Hon. HENRY TSANG** (Parliamentary Secretary) [9.36 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 represents a critical improvement in the management of Crown lands across New South Wales, ensuring that eligible Crown lands can be used to create carbon sequestration rights under New South Wales' world-leading Greenhouse Gas Abatement Scheme [GGAS].

Rights will be granted by the Minister responsible for the land with the approval of any leaseholders. Holders of leases in perpetuity will be able to create rights directly with the consent of the relevant Minister.

The New South Wales Government is committed to reducing greenhouse gas emissions. The New South Wales greenhouse plan was released in November 2005 following significant community consultation. The plan has been endorsed by the New South Wales Government and sets clear targets for reduction in greenhouse gases. The New South Wales Greenhouse Gas Abatement Scheme is a key tool for achieving those targets. The Western Division and other Crown land comprise roughly half of New South Wales. The bill has been prepared to remove legal impediments to using that land for the purposes of carbon sequestration under GGAS.

These amendments will also provide significant opportunities for those leasing Crown lands, particularly those in the Western Division who are doing it tough in these times of drought, to generate potentially significant streams of income from carbon

sequestration and much-needed employment opportunities. Creation of these carbon sequestration rights is already possible on freehold land across New South Wales.

The bill ensures that there is consistency across tenures, and that the whole New South Wales community has the opportunity to participate in this world-leading scheme. The bill also has environmental benefits beyond greenhouse gas abatement. Plantings for carbon sequestration can provide important vegetation coverage, reduce wind erosion, provide shelter belts for crops and stock and, in some cases, important corridors and shelter for wildlife. By facilitating plantings for carbon sequestration the bill will also bring welcome environmental benefits to the hard-pressed west.

Indigenous communities are a significant part of the broader community in the Western Division. Until now lessees of Crown land in the Western Division have been unable to participate in sequestration activities because of constraints on dealings with land under the Western Lands Act 1901. The amendments will provide new opportunities for indigenous communities in the west. To capitalise on these opportunities the Government has entered into a unique partnership with the New South Wales Aboriginal Land Council to attract international firms to plant carbon sinks on aboriginal land. This opportunity could lead to investment worth millions of dollars and significant job opportunities for indigenous Australians in their local communities and on their land. Before I turn to the bill in detail I will briefly outline the process of carbon sequestration and the nature of the New South Wales Greenhouse Gas Abatement Scheme.

Carbon sequestration is that process whereby vegetation incorporates carbon through the process of photosynthesis, converting carbon dioxide and water to starch and oxygen, with the carbon effectively stored in the structure of the tree. The long-term storage of carbon through this process is the basis for carbon sequestration activities to ameliorate greenhouse gas emissions. The New South Wales Government is committed to reducing greenhouse gas emissions, and to do all it can to prepare the people of New South Wales for the potential impacts of climate change. The New South Wales Greenhouse Gas Abatement Scheme began on 1 January 2003. It is one of the first mandatory greenhouse gas emissions trading schemes in the world.

The scheme aims to reduce greenhouse gas emissions associated with the production and use of electricity. One way of achieving this is by using project-based activities that reduce emissions, such as low-emission power generators, or that offset the production of greenhouse gas emissions, notably through carbon sequestration. The scheme sets annual statewide greenhouse gas reduction targets, and then requires individual electricity retailers and certain other parties who buy or sell electricity in New South Wales to meet mandatory benchmarks based on the size of their share of the electricity market.

If these parties, known as benchmark participants, fail to meet their benchmarks, then a penalty is assigned. The Independent Pricing and Regulatory Tribunal [IPART] is responsible for monitoring the program participants and also assessing abatement projects, accrediting parties to undertake eligible projects and then creating certificates, and monitoring compliance with the scheme. IPART also manages the greenhouse registry, which records the registration and transfer of certificates created from abatement projects. Under the carbon sequestration rule IPART, as scheme administrator, may accredit a person as an abatement certificate provider in respect of a carbon sequestration activity if a number of requirements are met.

These requirements include that the person owns or controls carbon sequestration rights with respect to eligible land and that the person can demonstrate that the greenhouse gas abatement secured by carbon sequestration activities can be maintained for 100 years. Eligible land is land that may be used for the purposes of growing planted forests under the terms of the Kyoto Protocol. This means that the land on which the forest is planted must have been predominantly non-forest at 31 December 1989.

I will now deal with the bill in detail. Schedules 1 and 2 to the bill contain substantially the same provisions to clearly authorise the Ministers responsible for the administration of the Crown Lands Act 1989 and the Western Lands Act 1901 respectively to grant carbon sequestration rights and associated forestry rights over Crown land. The amendments also make it clear that restrictions on the use of land subject to carbon sequestration rights may be imposed by IPART as a safeguard against the depletion of carbon on the land concerned. Forests New South Wales can already create carbon sequestration rights and other forestry rights over State forests and land it owns. Forests New South Wales is already an accredited abatement certificate provider under the New South Wales GGAS, and has created carbon credits.

Schedule 3 to the bill amends the Forestry Act 1916 to make it clear that the Forestry Commission, now known as Forests New South Wales, can also create carbon sequestration and other forestry rights with respect to timber reserves. Other amendments to the Forestry Act in schedule 3 will also clearly remove the statutory right of Forests New South Wales to take timber or products from plantations established for the purposes of carbon sequestration on Crown timber land and in respect of which carbon sequestration rights have been granted in accordance with the Crown Lands Act 1989 and the Western Lands Act 1901.

The bill also will make it clear that timber licences to log timber cannot be granted under the Forestry Act over such land.

Schedule 3 of the bill amends the Aboriginal Land Rights Act to ensure that the Minister may treat Crown lands which are subject to carbon sequestration rights, forestry covenants and restriction on use as claimable Crown lands pursuant to the Aboriginal Land Rights Act.

If such land is granted to an Aboriginal land council by the Minister, it is transferred to that Aboriginal land council, subject to such rights. Accordingly, any carbon sequestration, forestry covenant and restriction on use will not be affected by the transfer.

In conclusion, this bill represents another important step towards a reduction in greenhouse gas emissions in New South Wales, and will provide an important opportunity for landholders in the Western Division and other areas of the State to diversify their farm business, improve drought resilience, receive payment for environmental improvements and improve the prosperity of their businesses and communities.

I commend the bill to the House.

**The Hon. RICK COLLESS** [9.36 p.m.]: I lead for the Coalition on the Crown Lands Legislation Amendment (Carbon Sequestration) Bill. I assume that the speech the Hon. Henry Tsang was granted leave to incorporate in *Hansard* is the speech that was made by Mr Grant McBride in the other place.

**The Hon. Amanda Fazio**: No, he is the honourable Minister.

**The Hon. RICK COLLESS**: I acknowledge the interjection. He is the honourable Grant McBride, the Minister for Gaming and Racing. It is rather interesting that the honourable Minister should present the case for the Government in relation to a matter as complex and difficult to understand as carbon sequestration. Quite frankly, I seriously doubt the level of knowledge the Hon. Grant McBride would have in relation to carbon sequestration, as I doubt the knowledge of many honourable members in either House in relation to the more technical aspects of carbon sequestration.

At the outset I state that the Opposition will not oppose the bill. The Coalition strongly supports the whole process of carbon sequestration, but I have some doubts, judging by the way the bill has been drafted, about whether the Government has come to terms with the whole issue. The overview of the bill states:

Carbon sequestration in relation to a tree or forest is defined in section 87A of the *Conveyancing Act 1919* as the process by which the tree or forest absorbs carbon dioxide from the atmosphere.

That is a very simplistic definition of carbon sequestration. To my understanding, carbon sequestration covers a much bigger area than simply how much carbon a tree or a forest may be able to sequester from the atmosphere. The whole issue of carbon sequestration relates to absorbing carbon from the atmosphere and storing it in a sink somewhere in the environment. There is a lot more to carbon sequestration than simply storing it in tree trunks in a plantation. The object of the bill is to amend the Crown Lands Act, the Western Lands Act, and various other Acts to enable Crown land lessees, perpetual lessees, and western land lessees to engage in any carbon sequestration or carbon trading programs that may be available from time to time.

The whole concept of carbon sequestration is the process by which carbon dioxide is drawn out of the atmosphere and stored in some organic or mineral form in the environment. That stored carbon can exist as growing and mature vegetation; it can be stored in the soil as organic matter following the decay of vegetation; or it can be stored as a mineral carbonate or mineral compound in the soil, such as calcium carbonate, magnesium carbonate, and many other forms of carbonates that can be stored in a mineral form in the soil profile.

If one looks at some of the ways in which calcium carbonate has been stored in the environment over millennia, the most common form that people would be aware of is limestone. In countless millions of limestone caves around the world, carbon from the atmosphere has been stored in a mineral form through the activity of oceanic biodiversity in the form of coral reefs and so on. They store huge amounts of limestone, or calcium carbonate, in the landscape. Eventually that limestone is mined as a very valuable fertiliser and put back on the land because calcium is such an important component of our natural nutrition in crop and pasture production, and so on.

There are many forms by which carbon can be sequestered from the atmosphere and put into a storage system, a sink, where it is permanently locked up in the landscape. I will address some of those processes, and also the rigidity with which it is locked up following the storage process. The first component is growing and mature vegetation. This is the essence of the Crown Lands Legislation Amendment (Carbon Sequestration) Bill, which is about trees. It should be called the Carbon Sequestration Via Trees Bill because that is the only issue the bill addresses.

In the process of growing, plants necessarily go through a photosynthetic process and absorb carbon dioxide from the atmosphere. They convert the carbon from the carbon dioxide into sugars, starches and cellulose, utilising the input of solar energy. The oxygen from the carbon dioxide molecule is released into the atmosphere. The beneficial aspect of having forests in our ecosystems is that they draw carbon dioxide out of the atmosphere, store the carbon, and release the oxygen into the atmosphere. Oxygen, of course, is the essential gas that animals, not to mention humans, need to exist.

A young forest is composed basically of rapidly growing trees, which absorb carbon dioxide. That carbon dioxide is stored mostly as cellulose in the woody stems of trees. Thereby the young growing forest acts as a very dynamic carbon sink, or carbon reservoir, that increases in size. That carbon sink sequesters a significant amount of carbon from the atmosphere every day. Mature forests, on the other hand, are made up of

a mix of trees of various ages; some are decaying, some are new, and some are stagnating as mature trees. A forest may well be carbon neutral: the amount of carbon a forest gives off through the decaying process is roughly equivalent to the amount of carbon that is sequestered out of the atmosphere from the young growing trees.

Probably not a great deal of carbon sequestration occurs in a mature forest; the carbon in a mature forest is fairly stable. That raises a very interesting point about what happens in a forest. Mature trees that are harvested out of a forest have carbon locked up in their trunks. We export that timber out of a forest and turn it into, believe it or not, tables, chairs and other items that have been in this Chamber for more than 150 years. The carbon is locked up.

**The Hon. Ian West:** Some of that is plastic and oil.

**The Hon. RICK COLLESS:** The Hon. Ian West said it is plastic and oil. Plastics and oils release the carbon that had been stored previously. That is a completely different situation. I am talking about carbon that has been stored in books, timber, leather, and agricultural products, it has been locked up and the decay process has stopped. Therefore, carbon is not being released into the atmosphere.

**The Hon. Ian West:** We all understand it. Do you want to incorporate your speech?

**The Hon. RICK COLLESS:** I look forward to the contribution of the Hon. Ian West to this debate. This is a very important issue. We are talking about global warming and he is trivialising the issue by throwing in furphies that have no relevance to the bill. The whole point is that carbon is stored in, for example, this Chamber lectern and it will never be released into the atmosphere.

**Reverend the Hon. Dr Gordon Moyes:** Unless it is burnt.

**The Hon. RICK COLLESS:** Yes, unless it is burnt, as my colleague points out. In a forest that is constantly growing, sequestered carbon is harvested and put into house frames, furniture, and other items and locked up forever. If we put that forest aside as a national park, what happens to it after 5 or 10 years? It burns, and when it does, it releases all that carbon into the atmosphere, which contributes to global warming and the greenhouse gas problem that the world is facing.

**The Hon. Ian West:** And the point is?

**The Hon. RICK COLLESS:** The point is that we need to manage these forests so that the carbon is permanently locked up; permanently put aside and locked up forever in house frames, chairs, tables, furniture and everything else that we use on an everyday basis.

**The Hon. Amanda Fazio:** Woodchip?

**The Hon. RICK COLLESS:** Not woodchip; woodchip is different. Government members do not understand these issues. They are completely ignorant of the importance of the issues we are talking about. When wood is sold as woodchip it ends up as newspapers, the newspapers are burnt the following day and the carbon is released back into the atmosphere.

**The Hon. Amanda Fazio:** How do you know it is not made into a bible?

**The Hon. RICK COLLESS:** If it were made into a bible, I am sure my colleague Reverend the Hon. Dr Gordon Moyes would agree that it would be locked up forever because people would continue to read a bible forever. But most of the woodchips do not go into bibles; they go into newspapers. We are concerned about some pretty important issues.

