LEGISLATIVE COUNCIL

Wednesday 28 November 2007

_____

The President (The Hon. Peter Thomas Primrose) took the chair at 11.00 a.m.

The President read the Prayers.

PREVENTION OF CRUELTY TO ANIMALS AMENDMENT (PROSECUTIONS) BILL 2007

SYDNEY WATER CATCHMENT MANAGEMENT AMENDMENT BILL 2007

AGRICULTURAL INDUSTRY SERVICES AMENDMENT BILL 2007

RICE MARKETING AMENDMENT BILL 2007

WINE GRAPES MARKETING BOARD (RECONSTITUTION) AMENDMENT BILL 2007

Bills received from the Legislative Assembly.

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

Motion, by leave, by the Hon. John Della Bosca agreed to:

That the 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.

Second readings set down as orders of the day for a later hour.

AUDITOR-GENERAL'S REPORT

The President tabled, pursuant to the Public Finance and Audit Act 1983, of the report entitled "Auditor-General's Report—Financial Audits—Volume Five 2007", dated November 2007.

Ordered to be printed on motion by the Hon. John Della Bosca.

DEATH OF BERNIE BANTON, AM

The Hon. AMANDA FAZIO [11.03 p.m.]: I move:

That this House:

(a) notes the passing away of courageous asbestos campaigner Bernie Banton, AM,

(b) recognises the pivotal role that Bernie Banton played in fighting for the dignity, security and financial peace of mind for those victims of James Hardie who could not fight for themselves,

(c) acknowledges that Bernie Banton's campaign, on behalf of the victims of asbestos, for just compensation from James Hardie was strongly supported by the union movement and the State Government, and

(d) expresses condolences to Mr Banton's wife, Karen, his children, extended family and friends.

I thank the House for allowing this matter to be dealt with as formal business. We all recognise the loss that Australia, workers and sufferers of asbestos have suffered with the passing of Bernie Banton. We acknowledge the pivotal role that he played in fighting for justice for victims of James Hardie. We acknowledge that the campaign he waged had great community support, trade union support and particularly support from the State Government. We express condolences to his wife, family and friends.

Question—That the motion be agreed to—put and resolved in the affirmative.

Motion agreed to.

HER MAJESTY QUEEN ELIZABETH AND HIS ROYAL HIGHNESS PRINCE PHILIP SIXTIETH WEDDING ANNIVERSARY

The Hon. AMANDA FAZIO [11.04 a.m.]: I move:

(1) That the following address to Her Majesty the Queen and His Royal Highness Prince Philip be adopted:

To Her Majesty Queen Elizabeth the Second, by the Grace of God, Queen of Australia and Her other Realms and Territories, Head of the Commonwealth.

MAY IT PLEASE YOUR MAJESTY—

We, the members of the Legislative Council of New South Wales, in Parliament assembled, on our own behalf and on behalf of the people of New South Wales, offer the congratulations to Your Majesty and the Duke of Edinburgh on your 60th wedding anniversary.

(2) That Her Excellency the Governor be requested to forward the above Address to Her Majesty.

I thank members for allowing this item to be dealt with today. I express my best wishes to Her Majesty on the sixtieth anniversary of her wedding.

Question—That the motion be agreed to—put and resolved in the affirmative.

Motion agreed to.

GENERAL PURPOSE STANDING COMMITTEE NO. 3

Extension of Reporting Date

The Hon. AMANDA FAZIO [11.05 a.m.]: I move:

That the reporting date for the reference to General Purpose Standing Committee No. 3 relating to the budget estimates and related papers be extended to Wednesday 5 December 2007.

The motion extends the reporting date of the committee to 5 December because the committee is still considering the answers to questions taken on notice that it has just received.

Question—That the motion be agreed to—put and resolved in the affirmative.

Motion agreed to.

STANDING COMMITTEE ON STATE DEVELOPMENT

Report: Aspects of Agriculture

The Hon. Tony Catanzariti, as Chair, tabled report No. 32, entitled "Aspects of Agriculture", dated November 2007, together with transcripts of evidence, tabled documents, submissions, correspondence and answers to questions taken on notice.

Report ordered to be printed on motion by the Hon. Tony Catanzariti.

The Hon. TONY CATANZARITI [11.07 a.m.]: I move:

That the House take note of the report.

Debate adjourned on motion by the Hon. Tony Catanzariti and set down as an order of the day for a future date.

BUSINESS OF THE HOUSE

Withdrawal of Business

Private Members' Business item No. 63 outside the Order of Precedence withdrawn by Dr John Kaye.

Private Members' Business items Nos 9 and 11 outside the Order of Precedence withdrawn by the Hon. Amanda Fazio.

SESSIONAL ORDERS

Office of Assistant President

Motion by the Hon. Tony Kelly agreed to:

That the sessional order adopted on 28 June 2007 relating to the Office of Assistant Deputy President be amended by omitting "Assistant Deputy President" wherever occurring and inserting instead "Assistant President".

GENE TECHNOLOGY (GM CROP MORATORIUM) AMENDMENT BILL 2007

Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Ian Macdonald.

Second Reading

The Hon. IAN MACDONALD (Minister for Primary Industries, Minister for Energy, Minister for Mineral Resources, and Minister for State Development) [11.14 a.m.]: I move:

That this bill be now read a second time.

The Gene Technology (GM Crop Moratorium) Amendment Bill 2007 extends the operation of the Gene Technology (GM Crop Moratorium) Act until 1 July 2011. It also makes other, significant amendments. Before turning to the amendments, it would be useful to briefly look at the current operation of the Act. The aim of the Act is to preserve the identity of genetically modified, or GM, crops and non-GM crops for marketing purposes. It currently does this by designating New South Wales as an area in which certain GM food plants may not be cultivated. GM food plants that are subject to moratorium orders cannot be grown in New South Wales.

The Act was introduced in response to particular concerns. These included the possible impacts on market access and trade resulting from the cultivation of GM crops in New South Wales, in particular at that time, GM canola. The Act was introduced to give government, industry and the community more time to consider the issues surrounding GM food crop cultivation in New South Wales. The Commonwealth Government and the New South Wales Government have distinct roles when it comes to the regulation of GM crops in Australia. This is a very important point, and it is often misunderstood by many people. The Gene Technology Agreement, signed by the Commonwealth and all Australian States and Territories in 2001, defines these roles.

The Commonwealth is responsible for ensuring that dealings with genetically modified organisms, or GMOs, are safe for people and the environment. A GM crop is an example of a GMO. The Commonwealth Office of the Gene Technology Regulator assesses applications for dealings with GMOs, including GM crops. The concept of "dealing with" a GMO is very broad and includes everything from conducting experiments to commercial production. The role of the Commonwealth office is to determine any potential impact on human health and the environment which may result from dealings with GMOs. The role of New South Wales, as with the other States, is to manage market or trade issues affecting GM crops, together with industry. Only after the Office of the Gene Technology Regulator has granted a licence for the commercial use of a GM food crop does New South Wales have a role in the regulation of that crop.

In 2003 the Commonwealth granted licences for the commercial release of two types of GM canola. In response to this decision, New South Wales imposed moratorium orders under the Gene Technology (GM Crop Moratorium) Act. These orders have prevented the commercial cultivation of GM canola in New South Wales to date. Victoria, Western Australia and Tasmania all introduced similar moratorium legislation, regulation or

other construct. Effectively, this has prevented the commercial cultivation of GM canola in Australia. Queensland does not have a moratorium in place because canola is generally not grown in that State. Queensland's GM policy basically allows the cultivation of a GM crop in that State.

The New South Wales Act is due to expire on 3 March 2008. In July 2007 the New South Wales Government established an independent panel of experts to review the Act. The members of the review panel were the Hon. Ian Armstrong, Dr Kathryn Adams, an eminent lawyer and a trained scientist, and Professor Timothy Reeves, a leading scientist with almost 40 years experience in agricultural systems research. The review panel presented its report to me in October 2007. The review report has been publicly released and is now available on the Department of Primary Industries' website. The panel was asked to provide advice on the best way forward for the regulation of GM food crops in New South Wales.

The review panel was given clear terms of reference. It was asked to assess the impacts of various options on marketing, trade and investment in New South Wales. The first option was to extend the Act and maintain the moratorium orders on the cultivation of GM canola. The second option was to amend the Act and remove the moratorium orders. The third option was to allow the Act to expire. The review panel recommended that the New South Wales Government extend the Act and remove the moratorium on the cultivation of GM canola. The panel determined that there is sufficient evidence to show that industry is now ready to manage GM canola in this State. The review recognised that GM food products are increasingly accepted in our community.

On this point, it is worth noting that Biotechnology Australia conducts surveys every two years to assess the level of public awareness of biotechnology uses and changes in consumer attitudes. The 2007 results indicated an increase in the perceived usefulness of gene technology and a decrease in the perceived risks associated with the use of the technology. The survey found that acceptance of GM food crops had increased from 48 per cent in 2005 to 73 per cent in 2007. The review panel also recognised that there is a need to maintain a regulatory framework in New South Wales for the management of GM food crops, in addition to canola. The panel found that a clearly defined "path to market" is needed to stimulate investment in research and development of new GM food products in New South Wales.

The recommendations of the review panel make it clear that it is now time to amend the Act to recognise the increased level of understanding and acceptance of the benefits to be had from GM food crop production. The fact remains that the market conditions, which resulted in the introduction of the GM canola moratorium orders, have changed. Because of this change it is now time for New South Wales to provide its farmers with the proper tools to compete on the world stage. To this end I note the Premier of Victoria, the Hon. John Brumby, MP, announced yesterday that the Victorian Government would allow the moratorium on GM canola to expire on 29 February 2008.

I repeat that under the Gene Technology Act 2000 the Commonwealth undertakes human health and safety and the environmental assessments of GM crops. These issues are outside the scope of the New South Wales Act and, as a result, could not be dealt with by the review panel. Essentially every significant farming peak group in this country supports the intent of this bill. It is worth noting that the National Farmers' Federation yesterday came out in strong support for the lifting of the canola moratoria in New South Wales and Victoria. The President of the National Farmers' Federation made the observation that this decision:

> …will make farmers more efficient and competitive on the world stage. For too long Australian farmers have been left behind as the international market place embraced biotechnology as a safe and viable agriculture science.

The New South Wales Farmers Association said that the Government's decision represented a win for the future prosperity of agriculture. President Jock Laurie said this decision:

> … is a win for the environment, with GM crops potentially meaning fewer emissions and less chemical use, healthier soil and more sustainable farming practices.

The Victorian Farmers Federation President Simon Ramsay said the decision to lift the moratorium in Victoria would enable:

> … growers to get down to the business of farming on an equal footing with their international competitors.

Agrifood Awareness Australia stated that the New South Wales Government should be congratulated on allowing the commercialisation of GM canola. Turning to the bill, the key proposals for amendment are as follows. Firstly, the bill will extend the operation of the Act until 1 July 2011. A new objects clause will also be inserted in the Act. The object of the Act will be to establish a regime to regulate the commercial cultivation of

GM food plants in New South Wales and the conduct of experiments on GM food plans in New South Wales for marketing purposes. Secondly, the bill repeals the current moratorium order process. It will be replaced with a blanket moratorium and a scheme for approving the cultivation of GM food crops.

If a GM food crop has been licensed by the Commonwealth for commercial release, there will be an automatic prohibition on its cultivation in New South Wales unless one of the following circumstances is in place. The first circumstance is that a GM food crop must be approved for commercial cultivation in accordance with the requirements of the amended Act. The second circumstance where cultivation of GM food crop will be permitted is where an exemption has been granted for experimental purposes. That will apply to research. In this regard the bill establishes a scheme for approving the commercial cultivation of a GM food plant, or a class of GM food plants, in this State. GM food crops will be able to be grown in New South Wales if the Commonwealth has granted a licence for commercial cultivation and the genetically modified food crop is approved for commercial cultivation under the amended New South Wales Act. There are two criteria in play here.

To obtain the approval the relevant industry or industry sector must establish that it meets certain criteria that address market requirements. After receiving an application from a representative of the relevant industry I will consider whether the industry meets the criteria. These criteria deal with the industry's capacity to manage the commercial cultivation of GM food crop in accordance with market requirements. Firstly, the industry must establish it has adequately identified the requirements demanded by key domestic and international markets for the GM food plant. It must do so to my satisfaction.

Secondly, it must identify the threshold levels for the accidental or unintended presence of GM traits in food plants that are acceptable in the relevant key domestic and international markets. It must be noted that the threshold level for the accidental or unintended presence of GM traits in conventional canola has been set at 0.9 per cent by the Primary Industries Ministerial Council. This threshold level meets the strictest standards set by any of Australia's international trading partners for canola. Thirdly, I must be satisfied that the industry has, or is capable of having, supply chain management processes in place that adequately address the accidental or unintended presence thresholds. This includes any requirements to segregate GM food plants and non-GM food plants. Fourthly, the industry must demonstrate that it has obtained, or can obtain, any relevant approvals or other authorisations regarding importation of the GM food plants. Additional criteria can be prescribed by the regulations.

This leads me to a third area where the bill introduces significant change. The bill provides for the establishment of an expert committee. This committee will provide advice to me on whether an industry or industry sector meets the criteria. The committee will be an independent committee of experts from both industry and the scientific community. It will operate at arm's length from the Government. That committee's main role will be to provide advice to me in my capacity as the Minister for Primary Industries. The advice will be based on whether a particular industry meets all the criteria in relation to the specific GM food plants or class of plants covered by the application. In developing this advice the committee will need to consider whether another State or Territory has authorised the cultivation of a particular GM food plant. This is a practical move to ensure national and consistent regulation of GM food crops.

The bill abolishes the New South Wales Agricultural Advisory Council on Gene Technology. With the establishment of the new expert committee the advisory council will no longer operate. Following the application process I can declare that a specified GM food plant, which has been licensed by the Commonwealth, is approved for commercial cultivation in all or part of New South Wales. The order granting an approval will be published in the *Government Gazette*. I will have the power to revoke the approval in part or in whole if I am satisfied that the industry no longer satisfies any one of the criteria. Before doing so I must have regard to advice from the expert committee. The approval will automatically be revoked if the Commonwealth licence for the GM food plant is suspended or cancelled by the Office of the Gene Technology Regulator. My power to revoke an order is supported by departmental inspectors with the power to enter and inspect premises. They can enter and inspect premises for the purpose of ascertaining whether or not a provision of the Act or regulations is being complied with or contravened.

These amendments provide for a more streamlined regulatory scheme with the Commonwealth office of the Gene Technology Regulator. They will also reduce duplication and red tape. It will be an offence to knowingly cultivate a GM food plant in contravention of the Act. The penalties for committing such an offence will be significant. The financial penalty for corporations will be up to $137,500. Further, the bill makes important changes to ensure that the expert committee operates in an appropriate and timely manner. It does this

by clarifying how confidential information should be dealt with. It establishes a framework for committee members to disclose pecuniary interests. It also establishes strict timelines that the expert committee must meet when providing advice to me.

The bill makes a further amendment. New South Wales will no longer be able to modify by regulations the application of the Commonwealth's gene technology laws. A consistent national approach to the regulation of commercial cultivation of GM food crops is needed. It is needed because crops do not always respect State borders. In addition, the majority of canola in New South Wales grown in the southern part of the State is either crushed in, or exported, through Victoria. There is general agreement between New South Wales, Victoria and Queensland that legislation, regulation or other constructs in each State should provide a clear path to market for GM food crops.

The New South Wales expert review panel undertook significant community consultation in preparing its report. The panel received 1,375 submissions from interested parties and stakeholders and met with 31 key stakeholders. The panel found that there is widespread grower support for the introduction of GM canola in New South Wales. Growers consider that any associated farm level changes are manageable. Some of the submissions expressed concern that the adoption of GM canola in Australia would result in a loss of international market share for Australian canola. The experience of Canada is relevant here. Canada made GM canola commercially available in 1996. Canada has lost no international market share since that time. In fact, Canada has increased the production and export of canola. At the same time it has not incurred any discount for mixed GM and non-mixed GM canola exports. Significantly, it has maintained its share of the Japanese market, and that is a substantial share.