The second thing I want to talk about is the concept of mature and growing forests. We then have to consider sequestering carbon into a much greater sink than forests. We will sequester carbon into soil reserves. In Australia there are 768 million hectares of land. Twenty-one per cent of that land is covered by forests, which means that 79 per cent of the land is covered by rangelands or grasslands. Apply that on a worldwide basis and the same sorts of proportions apply. In a grassland we would look at the organic matter levels, or the carbon levels in the soil. If we took the point of view that we could increase soil carbon levels by just 2 per cent over a soil depth of 30 centimetres, that would store 35 tonnes of carbon per hectare. Thirty-five tonnes of elemental carbon per hectare is equivalent to 128 tonnes of carbon dioxide.

I know that these figures might be lost on the Hon. Ian West, but of the 768 million hectares of land in Australia, 79 per cent, or 645 million hectares, are rangelands or pasturelands. Multiply the 645 million hectares by 35 tonnes per hectare to establish the conversion rate between elemental carbon to carbon dioxide. One tonne of carbon is equivalent to 3.7 tonnes of carbon dioxide. If we could increase our soil organic matter levels by just 2 per cent, 84 million tonnes of carbon dioxide would be taken out of the atmosphere. Apply that worldwide and, as Mr Ian Cohen would know, that represents a serious impact on global warming.

**Mr Ian Cohen:** Land clearing is one of the biggest problems in Australia.

**The Hon. RICK COLLESS:** I am glad that the honourable member mentioned that. Land clearing is not one of the biggest problems in Australia. I am not talking about forested soils; I am talking about agricultural soils. Before I became a member of Parliament I was an agricultural consultant who focused on soil management, soil carbon management, soil fertility, and all those aspects. I tell honourable members now without any shadow of a doubt that it is eminently feasible to increase soil organic matter levels in agricultural soils on the 645 million hectares of agricultural soils across Australia. It is very easy to increase the soil organic matter levels of those soils by 2 per cent simply by changing management practices. This is a separate issue to forested soils. By that action alone we would be able to store 84 million tonnes of carbon dioxide in Australian soils.

**The Hon. Henry Tsang:** We need a new bill.

**The Hon. RICK COLLESS:** The Hon. Henry Tsang said that we need a new bill and he is right. Admirable though it is, this bill does not address some of bigger issues of carbon sequestration. We are talking only about forested lands. A much greater advantage is to be gained through carbon sequestration, through agricultural and rangeland soils, than there is through forests.

**Mr Ian Cohen:** Give us an example of how you would do it.

**The Hon. RICK COLLESS:** We would do it by putting in place the right management and nutrient management practices that would allow carbon to be sequestered. As an agricultural consultant I regularly said to my clients, "Why are we buying nitrogen out of a bag when 77,000 tonnes of nitrogen are sitting above every hectare in the atmosphere?" Why would we bother buying it when it is sitting above us? All we have to do is look at our management practices, which would allow us to take that nitrogen and sequester it from the atmosphere into the soil. We would do that through a number of methods. The first would be to look at the balance of all the different nutrients in the soil and correct that balance.

I am opposed to the whole concept of genetic engineering because it does not take into account the agricultural science and knowledge that are available to us simply by correcting nutrient management in the big picture of getting those nutrients back into the soil. Dr William Albrecht, a scientist who dates back to the early 1950s and a professor of science at Illinois University in the United States of America, made the observation that calcium was the prince of nutrients. If we look at agricultural soils across the world we find that they are all highly deficient in calcium.

I have already said that calcium carbonate is one of the mineral sequesters of carbon dioxide. Calcium carbonate is  $\text{CaCO}_3$ . Calcium carbonate sequesters carbon out of the atmosphere when it is formed. That is done through the formation of coral reefs and so on in a marine environment. Calcium carbonate then comes out of the ocean—

**Mr Ian Cohen:** We are killing our reefs.

**The Hon. RICK COLLESS:** No, that is a different issue. It is available to us now as limestone mines. When we mine that limestone and put it back on the soil, the improved concentration of calcium in the soil encourages the soil microbes to sequester carbon and nitrogen out of the atmosphere. The result is much more fertile soil for agriculture, forests and native vegetation. The soil becomes far more productive. Why are we not pursuing that type of science and technology to implement a carbon sequestration program? I will tell honourable members why. It is a shame that the Minister is not in the Chamber—he is never here when I have important information to tell him. The Hon. Henry Tsang sought to incorporate the speech delivered in the other place by Mr McBride. Mr McBride does not know anything about this stuff, and I doubt that the Minister does either. These matters should be debated vigorously and properly in the Chamber because they involve important issues such as land management, conservation and greenhouse gas emissions. That is why this debate is so vital.

The third aspect of carbon sequestration is mineralised carbon. I have spoken briefly about this in terms of calcium carbonate or limestone. But many other forms of carbonate are stored geologically. Magnesium carbonate is a very important one. During my career as a soil scientist I examined different soil types. I travelled to many different parts of the world and looked at many different soils and soil test results. I looked at the different concentrations of minerals and gases such as carbon, magnesium, potassium, sodium and hydrogen. There are all sorts of different things in soil. In Australian soils, in particular, there is a conflict between three nutrients: calcium, magnesium and hydrogen.

Agronomists around the world talk about the acidity of soil and the importance of soil pH to soil productivity. But soil pH levels can be an indicator that something is wrong. High pH soil has pH levels of between 8½ and 9½. Those with a scientific background will know that such levels are almost unheard of in soils. However, there are plenty of soils from the Liverpool and Moree plains, for example, that have pH levels of 8½ and 9½. Traditional agronomists say that the last thing we should put on soil such as that is limestone because it is supposed to increase pH levels.

**Reverend the Hon. Dr Gordon Moyes:** You have got to get some acidity.

**The Hon. RICK COLLESS:** Yes, the soil needs acidity. Those of us who were fortunate to receive training from people such as Dr William Albrecht would look more closely at those soils and discover that they have a magnesium concentration of about 60 per cent to 70 per cent. Ideally, soil should contain about 65 per cent to 70 per cent exchangeable calcium and about 15 per cent to 18 per cent exchangeable magnesium. But soils with very high pH levels have an exchangeable magnesium percentage of up to 60 per cent and 70 per cent. That magnesium exists in the soil as magnesium carbonate. The soil holds large amounts of carbon as magnesium carbonate.

The problem with those soils is that they also have very high pH levels because magnesium carbonate has a neutralising power of about 120 per cent compared with calcium carbonate. If a kilogram of calcium carbonate produced a pH level of 10 the pH level of a kilogram of magnesium carbonate would be 12, which is 20 per cent higher. How do we reduce pH levels in high magnesium soils? Because they have high magnesium levels they also have a very high calcium deficiency so we put limestone—or calcium carbonate—on them. Lo and behold, when we put calcium carbonate on soils with high pH levels and a high magnesium content, the pH level reduces and the soil becomes far more productive. It also has a much greater capacity to store organic carbon.

As I said, if we increase the organic matter level in soil by 2 per cent we will store 35 tonnes per hectare of carbon, which is equivalent to 3.7 times the amount of carbon dioxide that is taken from the atmosphere. Plenty of scientific documents talk about the importance of soil organic matter and the fact that it stores far more carbon than forests do. The good thing is that once the carbon is in the soil at depth, it stays there. As for carbon stored in forests, trees sequester a lot of carbon while they are growing—

**The Hon. Melinda Pavey:** And young.

**The Hon. RICK COLLESS:** Yes, while the trees are young and growing they are storing carbon. But when the trees reach maturity, the levels plateau. The forest holds a lot of carbon but it does not store any additional carbon. When a bushfire comes through the forest and wipes it out, as occurred on the outskirts of Canberra, in the Snowy Mountains and elsewhere in Australia in the past 10 years, the carbon is released back into the atmosphere, contributing to greenhouse gas emissions and global warming. Our national parks are not managed properly. That is a serious problem. We must put in place a management system to stop the parks burning because the trees that stored carbon as they grew will lose it overnight. That carbon is released back into the atmosphere as carbon dioxide and greenhouse gas.

The bill is good in theory but it does not cut the mustard when it comes to some of the more delicate issues involving carbon sequestration and the direction in which we should head in that regard. The bill is admirable in its intentions but we need to take a much broader, more scientific view and have a better understanding of what carbon sequestration is about. We must consider other ways of sequestering carbon from the atmosphere before we go much further down this track. Honourable members may wonder why I appear to know so much about carbon sequestration. Before I left the Department of Natural Resources, which was known in those days as the Department of Land and Water Conservation, I was district manager of the Inverell district. My role partly involved looking after the foreshore lands of Copeton Dam, which comprised about 15,000

hectares of what is now public land. We were charged with managing that area having regard to the environmental aspects of the land that drains into Copeton Dam.

The team I had working with me looked at a number of ways to improve the land around that area. We wanted to make sure that future management options were kept open and that it was managed in a sound environmental, social and economical way. We decided to get involved with an organisation called the Centre for Holistic Management in the United States of America. We looked at ways to increase the organic matter level of soil surrounding Copeton Dam. As part of that project we got involved with another organisation known as the Los Alamos nuclear research facility, which developed the nuclear bomb prior to World War II. Its view of life had changed since nuclear warfare had dropped off and it was looking to become involved in other projects. The Los Alamos facility suggested we look at a carbon sequestration program and the different organic matter levels and carbon levels in the soil. It could date when carbon was stored in the soil by tagging it with the nuclear fallout that happened following the Hiroshima bombing.

At that time I made a submission to the department that we should pursue this project. It is interesting that the Minister for Natural Resources who sponsored this bill and is not in the Chamber should go off half-cocked because only 10 years ago his department rejected my proposal and said it was nonsense. Ten years down the track and we are now discussing a bill on carbon sequestration. I am afraid the Minister is a bit behind the eight ball. Other people in this world have been discussing carbon sequestration for a very long time. It is a shame that a bill had to be introduced into Parliament rather than acknowledging a project by a group of people who were prepared to put their credibility on the line some 10 years ago. The Opposition will not oppose this bill but it does not really cut the mustard and get to the core issues of carbon sequestration.

**Reverend the Hon. Dr GORDON MOYES** [10.12 p.m.]: I thank the Hon. Rick Colless. It was 45 years ago since I studied botany, soils and chemistry and he has taken me back in a flood of memories, none of which I can properly remember. The Christian Democratic Party supports the Crown Lands Legislation Amendment (Carbon Sequestration) Bill. The object of this bill is to amend the Crown Lands Act 1989, the Western Lands Act 1901 and the Forestry Act 1916, to allow carbon sequestration rights to be granted over land covered by the amended legislation. This will provide for consistency in the granting of carbon sequestration rights across tenures in New South Wales.

This week honourable members have already had the opportunity to consider the nature and implications of the New South Wales Greenhouse Gas Abatement Scheme through the debate on the Electricity Supply Amendment (Greenhouse Gas Abatement Scheme) Bill. Honourable members know that the Greenhouse Gas Abatement Scheme commenced on 1 January 2003 and will now remain in force until 2021, rather than the original year of 2012. The scheme imposes mandatory greenhouse gas benchmarks on all New South Wales electricity retailers to abate the emission of greenhouse gas from the consumption of electricity in New South Wales.

The bill is important in assisting the reduction or abatement of greenhouse gases and supports the purpose of the Greenhouse Gas Abatement Scheme because it entrenches the opportunity to establish carbon offsets for approximately 50 per cent of non-freehold land in New South Wales. It is significant because it clarifies the rights available to those entities that are seeking to provide offsets for greenhouse gases through what is known as carbon sequestration.

In my contribution to the second reading debate on the Threatened Species Conservation Amendment (Biodiversity Banking) Bill yesterday, I mentioned the emergence of the relatively new phenomenon of greenhouse entrepreneurs. Interestingly, the example I referred to in that context covers the exact situation that is addressed in this bill. In my contribution I mentioned that CO<sub>2</sub> Australia is planting thousands of mallee trees in Condobolin in the Central West of New South Wales. The company is generating revenue by claiming carbon credits for the carbon that each tree locks up in its root, trunk and branches as it grows through its transpiration system, through its leaves and photosynthesis. In that case it seems that trees were being grown on private land. This bill facilitates these types of ventures on lands in the Western Division and Crown lands covered respectively by the Crown Lands Act 1989 and the Western Lands Act 1901.

In the second reading speech in the Legislative Assembly, the Government indicated that carbon sequestration could be undertaken on State Forest land if Forests NSW grants the right for someone to do so. Western Division lands and Crown lands cover close to 50 per cent of land in New South Wales. However, up until the passing of this legislation, the exercise of carbon sequestration rights and other forestry rights have not been able to legally proceed on these lands. This bill removes any doubt that carbon sequestration may occur on



Western Division and Crown lands. Grants will be able to be made under the relevant legislation for carbon sequestration rights with the consent of any lessee. In cases where land is held under a perpetual lease, the lessee may also grant the rights with the Minister's consent.