Some submissions suggest that Australia would lose price premiums paid for non-GM canola. The panel found that Australia is, in fact, not achieving price premiums for bulk non-GM canola in the international marketplace. Some of the submissions to the review panel argued that GM food crops and non-GM food crops could not be kept separate. However, the evidence shows that segregating food crops is feasible for industry. Indeed, it has been occurring for some time already. The segregation of grains is carried out routinely in the Australian supply chain. For example, more than 50 segregated wheat products are exported from Australia annually. This means that the coexistence of GM and non-GM food crops is achievable. Concern was also raised during the New South Wales review that GM crops would impact negatively on organic crop production. The Australian Bureau of Agriculture and Resource Economics released a report earlier this year dealing with this issue. The report concluded that the commercialisation of GM canola would have very little, if any, direct impact on the organic canola, livestock and honey industries in Australia. The organic industry is mainly based on the need to segregate organic and non-organic crops, including GM crops. It is now clear that this can be done. In fact, it has been stated that the industry does separate non-organic and organic canola. That is an important issue to take into account in this debate.

The bill will extend the operation of the Act. It will provide a clear way for GM food crops to enter the market where appropriate. It will provide certainty for investors in the research and development of new GM products. Importantly, it will maintain a mechanism to protect Australia's non-GM export grain markets. The benefits to the New South Wales grains industry and the New South Wales economy will be significant. If GM canola is approved for commercial cultivation in accordance with the process set out in the amended Act, our growers will be able to produce far more canola than they do at present. A recently released report by scientists Norton and Roush at the University of Melbourne on canola clearly states that if 50 per cent of canola in Australia were grown using GM technology we would have a reduction in the use of triazine use by 632 tonnes per annum. Given the nature of this chemical, that is a substantial figure. Mr Ian Cohen has asked me questions in this House over and over again about the use of atroscine by Forestry New South Wales. Atroscine—which is a derivative of triazine, or a triazine-type chemical—is used to prevent grass growth in our pine plantations. Mr Ian Cohen has attacked the use of it. Yet the overwhelming and vast usage of triazine in Australia is in the conventional canola industry. Therefore, utilising herbicide-resistant GM canola has major environmental benefits.

The report also states that the increased proportion of canola totals 6 per cent; the increased canola area 200,000 hectares; the increased yield on a national basis 7 per cent and in New South Wales 8 per cent; the increased canola production 23 per cent nationally; and the increased wheat production, due to the important factor of crop rotation with wheat, is estimated at 80,000 tonnes. The increased value of production totals $157 million. The evidence is clear-cut. A significant amount of canola will be grown in low rainfall areas. It is potentially a useful revenue stream for farmers who are wrestling with drought conditions. The use of GM canola will also have side benefits for the crops that are grown in rotation with it. In addition, investment in

research and development of new GM food products in New South Wales will be stimulated and innovation will be encouraged. Last but by no means least, the use of approved GM food crops will produce major benefits for the environment. That is because more environmentally friendly types of weed killer can be used with herbicide-tolerant GM food crops.

[*Interruption*]

I could add a lot more. In answer to the interjection by the Deputy Leader of the Opposition, the use of GM food crops will stimulate the undertaking of research by various groups. Currently, a problem exists about GM crops being produced by large overseas firms. Over the past 30 years in Australia there has been a wind back in research, particularly at the national level, in the development of these crops. This field has been vacated by government and taken up by international corporations. It would be better if more research was conducted in Australia. The use of GM crops, which will result in a path to market, will stimulate more local research in this area. It is already occurring in some areas. In response to the inane interjections by Mr Ian Cohen, the expert panel will be able to look at the segregation issues in great detail and make the appropriate recommendations. I commend the bill to the House.

Debate adjourned on motion by the Hon. Rick Colless and set down as an order of the day for a future day.

ANTI-DISCRIMINATION AMENDMENT (EQUAL OPPORTUNITY IN PUBLIC EMPLOYMENT) BILL 2007

LOCAL GOVERNMENT AMENDMENT BILL 2007

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO. 2) 2007

LOCAL COURT BILL 2007

MISCELLANEOUS ACTS (LOCAL COURT) AMENDMENT BILL (NO. 2) 2007

Bills received from the Legislative Assembly.

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

Motion, by leave, by the Hon. Eric Roozendaal agreed to:

That the 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.

Second readings set down as orders of the day for a later hour.

BUSINESS OF THE HOUSE

Suspension of Standing and Sessional Orders: Order of Business

Motion by the Hon. Duncan Gay agreed to:

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 97 outside the Order of Precedence, relating to an order for papers regarding the widening of Spit Bridge, be called on forthwith.

Order of Business

Motion by the Hon. Duncan Gay agreed to:

That Private Members' Business item No. 97 outside the Order of Precedence be called on forthwith.

SPIT BRIDGE WIDENING

Motion by the Hon. Duncan Gay agreed to:

That, under Standing Order 52, there be laid upon the table of the House within 14 days of the date of the passing of this resolution all documents not previously provided to the House, in the possession, custody or control of the Minister for Roads or the Roads and Traffic Authority which record or refer to the recommendation by the Roads and Traffic Authority not to proceed with the widening of the Spit Bridge, which recommendation was referred to by the Minister for Roads at a budget estimates hearing held on Friday 26 October 2007, and any document which records or refers to the production of documents as a result of this order of the House.

BUSINESS OF THE HOUSE

Suspension of Standing and Sessional Orders: Order of Business

Ms LEE RHIANNON [11.37 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. 76 outside the Order of Precedence, relating to a gambling summit, be called on forthwith.

This motion must be debated today because of a gambling crisis in New South Wales that the Government is failing to address. The people of New South Wales woke up today to read the alarming news that Star City Casino donated $100,000 to the New South Wales Labor Party in the lead-up to the renegotiation of its casino licence. The House has a responsibility to debate this motion and consider whether the Government has been compromised in managing problem gambling in New South Wales. Members need to be aware of how this donation looks to the average person: Labor gets $100,000 and Star City Casino gets a monopoly on casino operations in New South Wales.

The Hon. Amanda Fazio: Point of order: Ms Lee Rhiannon is clearly not speaking to the matter of urgency. She is speaking to the substantive motion. I ask that she be reminded to contain her remarks as to why this motion is so urgent that Government business should be interrupted.

Ms LEE RHIANNON: To the point of order: I draw your attention to Standing Order 200 and to comments by former President Willis on 15 September 1993, who stated that members who are required to establish urgency sufficient for the House to debate a motion often find it necessary to outline the substance of the debate to follow. He said that in putting their case members should make statements that bear on the question of urgency rather than on the substantive issue.

The PRESIDENT: Order! The ruling of President Willis is not at odds with standing or sessional orders, which clearly indicate that members need only speak to the reason a matter is of sufficient urgency to warrant the suspension of standing and sessional orders. Accordingly, I uphold the point of order on the basis that members, when they are seeking to make a case for the suspension of standing and sessional orders, should not address the substantive issues of the matter any more than is necessary to justify the suspension of standing and sessional orders to allow the matter to be debated.

Ms LEE RHIANNON: This motion is urgent and deserves the support of all members of this House. It is time the Government took the lead and initiated a public debate on gambling in New South Wales. The motion is urgent because it lays the basis for measures that will address the increase in gambling activities that are causing hardship in communities across New South Wales. This House should have the opportunity at least to debate this motion that calls on the Government to hold a gambling summit. Members need to ask themselves if they really want to vote against such a simple and worthwhile suggestion as contained in this motion.