Importantly, the bill will also allow for the imposition of forestry covenants and restrictions on use in connection with those rights. For example, the amendments allows the Independent Pricing and Regulatory Tribunal the discretion to impose restrictions on the use of land subject to carbon sequestration to guard against the depletion of carbon on the land concerned. As I mentioned before, Forests NSW may create rights over State forests and land that it owns. This bill will provide the ability for Forests NSW to grant carbon sequestration and forestry rights over timber reserves in respect of lands that it administers under the Forestry Act 1916. The bill clarifies that the statutory right of Forests NSW to take timber or products does not apply to any Crown timberland that is the subject of a forestry right within the meaning of section 87A of the Conveyancing Act. This will be the case unless Forests NSW holds the right.

Honourable members may like to know that this legislation will provide the platform for a unique partnership between the Government and the New South Wales Aboriginal Land Council. The bill will facilitate carbon sequestration to occur on lands claimed under the Aboriginal Land Rights Act 1983. Lands under the control of councils will be held subject to any carbon sequestration rights granted. It would be of interest to know the council's viewpoint on this legislation. Clearly, this bill facilitates benefits on many fronts, most importantly for our environment. As mentioned in the second reading speech, plantings for carbon sequestration can provide important vegetation coverage, reduce wind erosion, which I know the Hon. Rick Colless would support, provide shelter belts for crops and stock, and in some cases, will provide migratory corridors for wildlife and birdlife.

However it remains to be seen whether the elemental forces of nature will assist the progression of carbon sequestration schemes. Significantly, in view of the hardship suffered by many of our farmers at present we can hope and pray that rain will fall to provide much needed respite for them. If the growth of mallee forests fails, in years to come a tree can be dug up, burnt and radio carbon dating can be used to remember that the people who gave the rights to plant them were in the Legislative Council.

**The Hon. Rick Colless:** Through the mallee roots.

**Reverend the Hon. Dr GORDON MOYES:** Indeed, through the mallee roots.

**Mr IAN COHEN** [10.19 p.m.]: I speak on behalf of the Greens in this debate on the Crown Lands Legislation Amendment (Carbon Sequestration) Bill 2006. The Greens will not oppose the bill, but I will raise a number of concerns we have with the proposal. Before I do so I should say that the dissertation of the Hon. Rick Colless was enlightening and entertaining, indeed quite riveting. I congratulate him on his constructive contribution on a matter that is obviously close to his heart. It is a rare occasion in this Chamber that, when it becomes obvious that a member is nearing the end of his speech, I start thinking, "I wish he would say more." It is usually the opposite with speeches made by many members. The speech delivered by the honourable member is potentially of great consequence in that it could see all manner of people, from farmers to conservationists to greens, working in harmony on the matters to which he referred to improve improving land to the extent that it would sequester carbon.

The greenhouse gas problem has been well recognised, although some members of this Chamber do not demonstrate it. Greenhouse gas emissions and the resultant acceleration of evolutionary global changes in our very lifetimes mean that potentially we face a significant catastrophe. I do not think these are fringe issues any more. I can appreciate the frustrations of the Hon. Rick Colless—who has spoken to me on a number of occasions, as well as to many other people, about soil issues—in thinking that so much can be done, but is not being done because we do not seem to be able to jolt those with the power and ability to change the world into realising the importance of these issues. I thank the Hon. Rick Colless for kicking along an extremely important aspect of this whole debate, because, if we are to have any success in the short to medium term, we need to consider all relevant matters to bring about a proper balance in the earth's ecosystems.

The impact on our fragile Australian soils of past land use practices, often adopted through ignorance or economic pressure, have led to degradation of our soils rather than an improvement in their fertility. These problems are not peculiar to Australia. In an earlier debate a member talked about ancient civilisations in lands that were once forest covered and very fertile but are now desert. Sometimes I despair when I watch television footage of Iraq and see in the backdrop the Euphrates River—once the cradle of civilisation, with its fertile and

productive lands giving rise to the evolution of humanity—looking more like a ditch in a desert. That we now have the scientific knowledge, opportunity and ability to turn around such tragedies is both depressing and exhilarating at the same time. It will be a huge task, but if we consider and address the issues seriously—and I am keen to hear more about soil issues—hopefully that will have a beneficial impact and be a real step forward.

I wish to address a number of issues that have not been well defined in the Crown Lands Legislation Amendment (Carbon Sequestration) Bill 2006. First, the New South Wales Aboriginal Land Council's plans for carbon sequestration were at the pilot stage at most. A number of the council's Western Division properties are currently running at a loss, so the option of creating greenhouse abatement certificates through tree planting was being explored. The Greens do not oppose that concept in principle. However, we want to ensure that principles of sustainability are applied, not inappropriate monocultures. It was astounding to learn, in a meeting with representatives of the New South Wales Aboriginal Land Council convened to discuss a number of matters, not only that the council was unaware of the bill being introduced but also that the scheme lauded by Government members in the other place as a unique partnership seems to be nothing more than a concept plan. The land council knew nothing about it.

I ask the Minister: Is the so-called unique partnership in writing? Has some agreement been incorporated in a bill presented to the Parliament? Is there a master plan, or linen plan, or whatever it might be? Is there something in writing? Has there been communication between the Government and various Aboriginal land councils that has resulted in a framework for this concept? I would like to know. I think it is reasonable that this Chamber be apprised of that matter. How far has the concept progressed? How is it that the New South Wales Aboriginal Land Council was not advised of this legislation? I hope the Minister will answer those questions as we deal with this bill. What job opportunities does the bill offer? Does the Government contemplate a forestry joint venture or arrangement with perhaps an overseas company? I have been critical of other forest joint ventures involving Japanese power companies seeking the convenience of carbon sequestration. Does the proposal excise this land from future land claims? If there is some sort of joint venture and forestry use, does this impact on future land claims over leasehold land in the Western Division? These are all matters of real concern to me. By the way, young trees need water. Where is it?

**The Hon. Rick Colless:** Stored in the organic matter in the soil.

**Mr IAN COHEN:** I hope so. I hope it exists in the present circumstances of drought. Or are we seeing reconciliation Australian Labor Party style: "Don't tell them about it"? I have real concerns about this legislation and the way the Government has gone about developing it. It is a very worrying precedent.

Negotiations were continuing with Aboriginal bodies out west relating to pricing and some contractual issues, all subject to a confidentiality agreement. I would like to know what stage they have reached. What is happening? How does the fact that the land is subject to western lands leases affect the legality of such a project? As it is a pilot project, there may be many legal, commercial and environmental issues to be resolved: climate, soil type and whether it is conducive to cultivating Mallee eucalypt plantations, conversion efficiency and volume of uptake of carbon and hardness. There are many properties in the New South Wales Aboriginal Land Council's rural property portfolio. Are they likely to be suitable for similar ventures? The bill really does raise many issues. Interestingly enough, there is a reference here to a program that might be described as land banking—a bit of a follow-on from the biobanking bill, which I to call the "biobashing" bill, that is before this House.

It would appear the Government is running off with all sorts of projects, but how well have they been thought out? How serious is the Government about following through? Is this just some convenience that is developing prior to the State election? I am incredulous at the lack of proper steps for developing what are potentially very important schemes. It does not mean that I oppose the principle, but I certainly have serious concerns. There are important issues that certainly people in the conservation movement have not had time to think about because of the time frame and the way the bill has been brought before the House. For the Greens to wholeheartedly support this type of legislation and the effects that flow from it, we need more time to become fully cognisant of the implications.

The bill grants the leasehold of full carbon right, and that could be seen as a privatisation of public interest in leasehold lands. I would have thought that some of the proceeds from carbon credits on Crown lands should go to the Crown—not all to the leaseholder. Again, I will wait to see the results. It also means the whole process will be driven by individual leaseholders in a manner that will be difficult to regulate and control, and that therefore it will not promote long-term vegetation outcomes that also deliver biodiversity outcomes, such as

strategic planning in buffers and corridors. Given the Government's weak stance on carbon-producing industries such as coal, one can only wonder whether we should ever fall over ourselves to support its green-washing proposal for sequestration. Many of us have major concerns about the way carbon credits function generally. While I do not have the details of the New South Wales deal with the Tokyo electricity company in relation to carbon credits, this is possibly more of the same and we need to have a much closer look at it.

Carbon sequestration is defined as a process whereby a tree or forest absorbs carbon dioxide from the atmosphere. The carbon dioxide is then converted into cellulose and oxygen and stored in the structure of the tree. However, these types of offsets do nothing about the immediate impact of greenhouse gas emissions. Tree plantations provide temporary storage for carbon dioxide. But the science about the effectiveness of such schemes is hotly disputed. Trees take time to grow and are susceptible to disease, fire, timber harvesting and natural decay. That was well described by previous speakers in the debate. We often witness fire regimes; everything from sugar cane burning off to natural fires and disasters. The massive fires that recur almost every year can turn around the carbon cycle, in evolutionary terms, in an instant. The bill seeks to establish carbon sequestration rights on Crown lands. The clearing of vegetation, how the carbon dioxide is accounted for and various other issues are dealt with by other pieces of legislation.

Carbon sequestration should have a limited role with a cap on how big a part it can play in achieving New South Wales greenhouse gas reduction targets. That cap, however, needs to be put in place under greenhouse gas reduction legislation, not this bill. The Greens are concerned about how the Government will regulate and manage carbon sequestration activities, and in particular whether this will increase plantation forestry type activity on Crown lands. We support degraded areas being rehabilitated to benefit biodiversity, water quality and salinity. However, carbon sequestration is often not consistent with these aims. Carbon sequestration often establishes monocultures that are cleared every 20 years or so. The Minister's staff have advised me that in this case we are talking about trees being left in the ground for 100 years. I would like the Minister to verify that fact. If that is the case, I would be interested to hear some guarantee of it; I would like proof of that.

As has been seen with monocultures over 20 years or so, clearing has major implications for soils and water quality. While the scheme is eligible to operate under the terms of the Kyoto Protocol—which means that the average amount of time the trees need to be in place is around 100 years—it does not preclude the clearing of parts of large plantations as long as the average retains a certain amount of carbon. We could get into all sorts of fudging of the figures in that regard; it would look good but the substance would be lacking. I seek an assurance from the Government that this scheme will not result in existing native vegetation being replaced with plantations. I am very concerned about the potential impacts of monoculture plantations on Crown lands. Such plantations usually use non-local species-gene stock and even possibly genetically engineered trees. Plantations can cause major reductions in water yields from catchments, are frequently plied with pesticides and herbicides, often involve clearing of remnant patches of native vegetation of paddock trees, and major roading, which also has major environmental impacts.

The Greens are concerned also about Crown lands being used for commercial ventures and how any profits to the State from such activities would be used. Is the Department of Lands planning to use this scheme to raise funds so as not to require funding from Treasury? The Greens believe that any funds from carbon credits gained on Crown land should be spent on conservation management of Crown land. I ask the Minister whether all the proceeds of carbon credits on Crown land will go to the leaseholder or whether some will go to the Crown. The Greens see a problem with leaseholders being granted the full carbon right, as this could be regarded as privatisation of the public interest in leasehold land. I am concerned that the right being conferred in some areas seems to be broader than it needs to be; it confers forestry rights that are wholly or partly related to sequestration. I ask that the Minister explain that provision in his speech in reply.

The Government has rushed this bill through. There has not been enough time for consideration of the finer details. While on the face of it there may be merit to schemes such as the one proposed for the Western Division by CO<sub>2</sub> Australia Limited, I envisage some problems. I am advised that a plantation of Mallee would be very difficult to establish in the Western Division. There is no rain in the Western Division and Mallee would need irrigation to establish successfully. I support co-operation with Aboriginal land councils in schemes that will benefit them and which could also create carbon credits, but this must be done in a sensible and ecologically responsible manner. The idea of trees and forests acting as carbon sinks is problematic. A significant number of scientific studies have cast doubts on the effectiveness of carbon sequestration as a method of offsetting emissions. I will read onto the record some excerpts from an excellent article entitled

"CO<sub>2</sub>nned", which was published in the July 2006 edition of *New Internationalist* magazine. The following are excerpts from the article by Adam Ma'anit, under the heading "If you go down to the woods today":

Three to four times more carbon is stored in soils than in the vegetation above.

In that regard I am in complete agreement with the Hon. Rick Colless. The article continues:

Scientists concluded that the Kyoto Protocol and voluntary offset companies' promotion of tree-planting projects will enable them "to claim carbon credits for the new planting, while in reality releasing huge amounts of CO<sub>2</sub> into the air," since most tree-planting involves clearing of vegetation such as grasses which absorb carbon and exposing the soil.

A six-year study published in *Nature* assessed the impact of nitrogen depletion in soils. It concluded that rising atmospheric CO<sub>2</sub> levels would affect the availability of nitrogen and other nutrients in soils and thus restrict the ability of plant biomass to absorb carbon. One of the scientists in charge of the United State of America research team behind the study concluded we "cannot rely on nature to clean up" industrial carbon dioxide emissions. Offsets slot into the oil, coal and gas continuum—they do not challenge it. Some argue that offsets at least educate the public about their carbon emissions, but what exactly does that teach? That it is okay to fly and drive, so long as people pay some third party a small fee to ease their conscience? That we can consume our way out of a problem caused by our consumption in the first place? Rather than stopping the flow of oil, gas and coal, the offset industry tells us that we can continue as normal. We need not reduce: in fact, we can now consume our way out of the problem. Now we can buy offsets on top of our Caribbean holiday and thus neutralise our impacts. It certainly is a seductive argument, but it is a falsehood—a con.