The motion is urgent because this House is well overdue in congratulating Russell Crowe and Peter Holmes à Court on their courageous stand in suggesting that Souths become poker-machine free. This House urgently needs to give a lead to the Government, which at the moment is failing to deal with excessive gambling. A Government-initiated gambling summit is needed and we can no longer defer considering this matter. Summits have been held on the issues of obesity, drugs and alcohol; the Government could re-establish its own credentials in this area by initiating a gambling summit. If the Government initiated such a forum it would allow experts, politicians and the community to bring forward a public health plan to deal with the growing gambling crisis.

Surely, we should be able to have the opportunity to debate this motion today. A gambling summit is urgently needed in New South Wales to consider issues such as the negative impacts of gambling, the conflict of

interest between politicians and gambling proponents, and what limits should be placed on the gambling industry. I understand the Opposition will not support this motion because it wants to wait for the Independent Pricing and Regulatory Tribunal review on gambling.

The Hon. Greg Donnelly: Point of order: In your ruling you directed very clearly that Ms Lee Rhiannon should direct her comments to the substantive matter of whether this matter is urgent. She is now deflecting her comments into a discussion about what position the Opposition may or may not take on this matter, which clearly has nothing to do with the substantive motion of establishing this as an urgent matter for the House to consider.

The PRESIDENT: Order! Ms Lee Rhiannon should uphold the standing orders that require her to confine her remarks to the reason that standing and sessional orders should be suspended.

Ms LEE RHIANNON: This motion is urgent. It should be considered now as it offers all members in this House an opportunity to stand together to say we need to find solutions. We need a public debate. [*Time expired*.]

The Hon. ERIC ROOZENDAAL (Minister for Roads, and Minister for Commerce) [11.43 p.m.]: I object to the resolution of the Greens. It is yet another attempt by the Greens to jump the order for business. Many Australians like nothing better than gambling; in fact, it is often called the national pastime. Unfortunately, for some people gambling becomes an overwhelming obsession. The Government has introduced many successful measures to help address problem gambling and it will continue to examine how harm minimisation can be enhanced.

Honourable members may be aware that a major review of the Gaming Machines Act 2001 is currently underway. The review will determine if responsible gambling measures are effective and it will examine if any new harm minimisation measures need to be introduced. In addition, the renewal of the Star City Casino contract guarantees a continuation of the Responsible Gambling Fund, which this year will receive more than $9 million to fund G-Line, 50 problem gambling counselling services and further research into problem gambling. This research includes the first longitudinal study of gambling habits in New South Wales with the inclusion of questions in the quarterly survey of New South Wales residents carried out by NSW Health.

Responsible gambling and harm minimisation continues to be at the forefront of the Government's responsible gambling policy. The Gaming Machines Act 2001 introduced a package of new and strengthened responsible gambling measures, including a statewide cap on gaming machine numbers, a daily six-hour gaming machine shutdown period in venues, and a prohibition on gaming machine advertising.

The Government has supported 109 recommendations contained in the Independent Pricing and Regulatory Tribunal report "Gambling: Promoting a Culture of Responsibility", which are aimed at encouraging informed choice and discouraging risky behaviour by gamblers. There is no need for a gambling summit: it would be a waste of taxpayer resources. New South Wales is learning from overseas research and applying the findings of that research here, as well as conducting our own research to see how to best reach problem gamblers and help them address their gambling. This matter is certainly not urgent.

Reverend the Hon. FRED NILE [11.45 a.m.]: The Christian Democratic Party agrees that gambling is a major issue in this State and a summit is a good idea. But we believe it would not be effective unless the New South Wales Government sponsored it, as it did for the summit on alcohol and drugs and other summits. A Greens summit would be very ineffective. This matter should have been raised on a day set aside for private members' business.

Question—That the motion be agreed to—put.

The House divided.

Ayes, 4

Mr Cohen	*Tellers,*
Ms Rhiannon	Ms Hale
	Dr Kaye

Noes, 34

Mr Ajaka	Mr Hatzistergos	Ms Robertson
Mr Brown	Mr Kelly	Ms Sharpe
Mr Catanzariti	Mr Khan	Mr Smith
Mr Clarke	Mr Lynn	Mr Tsang
Mr Costa	Mr Macdonald	Mr Veitch
Ms Cusack	Mr Mason-Cox	Ms Voltz
Mr Della Bosca	Reverend Dr Moyes	Mr West
Ms Fazio	Reverend Nile	Ms Westwood
Ms Ficarra	Mr Obeid	
Miss Gardiner	Ms Parker	*Tellers,*
Mr Gay	Mrs Pavey	Mr Colless
Ms Griffin	Mr Pearce	Mr Donnelly

Question resolved in the negative.

Motion negatived.

CRIMES AMENDMENT (SEXUAL PROCUREMENT OR GROOMING OF CHILDREN) BILL 2007

Message received from the Legislative Assembly returning the bill without amendment.

ROAD TRANSPORT (GENERAL) AMENDMENT (HEAVY VEHICLE USER CHARGES) BILL 2007

ROAD TRANSPORT LEGISLATION (BREATH TESTING AND ANALYSIS) BILL 2007

Bills introduced, and read a first time and ordered to be printed on motion by the Hon. Eric Roozendaal.

The Hon. ERIC ROOZENDAAL (Minister for Roads, and Minister for Commerce) [11.55 a.m.]: I move:

Second Reading

That these bills be now read a second time.

The Road Transport (General) Amendment (Heavy Vehicle User Charges) Bill 2007 represents an important first step in the implementation of the Road Reform Plan announced by the Council of Australian Governments earlier this year. A key building block of the first phase of the Council of Australian Governments Plan is the review and voluntary trials of incremental pricing by the end of 2008. Incremental pricing involves the application of a direct user charge to heavy vehicles in exchange for a productivity initiative, such as increased mass limits and/or enhanced access. This will see heavy vehicles directly paying for the cost impact of their vehicle activity subject to the condition that they produce improved safety outcomes.

More importantly the trials will provide an opportunity to test electronic monitoring and billing technologies ahead of broader heavy vehicle road pricing reforms that will be considered by the Council of Australian Governments in the coming years. The national freight task is expected to double by 2020. In response to this national challenge, the Council of Australian Governments announced in February 2006 a range of reforms directed at improving the productivity of road and rail freight transport. This included directing the Productivity Commission to inquire into the efficient pricing of road and rail freight transport.

The Productivity Commission's final report of this inquiry identified a number of inefficiencies in the current heavy vehicle road pricing arrangements. The commission concluded that significant reform to heavy vehicle charges was required to address the constraints these inefficiencies are placing on heavy vehicle productivity. The Productivity Commission estimated that the reform of heavy vehicle charges as part of broader transport reforms within the current frameworks could lead to a 5 per cent increase in road freight transport productivity. Such an increase would deliver a cost saving of more than $2 billion per annum across Australia. This would be a significant national microeconomic reform and a significant benefit to New South Wales. The Productivity Commission also stated that more fundamental reforms to heavy vehicle charging and access arrangements could deliver productivity improvements of twice that amount.

In response to the recommendations of the Productivity Commission, the Council of Australian Governments announced the Road Reform Plan, which set out a program of productivity and pricing reforms for the road freight industry. The objective of the Council of Australian Governments plan is to introduce fundamental reform to heavy vehicle pricing to achieve a more efficient pricing regime through direct road user charges for heavy vehicles. That is, getting the right truck on the right road for the right price.

New South Wales is significantly disadvantaged under the current charging arrangements. Approximately half the total road freight and three-quarters of all interstate road freight in Australia moves through New South Wales for at least part of its journey. The level of heavy vehicle activity in New South Wales appropriately reflects our significance to the Australian economy and the nation's reliance on our roads. But the revenue returned directly to New South Wales from heavy vehicle charges does not reflect the cost impact of heavy vehicle activity on the State. The Council of Australian Governments plan represents an opportunity to address the imbalance. It will enable the development of heavy vehicle road freight users charges that promote the efficient, safe and sustainable use of infrastructure, vehicles and transport mode.

Pursuant to sessional orders business interrupted and set down as an order of the day for a later hour.