That flight to Bermuda has an immediate impact on the climate. Aircraft emissions are of particular concern as they not only release carbon dioxide and other pollutants but also trail water vapour, which has a significant heat-trapping effect in the atmosphere. Aircraft are also the fastest-growing source of greenhouse gas emissions as more people choose to fly and more frequently. If aircraft emissions are not reduced significantly, climate change will only accelerate. It was not until 1989 that the first carbon offset project was launched. It was conceived by United State of America power company Applied Energy Services [AES], together with the environmental think tank, the World Resources Institute, the official United States of America aid agency, USAID, and the big development non-government organisation CARE.

At that time AES was looking for regulatory approval for a new 183-megawatt coal-fired power plant in Connecticut. It eventually got the go-ahead, thanks to its mitigation project in the western highlands region of Guatemala. The project entailed planting 50 million non-native pine and eucalyptus trees on approximately 40,000 small farm holdings in this deeply impoverished region, which in theory would soak up the equivalent carbon dioxide emissions that were expected to be generated for the lifetime of the plant. According to Hannah Wittman of the Simon Fraser University in Vancouver, the project was a dismal failure. She stated, "What it did first and foremost was to take access to the trees out of the hands of ordinary people." An external evaluation revealed that subsistence activities undertaken by the largely indigenous population, such as gathering fuel wood for cooking, were now criminalised, and conflicts erupted over rights to the trees, exacerbating existing tensions over access to resources and local decision making.

Initially the tree species that were used were largely inappropriate for the area and resulted in land degradation. The evaluators, Winrock International, concluded in 1999—10 years after the project began—that AES's offset target was falling far below the expected level. By 2001, the farmers were still not receiving direct payments for the trees they planted and looked after, and many were not aware that these trees were being used for storing carbon for AES. However, these problems did not prevent the company from getting approval for its coal-fired power plant. The G8 Summit meeting in Scotland last year was carbon neutral, according to its organisers; so too the elite business schmooze-fest, the World Economic Forum in Davos. It seems that everyone is in on the game.

The plantation industry is now also experimenting with controversial super carbon absorbing varieties of genetically engineered trees to claim more offset potential and also to make them easy to pulp for paper. We should not be neutral about climate change. At best carbon offsets are a distraction and at worst a grandiose carbon-laundering scheme. We need to grasp our responsibility for climate change and take action now. There is absolutely nothing wrong with funding renewable energy sources and even some well-designed and appropriate tree-planting projects. However, people should not equate them with a licence to pollute. A carbon-positive agenda sees through the offset industry's gambit and relies on a more fundamental commitment to solving climate change.

Adam Ma'anit encapsulates the arguments about carbon sequestration very well. While the examples he gives of disastrous situations with carbon sequestration are from overseas, we must take note of the potential problems and avoid them here. Having said that, the Greens will not oppose the bill although we would have liked more time to more closely examine its details. I have grave concerns about the long-term impact of these types of projects. It is obvious that the short-term impact—to gain an advantage for the forthcoming election—is clearly in the Government's sights and in the forefront of the minds of Government members currently. I will monitor with interest the social and environmental implications of this bill. I wish the Government had been far more transparent and forthcoming in discussing this legislation with members of this House, the green movement and indigenous organisations, which feel they have been left out of the debate.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [10.45 p.m.]: Obviously greenhouse gases are becoming a serious issue in relation to climate change. I refer to an excellent paper by Stewart Smith, "The Greenhouse Effect and Climate Change: An Update", briefing paper No. 17/01 of the New South Wales Parliamentary Library Research Service. In the executive summary, he states:

Some of the most important conclusions to come out of recent work by the Intergovernmental Panel on Climate Change include: global average surface temperature has increased over the 20<sup>th</sup> century by about 0.6° C; globally, it is very likely that the 1990s was the warmest decade and 1998 the warmest year in the instrumental record since 1861; snow cover and ice extent have decreased; there has been a widespread retreat of mountain glaciers in non-polar regions during the 20<sup>th</sup> century; and global average sea level has risen and ocean heat content has increased. However, a few areas of the globe have not warmed in recent decades, mainly over some parts of the Southern Hemisphere oceans and parts of Antarctica.

The IPCC concluded that atmospheric concentration of carbon dioxide has increased by 31% since 1750. The present carbon dioxide concentration has not been exceeded during the past 420,000 years and likely not during the past 20 million years. The current rate of increase is unprecedented during at least the past 20,000 years. About three-quarters of the anthropogenic (ie, human generated) emissions of carbon dioxide to the atmosphere during the last 20 years are due to fossil fuel burning.

The IPCC projected that globally averaged surface temperatures are projected to increase by 1.4°C to 5.8°C over the period 1990–2100. The projected rate of warming is much larger than the observed changes during the 20<sup>th</sup> century and is very likely to be without precedent during at least the last 10,000 years.

The vulnerability of human populations and natural systems to climate change differs substantially across regions and across populations within regions. For Australia and New Zealand, the IPCC noted that the net impact on some temperate crops of climate and carbon dioxide changes may initially be beneficial, but this balance is expected to become negative for some areas and crops with further climate change. Water is likely to be a key issue due to projected drying trends over much of the region and change to a more El Nino like state.

The international framework for reducing greenhouse gas emissions is based around the United Nations Framework Convention on Climate Change. The Kyoto Protocol is part of this Convention, and commits Australia to limiting greenhouse gas emissions to 108% of 1990 emissions in the period 2008–2012. However, the Kyoto Protocol is yet to be ratified. The Commonwealth and States have co-operatively developed a National Greenhouse Strategy in an attempt to meet the Kyoto Protocol emission target. The Strategy is divided into eight modules encompassing: profiling emissions; understanding climate change; partnerships; efficient energy use and supply; efficient transport; greenhouse sinks; greenhouse best practice for industrial processes; and adaptation to climate change.

A key response of NSW to reducing greenhouse gas emissions was the establishment of the Sustainable Energy Development Authority in 1996.

That was written in 2001. The Sustainable Energy Development Authority is only a pale shadow of its former self, which shows how tokenistic the Government is. The bill proposes to make eligible Crown lands available for use in creating carbon sequestration rights under the New South Wales Greenhouse Gas Abatement Scheme. Carbon sequestration in relation to a tree or forest is defined as the process by which the tree or forest absorbs carbon dioxide from the atmosphere. It is defined under section 87A of the Conveyancing Act 1919, and this bill uses the same definition.

Carbon sequestration rights are created in accordance with the provisions of division 4 of part 6 of the Conveyancing Act, which provides for the imposition of covenants and restrictions on use in connection with the creation of such rights, and are usually associated with the creation of forestry rights that relate to the establishment and maintenance of trees. However, the bill is part of the greater commercial utilisation of Crown lands initiated by the Labor Government, which was recommended by PricewaterhouseCoopers.

It is estimated that Crown lands account for 49 per cent of all land in New South Wales and include Crown land under lease, licence or permit; community-managed reserves; lands retained in public ownership for environmental purposes; the public roads network; other unallocated or vacant Crown lands; the 72,600 licences and permits and the 14,800 leases statewide; and perpetual leases, special leases, as well as non-waterfront licences and permissive occupancies that comprise 30,400 tenures. So, there is a lot of land.

PricewaterhouseCoopers found that the average administration cost associated with leases and licences is approximately \$350 per holding per annum. However, a large proportion of those tenures are charged minimum rent of between \$70 and \$144 per annum. To recover administrative costs, PricewaterhouseCoopers recommended that minimum rent for such leases be progressively increased to a target minimum of \$350. To reduce any adverse impact on low-income groups, PricewaterhouseCoopers recommended it be phased in by an increase from July 2004. It seems extraordinary that it costs such a large amount for administration. The solution to the problem is to simply increase the rent, rather than decrease the cost of administration of the leases. That is by the by: I have not followed up on that point.

The bill amends the Crown Lands Act 1989 to expressly authorise the Minister administering the Act to grant carbon sequestration and related forestry rights in respect of Crown land, and amends the Western Lands Act 1901 to authorise the Minister to grant carbon sequestration and related forestry rights to land held under lease under the Act. The bill authorises a perpetual lessee under either Act to grant, with the relevant Minister's consent, carbon sequestration and related forestry rights to land that is subject to the perpetual lease.

The Forestry Act 1916 will be amended so that Forests NSW may grant forestry rights for its own benefit in respect of State forests, timber reserves, and land owned by the authority. At the end of the day I believe that, as pointed out by Mr Ian Cohen, carbon sequestration is a licence to pollute. The Democrats do not oppose the concept of carbon sequestration: it is one way to rehabilitate former mining sites, agricultural land affected by salinity, and other degraded areas that can be rehabilitated for biodiversity, water quality, and salinity benefits.

However, carbon sequestration is often not consistent with those aims. Carbon sequestration often establishes monocultures that are cleared every 20 years or so. The Democrats are concerned that native vegetation will be cleared and replaced by plantation forestry timbers. We are concerned about how the Government will regulate and manage carbon sequestration activities, and we are particularly concerned that it may increase plantation forestry activities on Crown land.

We would like to be assured by the Government that this bill will not result in existing native vegetation being replaced by plantations. The Environment Liaison Office is concerned about the bill. While the office does not oppose it, it has concerns about how it is going to be implemented. The idea is to simply give away rights to public land, so that anyone who manages to source some carbon gets a right in perpetuity. The giving away of wholesale rights to land, which affects that land use forever, may seem trivial, but if certain technologies change we may find that has been a hasty decision. It is hard to know what effects that might have.

The immediate solution is for the Government to bring in a big international accounting firm and say that all that land is available. Everyone knows that it is difficult to grow trees on land that is short of water and is becoming even more short of water. To simply say that the index will relate to the number of trees planted, or the biomass currently on the land, or the amount of carbon in the biomass, is unclear. It is a scheme more in hope than expectation. The question is: How much biomass can grow on that relatively infertile land, and how much effect will that have on the amount of carbon stored?

A story in the *New Internationalist*, which Mr Ian Cohen quoted, more or less said that governments wrecked vegetation, planted monocultures, and destroyed the food-growing capacity of indigenous people in relatively impoverished areas. But they did not get the carbon storage they thought they would. However, they did get the right to build a coal-fired power station in the short term. I wonder whether that is an analogy for storing carbon in biomass in the same order of magnitude as can be destroyed in burning fossil fuels. I think that is a fallacy. The concentration of carbon in coal and oil, the huge quantities burnt and the biomass in the western lands, where there is practically no water and poor soil fertility, certainly present a problem.

I was interested to hear the contribution of the Hon. Rick Colless on the storage of carbon dioxide and the importance of calcium in the cycle. It was good to hear a bit of science coming into a debate in this House from someone who knows what he is talking about now and again, as opposed to the endless political rhetoric we so often hear. The effect of this bill is marginal. The effect of all the sequestration is that if we just do this we can continue our lifestyles and continue the paucity of energy saving policies we currently have.

I wonder whether this economic model, this creation of a market, is sophistry to salve our consciences and allow the Government to say that it is doing something political to allow industries that pollute to continue to do so. People who consume so conspicuously should face the reality of what they are doing. I will not worry about the control of the scheme: I wonder whether it is a scam for the Government, the producers of greenhouse

gases, and the public. Will the bill delay the day of reckoning when we will have to decrease our consumption and move to alternative energy sources? I wonder as I drive to work—

**The Hon. Duncan Gay:** You will have to drive to work tomorrow, because you have missed the last ferry.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Yes, because the House has kept me talking about this for so long. I wonder how many woody weeds are burnt when my modest little car travels 12 or 13 kilometres home. How much would the theoretical offset be, and how much land would be used? How long would it take to offset that trip, never mind some of my longer trips? I do not oppose the bill, but we have to put it into context. It is something of a sop to the national conscience, and the political and economic system.

**The Hon. HENRY TSANG** (Parliamentary Secretary) [11.00 p.m.], in reply: I thank all honourable members for their contributions to the debate on the Crown Lands Legislation Amendment (Carbon Sequestration) Bill. The bill is a practical solution to promote carbon sequestration schemes throughout New South Wales, and in the Western Division in particular. The bill amends the Crown Lands Act 1989, the Western Lands Act 1901, and the Forestry Act 1916 to provide for the grant of carbon sequestration rights and related forestry rights under the Crown Lands Act and the Western Lands Act, and for the imposition of forestry covenants and restrictions on use in connection with those rights.

This in turn will allow the relevant Minister to grant carbon sequestration and other forestry rights over land under the respective Act with the consent of any lessee. It will also allow Forests NSW to grant carbon sequestration and forestry rights over timber reserves in respect of which it has control and management under the Forestry Act. It will also make it clear that the statutory right of Forests NSW to take timber or products does not apply to any Crown timber land that is the subject of a forestry right within the meaning of section 87A of the Conveyancing Act unless the right is held by Forests NSW.

Finally, it will ensure that the Minister may treat Crown lands, which are subject to carbon sequestration rights, forestry covenants and use restrictions, as claimable Crown lands under the Aboriginal Land Rights Act 1983. If such land is granted to an Aboriginal land council by the Minister, it is transferred to the Aboriginal land council subject to such rights. Accordingly, any carbon sequestration, forestry covenants and use restrictions will not be affected by the transfer. I commend the bill to the House.

**Motion agreed to.**

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

## **ROAD TRANSPORT (GENERAL) AMENDMENT (INTELLIGENT ACCESS PROGRAM) BILL**

### **Second Reading**

**The Hon. ERIC ROOZENDAAL** (Minister for Roads) [11.02 p.m.]: I move:

That this bill be now read a second time.

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

**Leave granted.**

The purpose of this bill is to improve access to the road network for the road transport industry, while maintaining the road safety and asset management requirements of the community and Government.

This bill gives effect to the national Intelligent Access Program in New South Wales, to complement the national compliance and enforcement model legislation—adopted in New South Wales via the *Road Transport (General) Act 2005*.

The Bill incorporates the provisions of the National Transport Commission's *national Bill for the Road Transport (Intelligent Access Program) Act 2005*, approved by the Australian Transport Council in December 2005.

The Intelligent Access Program is voluntary and provides the technical, legal, administrative and commercial framework to allow road authorities to use technology, such as Global Positioning Systems, to monitor heavy vehicles for compliance and enforcement purposes, while offering productivity benefits to the trucking industry.

The introduction of the Intelligent Access Program will provide substantial benefits to the trucking industry, as well as the community.

In particular, it will improve the New South Wales economy by enabling significant access to major freight routes by higher mass limit vehicles and more efficient access to key freight facilities such as mines, ports and intermodal terminals, as well as distribution and warehousing centres.

The program will deliver improved public amenity with fewer truck trips, reduced exhaust emissions, diminished exposure to noise and fewer trucks on the road.

The Intelligent Access Program will deliver improved asset management by restricting higher mass limit vehicles to approved routes, where the infrastructure can sustain the heavier axle loads.

The national *Bill for the Road Transport (Intelligent Access Program) Act 2005* was developed by the National Transport Commission with the assistance of the national Legislative Advisory Panel.

The panel included representatives from the Commonwealth Department of Transport and Regional Services, NSW Police, Victoria Police, the Australian Trucking Association, the New South Wales Road Transport Association and the Victorian Transport Association.

The bill contains several key elements.

It provides the legal authority to the Roads and Traffic Authority (RTA) to issue access conditions for heavy vehicles in New South Wales.

The New South Wales Government will be able to determine productivity benefits that can be offered to the trucking industry, in return for increased standards of compliance assurance made possible by the use of vehicle monitoring technology.

The bill establishes the process for certification of Intelligent Access Program service providers, that will provide vehicle monitoring services to trucking companies and Non-Compliance Reports to the RTA, for follow-up action of any breaches of the law.

Intelligent Access Program Service Providers will be private-sector companies, providing vehicle monitoring services to the trucking companies on a fee-for-service basis.

In order to certify Service Providers, State and Territory Governments have co-operated to establish Transport Certification Australia Limited, or TCA.

The Bill recognises TCA's role as the sole certifier and auditor of Service Providers, and the manager of the certification and auditing regime for the Intelligent Access Program.

TCA will also be able to cancel the certification of a service provider that does not meet its service provision obligations, and is obliged to advise the RTA if service providers are not meeting their obligations.

This bill provides significant safeguards to protect the privacy and personal information of road transport operators.

The legislation compliments the privacy protections provided by the *NSW Privacy and Personal Information Protection Act 1998*, to cover parties in addition to the New South Wales Government. That is, Service Providers, Transport Certification Australia Limited, Intelligent Access Program auditors, and transport companies.

These parties may be either handling personal information or be responsible for advising employees that personal information is being collected. The new regulations place obligations on these parties and contain significant penalties for failing to meet those obligations.

To provide consistency with New South Wales privacy principles and practices, the national model legislation has been amended to place a clearer obligation on transport operators to advise drivers that their truck is being monitored.

Provision has also been made for a review mechanism for individuals who may have lodged a complaint with the holder of their personal information. These amendments include penalties for parties that fail to comply with a direction from the RTA or TCA to take the required corrective action.

The national model legislation has also been amended to ensure consistency with the *NSW Workplace Surveillance Act* as far as possible.

The New South Wales legislation provides that information gathered under the Intelligent Access Program, when a heavy vehicle is used while the driver is not at work, cannot be used by the vehicle operator for any purpose.

To protect the integrity of the underlying objective of the Intelligent Access Program regime, the bill includes penalties for those tampering with Intelligent Access Program equipment.

The technical specifications allow for the automatic reporting of attempts to tamper with monitoring equipment and systems.

These anti-tampering provisions are supported by TCA's sophisticated auditing regime, and the RTA's Inspectorate which will also be working to identify trucking companies who may try to cheat the system.



The bill also ensures that data collected and Non-Compliance Reports are of an evidentiary standard and will be admissible in Court if necessary.

Prosecutions under road transport legislation, for non-compliance with conditions applicable to heavy vehicle access in New South Wales, will continue to be undertaken where Intelligent Access Program conditions apply.

The prosecution will have to prove the elements of these offences. However, the new provisions will enable prosecutions to rely on evidentiary certificates as set out in the new Division 5 of Part 6A of the *Road Transport (Mass, Loading and Access) Regulation 2005*, rather than on oral evidence from witnesses.

The new provisions also provide, in clause 72AE, that certain evidentiary presumptions apply. Clause 72AF provides that reports are presumed to be correct, unless evidence sufficient to raise doubt about these presumptions is adduced by the defendant.

The Intelligent Access Program will optimise economic utilisation of the road network by facilitating higher productivity, while ensuring the safety and asset management requirements of the community and Government are met.

Truck operators wanting access to increased productivity under road transport law will be able to use systems that demonstrate compliance with that law. A gain for the trucking industry will be accompanied by a benefit to the community.

Approximately eighty per cent of Australia's long haul road freight passes through New South Wales, creating unique asset management challenges. It is therefore fitting that New South Wales is the first State to implement this legislation.

This bill will facilitate the Iemma Government's plan for the expansion of the Higher Mass Limits network in New South Wales. Higher mass limits access provides a 13 per cent increase in B-Double payload and a 10 per cent increase in standard semi-trailer productivity.

The extra payloads reduce the truck journeys needed to complete a freight task. This results in fuel savings, reduced exhaust emissions, diminished exposure to noise and fewer trucks on the road.

This benefits the New South Wales economy, the environment and provides for improvements in community amenity.

The New South Wales Government was successful in having vehicle monitoring included as a condition for higher mass limits access, under the AusLink Agreement with the Commonwealth.

The Intelligent Access Program will provide the productivity benefits of higher mass limits, while managing the use of the State's bridges and roads. It also provides the compliance assurances needed to expand the current higher mass limits network.

The Intelligent Access Program will allow the Government to expand the New South Wales Higher Mass Limits network, in addition to the 3,800 kilometres of the AusLink Higher Mass Limits network.

This does not include roads within Sydney, Newcastle and Wollongong, that can now be opened up to more productive trucks, thereby providing more efficient access to ports, railheads, major industrial parks and oil refineries.

The Intelligent Access Program will make possible a significant network of major freight routes for more efficient road transport, to the benefit of the New South Wales economy.

The New South Wales Government is working with Local Government and other relevant stakeholders to finalise a framework for the on-going assessment and approval of access to other RTA-managed roads, as well as Council and State Forest roads.

Higher mass limits are only one example of a productivity initiative made possible by the availability of the Intelligent Access Program.

Another proposed scheme is the operation of higher productivity road train variants—B-Triples and AB-Triples.

It is anticipated that these vehicle combinations will be used substantially for grain, livestock and fuel haulage in rural areas. These vehicles have an equal or better safety performance than existing road trains and carry up to 26 per cent more payload.

However, as these vehicles are up to 20 tonnes heavier than a standard road train they have to be restricted to suitable sections of the road network so that we can manage vulnerable rural bridges.

Also, for safety reasons, it is important that these combinations remain on the approved sections of road. The Intelligent Access Program will provide the economic benefit delivered by these vehicles, while ensuring that road safety and asset management safeguards are in place.

The Intelligent Access Program will also ensure the appropriate safety and asset management measures are in place for future developments in trucking.

For example, the Intelligent Access Program will support the take-up of innovative higher productivity vehicles operating under the proposed Performance Based Standards regulatory framework, which the National Transport Commission is currently developing.

With respect to the Performance-Based Standards and innovative vehicles being used on long-haul routes between metropolitan and regional centres, the National Transport Commission estimates an annual Net Present Value benefit to the transport industry of \$18.8M per year.

There is already evidence of what the use of vehicle monitoring technology can deliver.

There is the New South Wales Mobile Crane Concessional Benefit Scheme, under which mobile cranes up to 2.9 metres wide are fitted with Global Positioning Systems, so the RTA can remotely monitor compliance with time, route and access restrictions across greater Sydney and other parts of the State.

The Scheme provides the RTA with assurances that the potential adverse impact on other road users arising from the nature and size of these vehicles is minimised while allowing additional operational flexibility for crane operators.

A cost benefit analysis of the first year of the scheme's operation indicated a benefit to each crane operator of between \$490,000 and \$970,000 per year, as a result of a 25 per cent increase in crane utilisation efficiency.

The Scheme will operate within the Intelligent Access Program framework.

The use of Global Positioning System technology to achieve strong compliance assurance would provide clear benefits to the public, and increased productivity to the road freight sector.

In addition, the Intelligent Access Program scheme provides an open market for service provision, allowing efficiency and innovation. This means job creation in the Information Technology industry.

The Intelligent Access Program takes ideas from the newest industries and applies them to solving the problems of one of the world's oldest—trade and freight carriage.

All Governments have agreed that we should not be in the game of installing "black boxes" in trucks.

Instead, New South Wales is represented on the Board of Management of Transport Certification Australia Ltd, or TCA, so that it can certify, audit and cancel—if necessary—the certification of Intelligent Access Program Service Providers, and maintain a certification and auditing regime of the highest standard.

TCA's certification and auditing framework will deliver certainty in quality systems; operations - including systems, hardware and software; and also testing, training and disaster recovery processes, in addition to monitoring and non-compliance detection and reporting.

Australia's freight task has been forecast to double over the next ten to fifteen years. The traditional 'on-road' enforcement resources of the RTA have led Australia in the use of compliance technology.

It is time for the next step.

We need smart regulatory and compliance models to match the development of 'smart' trucks with their higher productivity, improved fuel efficiency, and lower emissions and noise.

The Intelligent Access Program builds on what innovative transport companies are already doing.

The introduction of the Intelligent Access Program will provide substantial benefits to the trucking industry, as well as the community.

The Iemma Government is leading the way with innovative solutions, supported by tough regulation.

I commend the Bill to the House.

**The Hon. MELINDA PAVEY** [11.02 p.m.]: I lead for the Opposition on the Road Transport (General) Amendment (Intelligent Access Program) Bill and indicate at the outset that the Opposition does not oppose the bill. However, I refer to a number of concerns and reservations I have with it. I will talk briefly about the importance of the road transport industry to the New South Wales economy. To highlight this relationship I will share some figures with honourable members. In 2005 the road transport industry's gross domestic product was \$13.7 billion; it employed 15,000 people; and it was responsible for the transportation of 1.696 billion tonnes of goods per year. The road freight task has trebled since 1980 and it is expected to double again by 2020.

The roads share of the domestic freight task in tonne kilometres has increased from 22 per cent to 36 per cent in the past 25 years. That share is also expected to increase in the coming years to 42 per cent. In total, the road freight task is forecast to grow 30 per cent faster than the economy as a whole between now and 2020. As honourable members can see, the road transport industry plays a vital role in the New South Wales economy.

I acknowledge the contribution of the Federal Government, which took over rail freight networks across Australia—an important aspect that will increase the freight task across Australia. It also highlights the inability of State Labor governments to manage that task. The Federal Government has taken over those networks, and that is a good sign. The new Assistant Minister for Transport is also the Minister for Roads. He has much to learn about the rail freight issue.

The New South Wales economy has been lagging behind that of other States mainly due to the Labor Government's mismanagement and the failure of its economic policies. In particular, our road transport industry has struggled to compete with the rest of the country as a result of the unfair burdens and restrictions placed on it by the Government. New South Wales is the most overregulated and least flexible State when it comes to transport across the board—road, rail and port. It is lagging behind other States in restrictions on mass limits, as well as volumetric loading and harvest schemes.

The current set of rules and regulations that guide the New South Wales road transport industry are incompatible with those for the rest of Australia and, as a result, areas of our economy suffer. Businesses that conduct interstate business are struggling because they are subject to different levels of regulation and restriction between States. For example, Queensland accepts higher mass limits than New South Wales. That means that businesses must incur unnecessary costs when they deal interstate—something about which the Hon. Amanda Fazio would be aware. As a result many businesses have relocated interstate to take advantage of lower levels of taxation and regulation, and generally more favourable operating conditions.