QUESTIONS WITHOUT NOTICE

MILTON ORKOPOULOS ELECTORATE OFFICER WORKERS COMPENSATION CLAIM

The Hon. MICHAEL GALLACHER: I direct my question to the Minister for Industrial Relations. Is the Minister aware that Gillian Sneddon was a staffer in the electorate office of Milton Orkopoulos and that, after she passed on to police a complaint of sexual assault against Labor Party member Milton Orkopoulos, she suffered serious psychological stress after being, amongst other things, locked out of the electorate office by the Clerk and Speaker and verbally abused by ALP members? Is the Minister aware that she was assessed by her own psychiatrist as having a 22 per cent whole body impairment but that WorkCover's psychiatrist has assessed her as having a zero whole body impairment? Why does the Government continue to vigorously refuse Mrs Sneddon's common law workers compensation claim?

The Hon. JOHN DELLA BOSCA: The honourable member has asked an interesting question, about which there has been some public comment. There has been some direct and indirect public reporting of the matter he has referred to. Clearly, it is not the usual prerogative of the Minister to speculate about WorkCover's internal tribunals and assessments by various WorkCover bodies. I am happy to take the question on notice and provide the honourable member with a detailed response as quickly as I can.

TAFE MINOR CAPITAL WORKS PROGRAM

The Hon. HELEN WESTWOOD: I address my question to the Minister for Education and Training. Will the Minister inform the House about any initiatives the Iemma Government is undertaking to improve the infrastructure of the New South Wales TAFE system?

The Hon. JOHN DELLA BOSCA: I thank the honourable member for her ongoing interest in technical education and training. TAFE is a world-class training provider. This financial year the Iemma Government will be injecting $23 million into new buildings, building refurbishments, upgrade works and equipment as part of its TAFE minor capital works program. These additional funds will improve learning facilities at 31 TAFE campuses across New South Wales—from Ballina in the north to Albury in the south. The $23 million program of works includes the refurbishment of horticultural facilities at Ourimbah TAFE College; the refurbishment of electro technology facilities at Sutherland TAFE college campus at Gymea; the refurbishment of automotive facilities at Wagga Wagga TAFE college, and the new Aboriginal Cultural Centre at Wollongong TAFE college. Work will continue this year on almost $16 million worth of minor improvements at TAFE colleges including an upgrade of the electrical services workshop at Meadowbank TAFE college, a regional computer room refurbishment at Newcastle TAFE college, and a digital photography upgrade at Hornsby TAFE college.

The Iemma Government is committed to providing TAFE students with quality facilities so we can tackle the national skills shortage—a pitiful legacy of the Howard Government, which failed to take effective action on this growing problem despite more than 11 years in office. The Howard Government's belated and

ill-conceived approach was to waste $552 million of taxpayers' money on its failed Australian Technical Colleges. Despite this huge financial commitment, enrolments were just a fifth of their targets, with a little more than 500 students signing up. These colleges were established as part of the ideological obsession of John Howard, Peter Costello and Joe Hockey to force Australian workplace agreements on all employees as part of their plans to expand the reach of WorkChoices into the public sector. They should have directed that money to the proven and successful New South Wales TAFE system.

Recently released data shows the New South Wales TAFE system is leading the way when it comes to tackling the skills shortage. The National Centre for Vocational Education Research reports that in the year to March 2007, while the national net increase in commencements for traineeships and apprenticeships was only 600, in New South Wales it was 3,400—nearly six times the national figure. To support the vital contribution that TAFE colleges make to New South Wales this year the Iemma Government is spending $86 million on TAFE college upgrades and almost $36 million on maintenance. In 2007-08 work will begin on 11 new TAFE major capital works projects worth an estimated total cost of $55 million. This will see works take place at colleges such as Katoomba, Dubbo, Hamilton, Nirimba and Randwick. Furthermore, we will continue work this year on 18 projects already underway in our TAFE colleges worth more than $114 million. These projects include the refurbishment of buildings at TAFE institutes in Bathurst, Newcastle and Ultimo. These projects are in addition to the $23 million minor capital works program.

Over the next four years, the Iemma Government will also invest almost $67 million through our Learn or Earn policy, creating more than 12,580 training places for young people. We are establishing 25 trade schools in skills shortage areas across the State, providing students with the opportunity to learn vocational skills as part of their higher school certificate, giving them a head start to employment. The Iemma Government's commitment to public education in our schools and TAFE colleges is underlined by its commitment to deliver a $2 billion public education and training capital works program over the next four years—the largest ever undertaken in New South Wales.

MILTON ORKOPOLOUS ELECTORATE OFFICER WORKERS COMPENSATION CLAIM

The Hon. DUNCAN GAY: My question without notice is directed to the Minister for Industrial Relations. Does the Minister recall that Mark Aarons was paid almost $130,000 by his Government to remain silent following the appointment of Paul Gibson to the New South Wales Cabinet and allegations of domestic violence?

The Hon. John Della Bosca: Point of order: Clearly, this question, the way the honourable member has expressed it, contains argument. He is making an assertion, consequently an argument, about the reasons for Mr Aarons' departure.

The Hon. DUNCAN GAY: To the point of order: I think you should hear my full question before you make a decision, Mr President. This matter was in the public arena and it is by way of a question and part of a further question on the rights of Gillian Sneddon. So, I think it is important that I be allowed to finish my question.

The PRESIDENT: When the member completes his question I will determine whether it is in order.

The Hon. DUNCAN GAY: I will start again. Does the Minister recall that Mark Aarons was paid almost $130,000 by the Government to remain silent following the appointment of Paul Gibson to the New South Wales Cabinet and allegations of domestic violence? Why is the Government so vigorously denying Gillian Sneddon the same right to a lump sum common law workers compensation claim for stress-related injuries she sustained for assisting police investigate a Labor member accused of alleged child sex offences.

The PRESIDENT: Order! The question is clearly out of order. It contains argument as well as inferences and imputations.

SPECIAL PURPOSE SCHOOLS STAFFING

Dr JOHN KAYE: I direct my question to the Minister for Education and Training. Does the Minister recall saying, in response to a question on notice during the budget estimates, that teachers are allocated to behaviour schools and schools for students with disabilities—that is, SSPs—using a staffing formula that is aligned with the primary staffing formula? Can the Minister explain the rationale behind funding students at

these schools in a way that denies the additional cost of fulfilling the educational needs of secondary students in SSPs and behaviour schools?

The Hon. JOHN DELLA BOSCA: The member has asked a very good question about current educational policy. He makes an important point, which was a point well made during the education estimates hearings. I am not prepared to provide him with that rationale because shortly after becoming Minister, I had the opportunity to visit a number of our excellent special schools, behaviour schools and tutorial centres, all of which were initiatives of the Carr Government. I had the opportunity to discuss with a number of principals and teachers in those schools, as well as with a number of parents, some of the issues in relation to the way the staffing formula applies.

I have had some discussions with the Deputy Director General of Schools and the Director General of Education and Training about this matter. I am appreciative of the opportunity to discuss this in some detail with representatives of the Teachers Federation, who have brought in a number of representatives of the workforce most involved in this area of the education system's work. I had a long discussion and listened intently—I would like to think I listened intently and that I always listen intently—to the concerns they raised and to the options and solutions they proposed.

Currently I am considering these matters. I am not prepared to explain the rationale for something that I may not end up supporting. Obviously the rationale is simply related to scale, as I suggested to the member in a private conversation earlier. Most of these schools are quite small and relatively small numbers of teachers work there. Clearly that means that the administrative side of the duties of principals is much less because the schools themselves are small. They have only a relatively small number of full-time staff and, generally speaking, quite small grounds, but the nature of their work is obviously different to other primary and secondary school principals. For that reason I am now considering all the matters that have been put to me by teachers, representatives and principals in relation to these schools. It is important that we continue to work through these issues and come to the best possible outcomes. These schools are doing fantastic work and they are a great initiative of the Carr Government.

EQUINE INFLUENZA

The Hon. TONY CATANZARITI: My question is directed to the Minister for Primary Industries. Could the Minister please update the House on the current efforts to control equine influenza in New South Wales?