This affects our entire economy as it impacts not only on businesses that rely on interstate transport but also on our transport industry. I highlight in particular that the Intelligent Access Program is linked with the roll-out of higher mass limits in New South Wales and intelligent transport systems. The Opposition believes that the roll-out of higher mass limits is vital to the New South Wales economy and it is long overdue.

The Opposition also supports the use of the intelligent transport system and welcomes the idea of using sophisticated electronic and global positioning systems [GPS] technology to improve the transport industry. This involves the use of electronic or other technologies that have the capacity and capability to monitor, collect, store, display, analyse, transmit or report information relating to vehicles, drivers, operators, or other persons involved in road transport—having the overall effect of providing real-time data on vehicles in use on New South Wales roads.

This technology can be used to determine the location, speed, load and scheduled delivery time of freight. There are issues relating to technology being able to ascertain a vehicle's load. The Hon. Rick Colless, a member of the Joint Standing Committee on Road Safety, raised those concerns with me. So there are issues relating to the GPS system, which cannot weigh a truck load from high in the sky. The system has potential but we need to work out how to weigh truck loads. Although the implementation of this technology across the board no doubt will improve the efficiency of the road transport industry, the Opposition is concerned about the applicability of current GPS and monitoring systems to ensure they do not become obsolete.

The bill must be flexible in its definition of the intelligent transport system to accommodate and incorporate new technologies as they continue to develop. This will ensure that New South Wales remains up to date and competitive with the rest of the States. An assurance must also be given to the road transport industry that the Intelligent Access Program will address compliance concerns and will be capable of use on existing GPS systems that have been put in place by a number of transport operators in this State. The Opposition is also concerned about the financial implications of the up-front and ongoing costs for many truck operators having to implement or upgrade existing tracking systems.

Any additional costs incurred by the road transport industry will, of course, be passed on to consumers through the price of goods at the retail level. Given that road freight is such a significant component of the cost of goods sold, it would be wrong to assume that increased freight costs are not an issue. The Opposition wants an assurance that the Intelligent Access Program will address compliance concerns and will be capable of use on existing GPS systems that are currently being used by transport operators. This issue, along with high fuel prices, taxes and other expenses may potentially impose heavy financial and taxation burdens on transport operators in New South Wales. This would add to the ever-growing list of burdens that face truck drivers.

Already on this list are further regulative burdens such as the fatigue-related long distance regime, the three-strikes legislation, and the responsibility legislation. In addition, the road transport industry faces a lot of media scrutiny and is often used as a whipping post by the Labor Government. We have seen this occur on numerous occasions, such as when the Government blamed trucks, instead of its own mismanagement, for pollution levels in the M5 tunnel. This scenario is also reflected in statements from the Minister for Roads, who said that the heavy vehicle industry would be targeted for random drug tests. It seems as though the Labor Government is giving the trucking and road transport industry—a major component of the New South Wales industry and economy—a hard time.

The Opposition believes that transport operators should not be punished further as a result of the Labor Government's failure to consider the financial implications of a further regulation of the road transport industry. The Opposition is also concerned about the handling of the information obtained through the Intelligent Access Program and, in particular, whether that information may be used as an enforcement tool rather than a compliance tool. If that were to occur it would be yet another case of transport operators being targeted and subjected to taxes and fines.

Currently, taxes paid by road transport operators in Australia total more than \$1.6 billion per year. There is significant doubt within the industry as to whether the Intelligent Access Program will remain a compliance tool rather than be used as an enforcement tool to punish operators that breach operating conditions. It is important that the Intelligent Access Program fulfil its purpose, which is to facilitate higher mass limits. It must not facilitate more revenue raising through the fining of road transport operators. The Opposition wants an assurance that the Government will not use the information obtained through the Intelligent Access Program simply as another means to impose fines and raise revenue from truck drivers in New South Wales. The industry has another concern relating to the handling of information obtained by the Intelligent Access Program. When dealing with such information, the matter of privacy has to be considered.

As the Government expects full compliance on behalf of the road transport industry, we should expect the Government to respect the often private nature of transport operating businesses. The Opposition wants an assurance that there are legislative and regulatory mechanisms that will exist to address perceived concerns regarding the protection of commercially sensitive information. Having stated the concerns that the Opposition has with the bill, we will not oppose it. I trust the Minister will respond to the concerns I have raised and I hope that this legislation will aid in the improvement and efficiency of the road transport industry in New South Wales.

**The Hon. ROBERT BROWN** [11.10 p.m.]: Honourable members may be aware that I am a relatively newly appointed member of the Staysafe committee. Of course, I acknowledge the much longer history and knowledge of the workings of the committee of my colleagues the Hon. Rick Colless and the deputy chair, the Hon. Ian West. Even though I am the new boy on the block, I will take a few minutes to reflect on the Road Transport (General) Amendment (Intelligent Access Program) Bill. In part the bill addresses how freight will be managed in New South Wales. It foreshadows a future of widespread application of motor vehicle telematics involving global positioning system technologies to monitor, manage and control aspects of a driver's performance in manoeuvring a vehicle within the road transport network. It is an exciting future.

In New South Wales our roads handle about 80 per cent of the national road freight task. That includes freight movements within New South Wales and freight movements to destinations in other States and Territories. New South Wales roads are transit roads from point of origin to destination. There are significant issues for New South Wales, notably, safety concerns and road infrastructure capacity. By 2020 it is predicted that there will be an extra 50,000 heavy vehicle trucks on Australian roads. Anyone who drives on the M5, M4, M2 and M7, Sydney's arterial routes or New South Wales highways will know that they are already congested. I speak from experience having run businesses in the Botany area for the last 20 years. I had to contend with them every day of the week. Imagine 40,000 more trucks within the next 15 years and imagine that by 2020 one in four vehicles on Sydney roads will be a truck. That is the prediction, and it is a conservative view.

As well, there is an inexorable move towards higher mass limits on heavy vehicles. We must ensure that the roads on which those heavier vehicles operate are actually capable of carrying the vehicles and their loads safely and efficiently. The Intelligent Access Program is a way of ensuring that heavier, more massive vehicles are operating safely and only on roads that are approved, and that the expensive road infrastructure that is provided is protected from damage. I draw the comparison there between Botany Road and Foreshore Drive, which is a perfect example. Vehicle telematics enable the provision of services to road freight operators that can monitor the compliance of vehicles with respect to access conditions set by individual jurisdictions such as New South Wales. This ability to accurately monitor compliance provides an opportunity for a whole new set of opportunities for both the State Government and transport operators to manage and optimise performance, improve road safety and protect the road infrastructure.

The Intelligent Access Program is a program whereby heavy vehicle compliance is monitored via the tracking of vehicle location and reporting of associated parameters. The objective is the implementation of a voluntary system that will allow the monitoring of road freight vehicles remotely using satellite-based telematics services to ensure that they are complying with the agreed conditions of operation—that is, ensuring that the participating trucking and logistics companies are operating how, where and when they should. Roads

authorities such as the Roads and Traffic Authority in New South Wales can set conditions on the access of a particular vehicle, a combination or even a particular delivery to a known location and then be able to monitor compliance with those conditions of the permit.

Even though I am a relatively new member of the Staysafe committee I would like to draw the attention of the House to the current work of the committee. The committee has been promoting intelligent speed adaptation as a means of more effective speed management by drivers. I acknowledge also the concerns expressed by my colleague the Hon. Rick Colless about some of the limitations of that technology. However, the concept is the subject of major research and investigation in Europe. Programs to investigate intelligent speed adaptation are well advanced.

The Intelligent Access Program is a demonstration of the feasibility and application of on-board telematics systems for monitoring and reporting what drivers are doing with their vehicles. It also shows that it is possible to implement practical and effective programs that use satellite-based telematics services to monitor and track motor vehicle parameters. In concept, it is a comparatively easy step to build in speed zone and speed limit data that can be combined with vehicle location to provide for capacity to monitor, manage and control vehicle speeds. I can see a future, now closer than many of us think possible, where exceeding the speed limits in our cities and towns and on our open roads will no longer be able to be explained as a transitory mistaken behaviour. Instead, excessive speeding by a heavy vehicle driver will be a reflection of a conscious and criminal intent to subvert vehicle technologies and our laws for what is typically a reduction of only minutes or even seconds of travel time while increasing the risk of a crash, property damage, injuries and death. I endorse the Intelligent Access Program as an innovative piece of legislation. I welcome the shift in thinking it represents and the foretaste of a new safer future for motorists as we become accustomed to the new opportunities offered by on-board telematics systems.

**Reverend the Hon. FRED NILE** [11.05 p.m.]: The Christian Democratic Party supports the Road Transport (General) Amendment (Intelligent Access Program) Bill. The bill will amend the Road Transport (General) Act 2005 and regulations made under the Act to provide for compliance by vehicle operators and drivers with conditions relating to access to and use of roads to be monitored by intelligent transport systems such as global positioning systems and the collection, use and disclosure of information obtained by the use of such intelligent transport systems.

The bill is consistent with the national model legislative provisions for the Intelligent Access Program that have been approved by all Australian transport Ministers. It is estimated that approximately 80 per cent of Australia's long haul road freight passes through New South Wales and that creates a number of challenges. The use of global positioning systems is designed to ensure heavier vehicles will be directed onto roads and bridges that can carry those loads. I understand the current load can be increased by up to 20 tonnes and we are concerned about the impact of heavier vehicles such as triple-Bs and B-doubles. One wonders whether our roads, even with the global positioning systems, can physically cope with heavier loads because they are cracking under existing loads.

One must also consider the concerns that motorists have about their safety when confronted by triple-Bs. In addition, congestion on the roads will increase when a number of triple-Bs line up, one after the other, on our roads. The Government should review its policy to ensure that it maximises the use of rail because it seems that government policy is to use road trains rather than freight trains, which I believe is the wrong policy direction. However, with those comments, the Christian Democratic Party supports the bill.

**The Hon. ERIC ROOZENDAAL** (Minister for Roads) [11.28 p.m.], in reply: I thank honourable members for their contributions to this debate. The Road Transport (General) Amendment (Intelligent Access Program) Bill is about improving access to the road network for the road transport industry while ensuring that high standards of road safety and asset management are maintained. The Intelligent Access Program [IAP] will provide a boost to the New South Wales economy. The voluntary scheme will allow significantly improved access to major freight routes by higher mass limit vehicles and it will enable more efficient access to key freight facilities such as mines, ports, intermodal terminals and distribution centres. The Intelligent Access Program will ensure that higher mass limit vehicles travel only on approved routes where the infrastructure can sustain the heavier axle loads.

The bill gives the Roads and Traffic Authority [RTA] the legal authority to issue access conditions for heavy vehicles in New South Wales based on the Intelligent Access Program. The bill establishes the process for the certification of Intelligent Access Program service providers by a single body, Transport Certification

Australia Limited. Intelligent Access Program service providers will be required to provide non-compliance reports to the RTA for follow-up action of any breaches of the law. The bill gives Transport Certification Australia the authority to cancel the certification of a service provider that does not meet its service provision obligations. Transport Certification Australia is obliged to advise the RTA if service providers are not meeting their obligations.

To further protect the integrity of the IAP, the bill includes penalties for tampering with equipment. The bill adopts a high level of privacy and personal information protection by adopting the national model provisions developed in consultation with the New South Wales, Victorian and Commonwealth privacy commissioners. There was also direct consultation with the New South Wales Privacy Commissioner during the translation of the national model bill into the New South Wales bill. The New South Wales Attorney General's Department was consulted to ensure that existing workplace surveillance protection was maintained.

A review mechanism will be available for individuals who have lodged a complaint with the holder of their personal information. Failure to comply with a direction from the RTA or Transport Certification Australia to take the required corrective action will attract penalties. The bill ensures that data collected and non-compliance reports are of an evidentiary standard and will be admissible in court if necessary. This bill will facilitate the Iemma Government's plan for the expansion of the higher mass limits network in New South Wales. I welcome the Opposition's support for the use of the Intelligent Access Program to provide the safeguards required to expand the higher mass limits network in New South Wales.

The New South Wales and Australian governments agreed that vehicle monitoring should be included as a condition for higher mass limits access under the AusLink agreement. I have already acknowledged the co-operation of the New South Wales Road Transport Association. The association, which has worked with the Government to ensure that the bill addresses the concerns of industry, has advised that it believes the bill contains adequate safeguards that are consistent with prevailing policies and legislation regarding privacy in New South Wales. The association has expressed its desire to work closely with the RTA and Transport Certification Australia during implementation of the Intelligent Access Program to work through any issues that arise. The New South Wales Road Transport Association has adopted a good attitude and has worked co-operatively and amicably to deliver a better result for the State and for our trucking industry. I hope that the association's counterparts interstate will adopt the same sort of working relationship with the New South Wales Government.

The leaders in the trucking industry understand and accept that the Intelligent Access Program is the way of the future for compliance under a fully operational higher mass limits scheme. There have already been more than 500 Intelligent Access Program pre-enrolments for higher mass limits and 233 permits were issued to vehicles operating in western New South Wales. There are significant benefits for the industry in supporting this bill. The National Transport Commission estimates the financial cost to heavy vehicle operators of using Intelligent Access Program services is between \$500 and \$1,600 per vehicle per year. Transport Certification Australia has estimated that a B-double on a higher mass limit permit that runs from Melbourne to Sydney with an extra payload of just four tonnes one way will break even on all extra expenses in just 16 trips.

Australia's freight task is forecast to double over the next 10 to 15 years. The traditional on-road enforcement resources of the RTA have led Australia in the use of compliance technology. It is time to use technology to support smart regulatory and compliance models to match the development of smart trucks, with their higher productivity, improved fuel efficiency, and lower emissions and noise. The bill builds on what innovative transport companies are doing already. The introduction of the IAP will deliver substantial benefits to the trucking industry as well as the community. The Iemma Government is leading the way with innovative solutions, supported by tough regulation. I am grateful to the RTA and its dedicated staff for working through the process and ensuring the success of the IAP, which we developed with the trucking industry. I commend the bill to the House.

**Motion agreed to.**

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

## **ADJOURNMENT**

**The Hon. ERIC ROOZENDAAL** (Minister for Roads) [11.25 p.m.]: I move:

That this House do now adjourn.

**QUEANBEYAN COUNTRY LABOR CONFERENCE 2006**

**The Hon. MELINDA PAVEY** [11.25 p.m.]: The Country Labor Conference will be held in Queanbeyan this weekend. It is pleasing to see that Country Labor has decided to hold its conference in this wonderful pocket of south-eastern New South Wales. Queanbeyan is a thriving area. It is one of the fastest-growing parts of regional New South Wales and, while it is somewhat eclipsed by its nearness to the Australian Capital Territory, it offers numerous business opportunities and is a great place for young families and people looking for a tree change. The fact that the Country Labor Conference will be held in Queanbeyan this weekend gives me, The Nationals duty member for Monaro in the Legislative Council, a wonderful opportunity to highlight some of the issues that Country Labor delegates need to understand before they get there.

The conference will be held on Crawford Street, near Queanbeyan's main drag. When delegates sit outside the cafés near the main street, enjoying their lattes and glasses of chardonnay, they will be able to listen to the trucks as they rumble down the street. This is the same street that former Premier Mr Bob Carr walked down 11 years ago in 1995 and from which he said he would redirect the trucks. Labor delegates will be able to see for themselves this weekend that Bob Carr failed, Morris Iemma has failed and the Government is failing. The Minister for Roads should take a very good look.

**The Hon. Don Harwin:** Twelve years of excuses.

**The Hon. MELINDA PAVEY:** Yes, we have had 12 years of excuses. That is long enough. Yet despite the strong declaration by Bob the non-Builder, delegates will notice 11 years later the noise and fearful expressions of locals, as they run the gauntlet on the main street. The heavy vehicle bypass, which was a Federal initiative matched by the States, that opened in April this year has not solved the problems. Queanbeyan desperately needs a total solution for its numerous traffic troubles. All residents, young and old, are extremely nervous as they walk up and down the main street. David Madew, The Nationals candidate for Monaro, raises this issue constantly.

If delegates take the time to walk around the town they will see no active construction work on the promised hospital redevelopment. I urge them to walk to the hospital and have a look around. They will see that nothing is happening. The redevelopment has exploded in terms of both costs and time delays. In 2003 the Labor Party matched our commitment to redevelop the hospital but, as waiting lists at the hospital rise exponentially, the Labor Party continues to stall progress until after the next State election in March 2007. After the election the Coalition will make progress on the hospital. We will make it happen. The redevelopment will not include the construction of a hydrotherapy pool at the new facility.

Should delegates decide to have a quick drive to Canberra, may I suggest that they time their travel not to coincide with peak times as residents of Jerrabomberra head to and from work? If delegates do not heed my warning they will join the long-suffering commuters experiencing huge traffic congestion and delays. It can sometimes take people up to an hour to travel the 25 kilometres to work. There are also massive traffic delays on the Kings Highway and on feeder roads in and out of Queanbeyan. Infrastructure is failing because of this failed Labor Government.

Delegates will also see that construction work is about to commence on the very unpopular gaol site on Jerrabomberra residents' doorstep. The honourable member for Monaro, Steve Whan, refused to stand up to the Australian Capital Territory Labor Government and oppose the gaol, which no-one on the New South Wales side of the border wants. But the local Labor member has been unable to stop the construction despite his constant promises to write very stern letters to the Australian Capital Territory Chief Minister. No-one from the New South Wales Labor Government will stand up to Stanhope and stop the madness of this gaol. I implore delegates at the 2006 Country Labor Conference in Queanbeyan to speak with the honourable member for Monaro over the weekend and demand that he start representing his constituents properly between now and 24 March, when he will be replaced by a most deserving candidate who is working on behalf of the people of Monaro.

I must also acknowledge the contribution made in 1991 in the other place by Roger Wotton, who was the member for Castlereagh until that year. We can always learn from the wise words of our elder statesmen. He said:

I pay tribute to all my parliamentary colleagues, including the brand new honourable member for Smithfield, who is as cheeky as a buck rabbit. He will learn when he is cut down to size as time goes on. He has a lot of ability but will have to do something about his mouth if he can.

## CULTURAL DIVERSITY

**The Hon. Dr PETER WONG** [11.29 p.m.]: Tonight I borrow the words of Mark Anthony in Shakespeare's play *Julius Caesar*:

Friends, Romans, countrymen, lend me your ears; I come to bury Caesar, not to praise him.

This famous oratory has a powerful and reverberating effect that exposes the themes of treachery, ambition, revenge, irony and hate under the disguise of an honourable man. I raise this in light of a crisis that is under way here among us. I believe that many in the Government and the Opposition would be deeply concerned about any plans to undermine the often-celebrated cultural diversity in Australia. Equally, I suspect that there are many conscientious insiders who remain deeply perturbed with the direction that honourable leaders of this great country are taking us in the name of harmony and national security.

For many months now the leaders of our nation have sought to redefine our culture and bring us back to the days of assimilation and the concept of servicing a dominant culture. They have been assisted in this by a compliant media under the pretence of so-called Australian values. The latest assault is taking place as we declare to the world our national talents in linguistic diversity exemplified by our magnificent achievements and success in tourism, as a leading destination in high education and a host of other successes. At home we are quick to uphold the importance of English as the national language. This sounds honourable, patriotic and proper. Indeed, it is seen by some as a unifying cause in social harmony, tolerance and nation building. Such proponents have taken it upon themselves to extend this logic into preaching at religious institutions.

They say that all preachings should be conducted in English. But that is not quite true. Perhaps—just perhaps—only certain groups should preach in English. In raising this matter my first thoughts are of Orthodox Christians and the Jewish faith. Orthodox Christianity has deep-seated traditions and adheres to the *Bible* and Dogma of the Church, and is preached in many languages. Likewise, the Jewish faith and its several thousand years of tradition, prayers, poems and words of wisdom are often expressed in Hebrew or another language, rather than English. I suspect that not a single politician anywhere in Australia would dare to raise the issue of enforcing the English language onto religious sermons among these religious communities.

I am sure that they would get the prompt and unequivocal response they would expect. Somehow, I can hear the cries of "hurrah" if this message is intended for the Islamic community, and the Islamic community only. After all, that should ensure that its leadership will finally succumb to our one nation agenda. I looked up the definition of "sermon", which is "a discourse for the purpose of religious instruction or exhortation, especially one based on a text of Scripture". In other words, it is for the spiritual wellbeing of its followers. One would reasonably deduct from this that the nearer a person is to their native language, history and tradition, the more helpful it would be to them.

What would the oratory of Mark Anthony sound like in Chinese? I can tell honourable members that it would not sound too well at all. I think they can get the gist of what I mean, as most opera in English is also equally less than satisfactory. Like Orthodox Christians and Jews, the Islamic faith is not one's typical newfound Christian bible-singing organisation, whose program can be changed at any time to accommodate the audience. Maybe someone in the congregation among an Arabic-speaking community would benefit from English sermons. I suspect that the majority of this minority would actually be the Australian Security and Intelligence Organisation and the Australian Federal Police in their surveillance of the Islamic community.

I suppose that in these difficult times of cost savings on translation, every English word counts. A spiritual man is a person who preaches the message of God, Allah, or Yahweh to his community. A spiritual man is not a politician; nor should he be treated as such. He leads his flock in prayer and reflects upon heavenly matters, as opposed to the mundane affairs of this world. We need to ask ourselves whether language itself is the cause of so much hatred, intolerance, persecution and injustice in the world. One could argue that English has a peaceful and calmativ effect, and that no other language could possibly achieve this. One needs only to observe the debates in this House and in the other place for such a thought to be put to rest.

Similarly, the English speeches of Ian Paisley's language of religious and racial hatred, or conversely those of the IRA, confirm my disbelief. Our leaders are all too ready to condemn other countries for restricting people's civil, political and religious rights, or to dress them down. For example, China and Indonesia have often come under close scrutiny by Australia for their treatment of Christians. Yet, China and Indonesia would not even attempt to suggest that sermons ought to be delivered in Chinese or Indonesian. In his own reckless,



unnecessary and provocative way, John Howard is denigrating traditional Australian values. He is aided by a complacent media and inept Opposition leader. Through political rhetoric, they have explicitly or implicitly fomented community fears, strained intercommunal harmony, and created feelings of exclusion and insecurity among different communities. Even now, as John Howard blew the dog's whistle in English, Kim Beazley went hunting. To quote former US President Bill Clinton, "democracy is not only about majority rules; it is also about minority rights". We often hear that one of the greatest Australian values is a fair go. It would be nice to see this.

### MIDWIFERY CARE

**The Hon. PENNY SHARPE** [11.34 p.m.]: Tonight I draw to the attention of honourable members the benefits of one-to-one midwifery care for all women who are planning to have a baby. One-to-one midwifery care provides the most effective and supportive care for women before, during and after pregnancy and birth. It should be the minimum standard for all women with normal pregnancies. Pregnancy and birth are a normal part of many women's life cycle. Access to a known midwife who provides continuous care during pregnancy, during labour and post birth has been demonstrated to lower rates of acute medical intervention, including caesareans, epidurals and episiotomies, and provides early intervention that lays the groundwork for a secure start for the mother, her baby and the rest of her family

One-to-one midwifery care is also very cost effective. Most importantly, midwifery care provides women with continuous, women-centred care that is highly regarded by the women who are able to access it. Every year 250,000 women give birth in Australia. But only 1 per cent of them will access a midwife as their primary carer. Compare this to the situation in New Zealand, where more than 80 per cent of pregnant women receive their primary care from midwives. Unfortunately, the culture of birth in Australia has been overmedicalised. As just one example, the Australian caesarean rate is around 25 per cent. The World Health Organisation believes that it should be no more than 15 per cent. Women in New South Wales who have one-to-one midwifery care typically have a caesarean rate of around 5 per cent to 6 per cent. The main reason for the difference is the type and form of care that women receive from midwives.

Upon becoming pregnant, most women will first access their general practitioner or an obstetrician to discuss their care and where they will give birth. Few will be offered midwife care, even in cases where it is available. A women who has access to a midwife throughout her pregnancy, labour and birth typically has monthly check ups that last as long as she needs them to. Her needs, wants, fears, ideas and views are sought in relation to her treatment and options for birth. She is provided with as much information that she desires. Her midwife is available 24 hours a day by phone if she has any queries during the pregnancy. Her care is holistic and treats birth not as an illness but as a normal part of life. Midwives build trust and respect during pregnancy so that when the woman is in pre-labour and labour she is informed, confident and ready to allow her body to give birth to her baby. Her midwife is with her for the entire process. If she has received continuous care she is less likely to need pre-labour admission to hospital and is less likely to need drugs during birth.

Obstetricians and doctors are an essential part of a comprehensive maternity service system, especially for women who have risk factors that require ongoing monitoring and care. However, it is to the detriment of women and babies that the system fails to provide all options of care for women when pregnant. Despite the proven benefits of one-to-one midwifery care, it remains mostly a boutique option due to the lack of a comprehensive national model of maternity care that fully incorporates and prioritises midwifery care into the system. In New South Wales some positive steps have been taken to provide access to primary midwifery care for women. However, this access is not universal.

I have had the privilege of attending and visiting the RPA birth centre and the Belmont birth centre. Women in Ryde, Camden and the St George area also have access to this sort of care. I am particularly impressed with the St George service that provides a home birth service to women who wish to choose this option. I acknowledge the skilful, caring and hardworking midwives who provide these services. The midwives I have spoken to about the continuous care model report the same things, best summed up by a quote from a report by Carolyn Hastie, who set up and runs the Belmont Birthing Centre. One of the midwives from the service said:

When I do a home visit, it is so easy, the third day blues don't happen, the babies are not crying, the feeding is going well and the women feel like they have done it by themselves. They feel like they can do anything. We have supported them through it, but they have done it. We are just sitting back enjoying them do it. It is such a joy to watch.