The Hon. IAN MACDONALD: I am pleased to inform the House that we have made some excellent progress in our efforts to control the equine influenza outbreak in New South Wales. On Monday, I announced another milestone in our campaign to rid the State of the disease. A massive 10 million hectares of the State has moved from high risk to low risk, signalling the freeing up of movements within this region.

The Hon. Duncan Gay: It is milestone after milestone after milestone as it has gone across the State.

The Hon. IAN MACDONALD: It has not. As part of our strategic zoning plan, this area has moved from the amber zone to the green zone. This downgrading affects large parts of the North Coast, Northern Tablelands and north-west, and was the result of extensive testing in these areas, which confirmed they are now free of horse flu. Horse owners in these areas can now begin moving their horses again and life can return to some degree of normality. Events can be held, as long as they are registered with the Department of Primary Industries. Horses can be moved within the green zone, provided the owner has a travelling horse statement.

Other areas moved to the green zone include most of the Coonamble, Walgett, Warren and Shoalhaven local government areas. Meanwhile the risk at Mudgee and Temora has been downgraded, with both areas recently moving from red zone to amber, following confirmation that they are also clear of equine influenza. In terms of overall State statistics, the low-risk green zone now covers more than 73 per cent of New South Wales, while the higher risk amber zone is confined to just 17 per cent of the State. Approximately 7 per cent of the State is in the red zone and 3 per cent of the State is now in the purple zone.

In other good news, the rate of new infection has dropped dramatically, with only a few new infected properties reported each day, compared to more than 200 daily in late September. The latest figures show there are just over 5,000 infected properties with 41,402 horses. I believe that many of those horses have now recovered. We are confident that more regions will move to green in the near future as long as we continue to

work together. I stress that while necessary tests have been taken and clear results received, we will continue ongoing testing in the green zone as a precaution.

Our vaccination efforts are continuing throughout both the purple zone and in strategic buffer areas to help reduce the presence of the disease. In fact, we have vaccinated well over 25,000 horses on one round and have done nearly 7,000 horses so far on the second round. That is excluding the more than 10,000 horses done by Racing New South Wales. Our aim is to progressively downgrade the risk in infected areas as the virus burns out. We still have a long way to go. Even if there are no new outbreaks it will still take time for the virus to burn out in already infected areas, followed by a lengthy period of surveillance testing and thorough investigation.

Again, I acknowledge the cooperation and patience of all horse owners across the State. To help address community concerns and answer horse owner questions, we are continuing to stage community meetings across New South Wales. To date, more than 50 meetings have been held with more than 5,000 people attending. As always, the Department of Primary Industries website is a great source of information about the latest horse flu situation, and a hotline is operating seven days a week. We are working hard to control and eradicate equine influenza and we are confident we can succeed. Our efforts are part of a national strategy agreed on by industry, all States and the Commonwealth.

I look forward to sharing more good news about our efforts to control and eventually eradicate this disease in the near future. In particular, I await the report of Justice Callinan, which will show why The Nationals has gone from 25 seats down to 10. They will probably go down to single digits because The Nationals have neglected quarantine services in this country. This report will show equine influenza started with The Nationals; with the Deputy Leader of the Opposition, the Hon. Rick Colless—

The Hon. Duncan Gay: Point of order: Mr President—

The PRESIDENT: Order! The Minister's time for speaking has expired. Does the Deputy Leader of the Opposition still wish to take a point of order?

The Hon. Duncan Gay: Yes. Who is going to do a report into him?

The PRESIDENT: Order! Clearly there is no point of order.

CLIMATE CHANGE

Ms SYLVIA HALE: I address my question to the Treasurer. Given that in the Sandon Point case the Land and Environment Court has now recognised the significant threat posed by climate change, will the Treasurer undertake a study of the impacts of climate change on the State's economy?

The Hon. MICHAEL COSTA: I did note the decision today. I think there was an article in the *Sydney Morning Herald*. It appears that the Land and Environment Court, on some technicality, made a decision against a particular development. As I understand it, the Minister for Planning is currently considering the Government's position on this matter and I do not intend to pre-empt that. However, decisions need to be balanced decisions that take into account the need for economic growth and jobs as well as environmental considerations. I am sure that the Minister for Planning will review the decision, as he did with the Anvil Hill decision and there will be a Government response.

REPORT ON STATE FINANCES 2006-07

The Hon. GREG PEARCE: My question is directed to the Treasurer. Is the audited Report on State Finances 2006-07 correct? In particular, are all current and non-current liabilities correctly disclosed?

The Hon. MICHAEL COSTA: I suggest that if the honourable member has a particular point in relation to any of the matters he is talking about, he put them on the *Notice Paper* and I will be happy to respond to them. All of our reports are prepared with appropriate reference to the due accounting standards and processes required by government.

PRINCES HIGHWAY UPGRADES

The Hon. GREG DONNELLY: My question without notice is directed to the Minister for Roads. Can the Minister provide the House with the latest information on upgrades to the Princes Highway?

The Hon. ERIC ROOZENDAAL: I welcome the opportunity to update the House on a significant milestone upgrade on the Princes Highway between Gerringong and Bomaderry. On Monday, Matt Brown, the hardworking member for Kiama, Minister for Housing, and Minister for Tourism announced the route options for the highway upgrade to four lanes from Gerringong to Bomaderry. Seven routes have been identified as the most viable options for the upgrade, and community consultation on these options is now in full swing. The short list was determined after a thorough evaluation of social, environmental, engineering and land factors while considering the requirements of the road, including future traffic and transport use.

Consultation on the options is open from now until late February 2008, and we are encouraging everyone in the community to comment. The Roads and Traffic Authority is in the process of contacting all the landowners who potentially could be affected by one or more of the options. A comprehensive brochure on the options is this week being mailed to all 11,000 residents in the study area. This information is also available on the Roads and Traffic Authority's website and is on display at the Berry Project Office, in Berry, at Kiama and Shoalhaven councils, and at the Kiama and Nowra Fair shopping centres.

Towards the end of the consultation period, workshops will be held to discuss issues brought forward by the community. Consultation such as this is vital in determining a preferred route. Input will be taken from landowners, councils, community groups and other key stakeholders. I am advised that these community responses will be reviewed, along with the results of technical investigations, so that a preferred option can be announced in the second half of 2008. After identifying a preferred route, design plans will be finalised and environmental assessments conducted in preparation for planning approval. The Princes Highway is the main link from Sydney and the Illawarra region to the South Coast of New South Wales. Upgrading this major route is about improving road safety and efficiency, supporting regional and local economic development, and minimising environmental impacts.

The New South Wales Government has invested substantial amounts to upgrade the Princes Highway, with $142.8 million allocated to the highway as part of this year's State budget. Projects currently under construction on the highway include the $30 million Northern Distributor extension, the $45 million four-lane deviation between Oak Flats and Dunmore, and the $8 million construction of the Kiama ramps. In addition, a major road safety improvement package of more than $30 million was completed in June 2007 to improve safety on the Princes Highway. The New South Wales Government looks forward to working closely and cooperatively with the Rudd Federal Government on improving the State's road network, including South Coast roads.

BEE COLONY COLLAPSE DISORDER

Mr IAN COHEN: My question is addressed to the Minister for Primary Industries. Can the Minister inform the House what advances his department has made in determining the causes of bee colony collapse disorder? Is there any correlation with pesticide usage? Can differing, and possibly increased, herbicide loads due to the use of genetically modified crops be absolutely ruled out in terms of their impact on bee colonies?

The Hon. IAN MACDONALD: The one thing about the Greens and their associated groups is that they draw long bows for political purposes. In fact, the reason the bee colonies in the United States, in particular, have had some difficulty in recent times is the presence of a virus. I fail to see the connection between that and genetically modified crops. Certainly the science that I have been appraised of makes the suggestion of such a connection—

The Hon. Duncan Gay: You didn't see EI get around you, did you? You let EI get around you. A lot of things have happened on your watch.

The Hon. IAN MACDONALD: I want to get this on the record. Say it again.