I hope that as the birthing models in New South Wales further develop the time is not too far away when all women in New South Wales will have access to the benefits, safety and support of one-to-one midwifery care.

In the meantime I add my support to the women, midwives and members of the medical community who continue to campaign for the right of all Australian women to access best practice maternity care.

### **SUPPORTED ACCOMMODATION**

**The Hon. JOHN RYAN** [11.38 p.m.]: Tonight I highlight the issue of supported accommodation or disability housing. After 12 long years of Labor Government we have an emerging disability housing crisis, arising largely because the State Labor Government has neglected to fund supported accommodation over its term. It is years since the Labor Government has built new accommodation to relieve the growing pressure in the community coming from unpaid and in many cases ageing carers. In New South Wales we have at least hundreds of elderly people, some aged in their mid to late 70s and 80s, looking after children with disabilities who are aged in their 40s and 50s. In many cases both the parents and the adult children need some form of support for failing health. For example, one family I know in the Miranda area is very typical. Dad is 79 with increasing dementia because of advancing Alzheimer's. They have a 45 year-old son with intellectual disability and somehow Mum, who keeps the family together, has to do that with progressing arthritis and hip and joint replacements. Similarly, the Woodhouse family that I met at Westmead Hospital have a 13-year-old son who was locked in a ward because there was no available accommodation for him.

In May the Government trumpeted its Stronger Together disability package in which it made the bold claim that it will spend \$1.3 billion over the next five years. I point out that the only spending in that package that has been allocated in the only budget due before the next State election is \$75 million or 5.3 per cent of the total package. The rest is a mere promise. What is worse is the alarming lack of response by the Government to the known level of unmet demand within the disability sector. In Stronger Together the Government promised an extra 320 attended care places. According to figures supplied by the Government in answers to questions asked in estimates committee hearings a couple of months ago, 567 clients are now on the waiting list for both the high needs pool and for attended care.

Even if the Government delivers on its promise another 250 places, not including any extra people who join the waiting list during the next five years, will still be needed. Similarly, the Government is promising 990 new supported accommodation places over five years. But new figures that the Government has released in response to questions I put on notice for at budget estimates hearings indicate that the number of people applying for supported accommodation and missing out is increasing alarmingly. In 2004-05, 976 eligible people applied for the available 104 vacancies; 872 people missed out. New figures that have now become available for 2005-06 indicate that 1,339 people who were eligible for supported accommodation applied for 96 vacancies in the State's group homes. The number of people who missed out has increased from 976 in 2004-05 to 1,243 in 2005-06.

How does the Government expect the 990 places over five years it promised in Stronger Together to meet this growing need? If it delivered on every one it planned over the next five years we will still be short 250 places. But that is not the whole story. I refer to the transcript of the budget estimates hearing for the Department of Ageing and Disability held on Friday 8 September 2006, particularly to the answer given by Ms Carol McAlpine on behalf of the Department of Ageing, Disability and Home Care concerning how the Government-promised 990 supported accommodation places will be allocated. She informed the committee that 450 accommodation places have been allocated to children leaving the care of the Department of Community Services when they turn 18, 200 others would be allocated to people leaving the criminal justice sector and only 340 will be left for unpaid carers. Only 340 of the Government-promised 990 new supported accommodation places will be available to unpaid carers, who make up most of the 1,243 people who applied unsuccessfully for supported accommodation this year.

The Government is planning only 340 new places over the next five years to meet the needs of people like the families I described earlier. That will do nothing to alleviate the mounting pressure for supported accommodation in the community from people who are not already in some form of government accommodation. Stripped of its spin, it is obvious that the Government's Stronger Together package barely responds to the unmet need that already exists in the community for disability services, let alone the additional levels of demand that will arise over the next five years while it is being implemented.

### **SYDNEY MEDICALLY SUPERVISED INJECTING CENTRE**

**Mr IAN COHEN** [11.43 p.m.]: I speak in support of the Sydney Medically Supervised Injecting Centre, which attracts plenty of criticism from those whose idea of drug policy is to bury their heads in the sand

and hope it all goes away. Their simple and backward thinking runs along the line of drugs being bad so let's ban them outright, criminalise their users and the problem will disappear. That this approach has been one of the great worldwide policy failures of the twentieth century does not seem to dampen its proponents' enthusiasm for it. There are, however, people in the community who are actively trying to find real solutions to this problem, and who are working at the grass roots level to implement them. Dr Andrew Byrne of the Redfern Clinic has been providing professional help to alcohol-dependent and drug-dependent people for more than 20 years. He is interested in real and workable solutions to what is a serious problem. He has dedicated his life to it.

I suggest that we ought to take heed of someone of his standing in his field who talks about issues concerning his area of expertise. I refer to the likes of Dr Byrne, not polities who are desperate for a sound bite or the shrill bleating of some of our more excitable media commentators. In recent weeks I was forwarded an email, via the Australian parliamentary group for Drug Law Reform, in which Dr Byrne outlined some of his thoughts on the operation of the Sydney Medically Supervised Injecting Centre over the five years of its existence. I will share some of them with the House.

Unlike a number of its critics, Dr Byrne has attended the centre frequently and knows its operations intimately. Despite initial misgivings, the vast majority of Kings Cross residents and businesses now support it—Dr Byrne claims this figure to be as high as 80 per cent—as experience shows the half-baked fears of its opponents to be unfounded. The centre also has strong support from the police and medical services, as well as health authorities. The greatest single reason for supporting the centre is the simple and indisputable fact that it saves lives. Early experience showed medical professionals that many drug users were taking enormous risks with injecting practices. Even the simple advice given to 9,000-odd people over the past five years reminding them to wash their hands before and after injecting may have potentially saved any number of lives. People have been given clean equipment and good lighting and a safe supervised environment in which to inject.

At the time Dr Byrne made these observations he noted there had been 1,747 overdoses observed in the time the centre has been operating. If that had happened on the streets or in people's houses a number of deaths would have been inevitable, yet every single one of those people survived. Another important point he makes—one that is often overlooked—is the educational benefits for both clients and staff. By bringing users out of the cold we can more easily obtain information that enables our society to tackle this ongoing problem. Communication and professional observation inevitably lead to education. That works both ways. Medical professionals can offer advice and assistance to users, but they can also learn from them. One example of that is that medical and welfare practitioners are now far better informed as to which drugs are on the streets and in what quantities.

In the words of Dr Byrne, the centre is acting as a sort of barometer of street drug trends as well as highlighting the shortage of treatment services. Centre staff also learnt that some of their own preconceived ideas were misplaced. Many had thought that provision of clean needles would erase the problems of infections in drug users. That did indeed prove to be the case with HIV, but it did not apply to hepatitis B, hepatitis C or skin infections. This vital piece of information would have taken much longer to come to light if the centre had not been operating. The ongoing educational process the centre provides means that as the staff continually increase their knowledge, so will the capacity of our health services to treat drug users. Ultimately, all of us will benefit.

Conversely, closing this centre would be a giant step backwards, not only in terms of both the health and mortality rates of drug users, but also because of the increase in crime rates that would occur as users find it much harder to access treatment and rehabilitation services. Closing the centre would only increase the strain on our already overburdened health services as an increasing number of people would need to be treated for overdoses or for diseases and injuries caused by unsafe injecting practices. I commend all those who have worked with the Kings Cross centre, which I have visited a number of times. I am suitably impressed by doctors such as Dr Andrew Byrne and Dr Ingrid van Beek and many other people, including a number of former members of this House, particularly the Hon. Ann Symonds, who worked tirelessly to promote better health practices in our community.

### ***THE FISHERMEN OF IRON COVE BOOK LAUNCH***

**The Hon. AMANDA FAZIO** [11.48 p.m.]: On Sunday 17 September I attended the launch of a book, *The Fishermen of Iron Cove*, at Leichhardt Library at the Italian Forum during part of History Week. The book was written by Annette Salt and published by Leichhardt Council in association with the Australian Centre for Public History at the University of Technology, Sydney. The book is based on a series of taped interviews now

housed in the local history section of Leichhardt Library and the research for the project was supplemented by work already completed by the local history librarian, Bruce Carter. I commend all those involved in this very worthwhile project.

I was pleased to attend the launch of this book as on 20 October 1886 my paternal great-grandfather, Vincenzo Fazio, came to Australia from Lipari, which is a small island north of Sicily, and eventually settled in Tuncurry, where he established the local fishing industry. He had previously served in the Italian Navy. His brother-in-law, Phillippo Sciacca, followed in 1889. Vincenzo introduced the Mediterranean style of net fishing and sponsored the migration of many other fishermen from Lipari, whose descendants until very recently were still working in the fishing industry in Sydney Harbour. A photo of my great grandfather and a group of the fishermen he sponsored appears on page 8 of the book.

The story of the fishermen of Iron Cove shares much with the story of other Italian fishermen who migrated to New South Wales and of the wider, complex process of Italian migration to Australia. Many Italian fishermen from Sicily, Puglia, Naples and the Aeolian Islands settled in the general area from Forster-Tuncurry in the north to Ulladulla in the south. The book gives a general history of the migration of these fishermen and their families and looks specifically at five families: the Gioia brothers, the Ilacquas, the fishing LoSurdos, the Mirabito brothers and the Restuccia brothers, plus one of the last arrivals who migrated here in 1955, Giuseppe Virtu.

Many of these fishermen settled in the Iron Cove area, part of which was called Leichhardt but is now called Lilyfield, and this area was known as Sydney's Little Italy before the Second World War. Physically, this area is very similar to the island of Lipari. Many of the fishermen of Iron Cove come from the Aeolian Islands, which is a volcanic archipelago north-east of the coast of Sicily. The Aeolian Islands are particularly beautiful and the main industry was fishing. The majority came from Lipari, which is the largest island in the group but which is still only 48 square kilometres. There are seven islands in the group.

When my family visited there, my brother—who, unlike me, is a fitness fanatic—would run around the circumference of the island every morning and was known as the crazy tourist. I have been fortunate enough to visit Lipari twice and still have many relatives there to this day who make their living from fishing. The island of Lipari is small and the main township is also called Lipari, which is confusing. There are four other small villages on the island. The island is hilly and suitable only for growing capers and tomatoes. The island is well known for two other things—pumice and obsidian—and now the islands are well known as tourist destinations and are particularly popular with Germans.

One may wonder why so many fishermen and their families left such an idyllic place. The answer is simple. These families were economic refugees. There was no great wealth in Lipari, just a hard life and hard work. The islands still have their drinking water shipped in. It now comes overnight by ship from Naples. Before World War I immigrants from the Aeolian Islands had colonised the streets between Balmain Road and Hill Street, Leichhardt. That came about because they had a system of informal sponsored migration. Once one member of a family arrived, settled and became successful, other family members followed. The book stated:

The Fazios, a noted Liparese family, was pivotal in this. Vincenzo and Nicolo and Giovanni Fazio acted as conduits for their countrymen who in turn supported their extended families as they arrived from Sicily. Family intermarriage and their common origin and occupation created and maintained that connection.

That connection still exists today. One of the great aspects of the launch of this book was seeing all the distant relatives catching up with one another, swapping family details and identifying their grandfathers, aunties and cousins in the photographs on display. It is also interesting that until recently the majority of these families were still strongly involved in the fishing industry in Sydney Harbour. While many more opportunities existed for these families in Sydney, it was still not an easy life; 14-hour to 15-hour days were not uncommon and the women in the families had to assist with mending nets.

The opportunity for the children of these fishing families to complete their education and advance in the community was embraced and they have done well. In fact, the contribution of immigrants from the Aeolian Islands has been significant, not just in relation to the development of the fishing industry. The first print of the book has been fully distributed and the second print should be available soon. As I said earlier, I congratulate all those involved in the production of this book, which is a useful resource for recording and recognising an important part of our migrant history. It also helps to explain the reason that Leichhardt has such a strong Italian influence. It is not just the restaurants and cafes; it is the people who migrated there after the First World War and established that industry.

**HUNGARIAN UPRISING FIFTIETH ANNIVERSARY**

**The Hon. DON HARWIN** [11.53 p.m.]: On Monday 23 October it was my pleasure to attend a mass at St Mary's Cathedral to commemorate the fiftieth anniversary of the Hungarian uprising. The mass was presided over by Bishop Anthony Fisher. I was pleased and proud to be there at the invitation of my great friend and tireless worker for the Hungarian community, Mata Biryani. Also present was Councillor Mallard from the city of Sydney council. In particular I also mention the presence of her Excellency the Governor, Marie Bashir. It was a moving occasion. At the processional at the beginning of the service a selection of community figures marched into the cathedral with flags. There was a moving service, remembering the events of 1956. In particular, the mass was sung in several parts by an outstanding choir, the Bartok choir. It was a beautiful service. Afterwards there were events in the theatrette in Parliament House on Hungarian culture, remembering the events of 1956. It was a great pleasure to be there.

*[Time for debate expired.]*

**Motion agreed to.**

**The House adjourned at 11.55 p.m. until Thursday 26 October 2006 at 11.00 a.m.**

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