The Hon. Duncan Gay: You let EI get around you.

The Hon. IAN MACDONALD: Quite clearly, the science in relation to this is far more advanced than the poor, old nine-member National Party of Australia. The Nationals have become so irrelevant on rural issues. The people in the bush understand this issue, but where are The Nationals? They are down to a little ruck around this country. The Australian people, particularly those west of the Great Divide and in rural areas of the country, have seen how the National Party has lost its identity; it is no longer a country party. Members opposite continually support the Greens in every little piece of nonsense they are passionate about. Certainly the Leader

of the Opposition and the Deputy Leader of the Opposition do so; it is not necessarily the rest of The Nationals. It is not The Nationals leadership at a Federal level that has a similar position. The Nationals are now going down the slippery path to nine members nationally. I cannot wait until the next election to see a few more Nationals members in the stake.

Mr Ian Cohen: Point of order: It is incumbent on the Minister to be at least a little relevant in answering the question. I have not heard him mention the words "bee", "pollen" or "pesticide".

The PRESIDENT: Order! The Minister will continue to be generally relevant.

The Hon. IAN MACDONALD: I am generally always relevant. Colony collapse disorder has been reported in Europe and the United States, where it has reportedly caused significant deaths in bee hives. The New South Wales Department of Primary Industries works closely with the apiary industry in the detection and management of bee pests and diseases. The industry in Australia is aware of the disorder, and New South Wales apiarists would immediately contact—and they do contact—New South Wales Department of Primary Industries staff if an unusual or high number of deaths were to occur.

Mr Ian Cohen: Have they occurred in Australia?

The Hon. IAN MACDONALD: I am not aware that there have been any reported significant deaths amongst bees related to colony collapse disorder, but we are monitoring the situation. With regard to the final part of the honourable member's question, the Office of the Gene Technology Regulator has conducted risk assessments for genetically modified crops in Australia. These assessments found that genetically modified crops pose no risk to insect populations. I am advised that genetically modified crops have not, in fact, contributed to the recent colony collapse disorder.

M5 EAST TUNNEL TRAFFIC FLOW

The Hon. CHARLIE LYNN: My question without notice is directed to the Treasurer. Is he aware that the daily traffic flow through the M5 East Tunnel now exceeds its planned capacity? Is the Treasurer also aware that increased congestion in the tunnel causes traffic to stop during peak periods and that it can take up to 10 minutes or more for motorists to traverse through the tunnel? Does the Treasurer agree with Premier Iemma's advice that motorists should wind up their windows to protect themselves against the toxic gases whilst traversing through the tunnel? Is he aware that such a solution is not possible for motorcyclists? What action will the Treasurer take to protect New South Wales taxpayers against future claims from motorcyclists exposed to unacceptably high levels of toxic gases in the M5 East Tunnel?

The Hon. MICHAEL COSTA: Of course the Government takes its responsibility in terms of both traffic management and the health of New South Wales' citizens very seriously. We have agencies that spend an enormous amount of time doing the appropriate planning for these issues, and clearly the Hon. Charlie Lynn's question will be referred to those agencies. As a person who also rides a motorcycle, I have to say the greatest hazard I encounter on the road is not pollution but, rather, other motor vehicle users, who seem to think that motorcyclists are invisible and do not take the appropriate caution. The Roads and Traffic Authority is running a campaign about motorcycle safety, and I congratulate the honourable member and the Minister on raising this important issue.

MARITIME INFRASTRUCTURE IMPROVEMENTS

The Hon. EDDIE OBEID: My question is addressed to the Minister for Lands. Can the Minister provide details of the New South Wales Government's latest initiatives to improve maritime infrastructure for coastal communities?

The Hon. TONY KELLY: The Iemma Government remains committed to working with coastal communities in improving coastal infrastructure, boosting local economies, and creating jobs. In the last couple of weeks I have announced a number of significant initiatives on the North and South coasts. I have called for expressions of interest into the redevelopment of Wollongong harbour. Previously, the Government's vision for a redeveloped Yamba marina was backed with $340,000 in funding for the dredging and breakwater repairs along the lower Clarence.

The Hon. Duncan Gay: They need a bit more help up there yet.

The Hon. TONY KELLY: At least we are not diverting the Clarence and giving it to Queensland—which would have happened if you lot had got in. The Iemma Government is taking a balanced approach to these developments, focusing on sustainable growth, environmental protection and stronger regional economies, which are all central to the State Plan. The Iemma Government and Wollongong City Council have been working together on the redevelopment of the Wollongong city centre, and the foreshore and harbour area. We have now reached the stage where we will go to market and seek expressions of interest for the possible redevelopment of Wollongong harbour.

This initiative complements the Iemma Government's commitment to growing jobs and investment in regional areas. Again it is important to stress that it is not our intention to sell any land as part of the redevelopment. As asset managers, we are looking to the private sector to lease and invest in the land for the benefit of Wollongong, both now and in the future. The initiative will cover the areas known as Belmore Basin, Flagstaff Hill, Brighton Beach and the Continental Baths. The redevelopment will build on the harbour's unique heritage and maritime characteristics, transforming it into a pivotal destination of the future, a place where locals and tourists will be able to enjoy the beautiful natural environment and the heritage port.

The Department of Lands is also looking at the proposed redevelopment of Yamba Marina. With the new Federal Labor member, a former member of this House, things are looking up for the people of Yamba. The Yamba Marina has put a proposal to the Department of Lands and negotiations are now underway. The port precinct, facilities and associated services are ready to make the next step towards a vibrant, modern, marina-maritime precinct—

The Hon. Michael Gallacher: Is Cottee next?

The Hon. TONY KELLY: Yes, Kay Cottee is one of the partners in the Yamba Marina with whom I had lunch a couple of weeks ago when I made these announcements. The Department of Lands will be investigating a number of other aspects associated with the redevelopment, including enhanced use of the very valuable parcel of land fronting the Clarence River for maritime facilities and services, along with tourism, hospitality, entertainment, visitor accommodation and related purposes. The community and stakeholder groups will be consulted all along the way, with fact sheets, a website and meetings with council and key stakeholders such as the Clarence River Fishermen's Coop, whom I also met with the other day.

The Hon. Duncan Gay: Are you going to have a look at the area between the islands?

The Hon. TONY KELLY: Yes. The Iemma Government is backing the redevelopment with the funds to maintain and improve the mighty Clarence. As I said, the Coalition had a plan to dam the Clarence and send it north.

The Hon. Duncan Gay: No, we didn't.

The Hon. TONY KELLY: You did. Turnbull announced it.

The Hon. Duncan Gay: It was very quickly unannounced.

The Hon. TONY KELLY: No, he did not retract it and he is about to become the Leader of the Opposition. The Iemma Government continues to invest in the Clarence and the communities that depend on it. While at Yamba I announced $300,00 worth of dredging to improve navigation and restore access for boating opposite the eastern end of the middle tide wall of the Clarence. The work will assist the large Clarence River commercial fleet, as well as recreational boaters and fishers at Yamba Marina. Another $40,000 has been allocated to undertake minor crest repairs to improve the walkway and topping up of armour stone on the southern breakwater at Yamba. The Iemma Government continues to remain committed to investing resources into coastal infrastructure.

GAMBLING REVENUE

Dr JOHN KAYE: My question without notice is directed to the Treasurer. Is it true that gambling accounts for 9.5 per cent of the State's revenue collection? What steps has the Treasurer taken to determine the degree to which this revenue is regressive, in that it is collected from those who can least afford it? What steps has the Treasurer taken to reduce the dependency of this State on gambling revenue?

The Hon. MICHAEL COSTA: We have had this question before. The honourable member has had explained to him on a number of occasions that the Government has programs to deal with people who have gambling problems. As a result of the casino negotiations, of course, a community fund will be set up basically to provide programs for people who cannot gamble in a responsible manner. But let me make it absolutely clear that only a small minority of people choose to engage in gambling. We are not wowsers like the Greens about such recreational activity. If people choose to gamble in a responsible way, the Greens do not have any basis for making valued judgments about people's recreational pursuits. I do not make judgments about the recreational habits of the Greens. I am sure many people would find the habits of the Greens pretty strange as well.

Mr Ian Cohen: What are they? Name them?

The Hon. MICHAEL COSTA: I could name a couple. Getting on a surfboard and trying to stop the *USS Enterprise* I would suggest is an absurd recreational habit, but people are entitled to behave in such a way so long as they do so within the law. The Greens do all sorts of weird things. I have noticed that although the Greens purport to be environmentally responsible, some drive cars that have greater pollution outputs than those of most average family cars. So long as people act within the law and behave responsibly, that is alright. The Government and its members are not wowsers, whereas the Greens obviously are. They do not want people to enjoy life. That is why they try to ban anything that has any semblance of enjoyment, and we will remain opposed to the Greens if they continue to operate on that basis. We believe in having proper laws and programs to give support to people with problems. That is a sensible position. Is it any wonder that Kerry Nettle got thrown out of office—

The Hon. Marie Ficarra: Oh what a pity.

The Hon. MICHAEL COSTA: What a pity, did you say?

The Hon. Duncan Gay: With tongue in cheek.

The Hon. MICHAEL COSTA: I thought it was a great pity. I was on a polling booth, as was announced yesterday—

The Hon. Michael Gallacher: Not for very long though. You got kicked off.

The Hon. MICHAEL COSTA: I did not get kicked off. I will tell members what happened.

[*Interruption*]

The Hon. Duncan Gay: And our vote doubled.

The Hon. MICHAEL COSTA: No, it did not. We won the booth of Metford. There was a Green on the booth who got very upset when I asked her where—

Dr John Kaye: Point of order: My point of order is relevance. The question was about whether gambling was regressive or not. My question was not about who won election to the Senate.

The PRESIDENT: Order! The Minister has the call.

The Hon. MICHAEL COSTA: I was on a booth and I struck up a reasonable relationship with people from Bob Baldwin's office; we got on very well. We were offering each other water and other benefits but I will not tell members what they were. Probably the greatest benefit was my conversation with them. The reality was that one of the Greens became very upset with me. Metford is a coalmining town and the booth actually backed on to the railway line—you could hear the coal trains going forward on the line. This particular Green was giving handouts and talking about saving the planet. I just pointed out to her that their posters about closing the coal industry were nowhere to be seen. I asked should they not be honest and display their posters in that coalmining town about closing the coal mines. She got very offended and, in fact, threatened me. I was absolutely shocked. Luckily I was with Mark Sargent, the former front row forward for the Newcastle Knights, and I was able to be defended from this vicious Green— [*Time expired.*]

ALSTONVILLE BYPASS FUNDING

The Hon. JENNIFER GARDINER: My question without notice is directed to the Minister for Roads. Can the Minister recall earlier this month Mr Kevin Rudd announced that a Rudd-Gillard Federal Government

would spend $90 million to build the Alstonville bypass? Is the Minister aware this is the same project on which former Labor Premier Carr promised to spend $36 million, which included a Federal Government contribution of $12 million, to build the bypass by 2006? How is it that the cost of the project using Mr Rudd's estimate has gone up 400 per cent in just four years from $24 million in 2003 to $90 million in 2007? What does the Minister say about the type of project management that sees a project's estimated cost quadruple in just four years?

The Hon. ERIC ROOZENDAAL: While I may well be the Minister for Roads I do not think it is appropriate for me to express an opinion—which is what is sought by the question—about an estimation of the cost of a project. I will point out, however, that there is a huge skill shortage in this country and that is primarily the responsibility of the recently defeated Howard Federal Government. The skill shortage is being experienced particularly in the provision of infrastructure and construction. In addition, the resources boom in Western Australia and Queensland is chewing up many skilled staff.

The Hon. John Della Bosca: Which we are training.

The Hon. ERIC ROOZENDAAL: I acknowledge the Minister's interjection as being quite correct. We are trying to address the skill shortage issue, but if Hon. Jennifer Gardiner had any knowledge of the issues in the industry—

The Hon. Duncan Gay: Are you aware that whenever you say that the civil contractors tell me that they think you are a fool?

The Hon. ERIC ROOZENDAAL: And that from the genius who was able to organise a brilliant almost 6 per cent swing to Labor in Crookwell at the last Federal election! I understand he was booth captain at Crookwell, where there was a 6 per cent swing.

The Hon. Duncan Gay: Point of explanation. I was not and I will not be booth captain for Alby Shultz!

The Hon. ERIC ROOZENDAAL: While we are on the subject of booth captains, the Hon. Melinda Pavey I believe was the booth captain at Coffs Harbour. The Hon. Melinda Pavey, in true Nationals tradition, received an 8.29 per cent swing. As a result I know The Nationals will seek advice from the highest-ranking Nationals public office holder in New South Wales, the mayor of Dubbo, Mr Matthews.

The Government looks forward to working with the Rudd Government. I enjoy the irony of the Opposition now saying that we should work closely with the Federal Government. We begged members opposite to go to the now-defeated Howard-Costello Government to lobby for more Roads funding and a better deal for New South Wales. They refused to do so. Now they must share the responsibility for the defeat of the former Federal Government. The people of New South Wales have judged them first at the State level and now at the Federal level. The performance of a few other booth captains may be of interest to the House. The Hon. Catherine Cusack worked hard in the seat of Page, where a swing of 7.89 per cent was achieved. I believe the Hon. Matthew Mason-Cox was in the electorate of Eden-Monaro.

The Hon. Matthew Mason-Cox: Point of order—

The PRESIDENT: Order! Members who take points of order must address the standing orders and not make debating points. In light of that ruling, the Hon. Matthew Mason-Cox may proceed.

The Hon. Matthew Mason-Cox: My point of order relates to relevance. I ask that the Minister be brought back to the tenor of the question.

The PRESIDENT: Order! The Minister should always be relevant. His time to answer the question, however, has expired.

CHINA AND INDIA BUSINESS MISSION

The Hon. HENRY TSANG: My question is addressed to the Minister for State Development. Would the Minister inform the House about the Government's recent business mission to China and India?

The Hon. IAN MACDONALD: What a successful mission it was too.

[*Interruption*]

The Hon. Melinda Pavey should get back to her booth up north. If she stays there for another year, she may regain 1 per cent of the vote. I am pleased today to inform the House that the business mission was very successful in promoting the strengths of New South Wales' business, tourism and education capabilities in both China and India. The Government wants to increase opportunities in Asia, particularly in the world's booming economies of China and India. This was the largest-ever delegation to leave New South Wales, and the Premier and I were there to tell them that New South Wales is open for business. We met with government and business decision makers in both countries to ensure they understand that New South Wales has expertise and experience relevant to the needs of their growing economies. We were accompanied by 64 representatives from New South Wales companies—including all the major New South Wales coal companies—universities, government departments and organisations.

China is already our State's biggest trade partner, with two-way merchandise trade valued at $15.4 billion in 2006-07—surpassing our trade with Japan. According to research by Austrade, if the Chinese economy keeps growing at its current rate it will be as big as the United States economy within the decade and twice as large as the United States economy by 2050. Coal is currently our fourth largest export, in value, to China. In 2006-07 New South Wales exported 91.5 million tonnes of coal, which is worth $6.2 billion dollars in income. Of this total, New South Wales exported 2.4 million tonnes of predominately thermal coal to China in 2006-07, which is worth an estimated $180 million. Coal will continue to figure prominently in world energy markets for some time, and booming economies such as China are likely to constitute high-growth markets. It is likely that there will be a considerable increase in demand, which New South Wales coal production is gearing up to meet.

I am pleased to add that clean coal technology was a major discussion point on the trip with all energy companies. I constantly pushed the need for clean coal technology and the fact that New South Wales was fully capable of meeting the demands of the Chinese market over coming years. This was a major theme of my meetings with senior representatives of the major Chinese power generators and coal companies, including China Shenhua Energy Company, China Coal group, China Guodian corporation, China Datang group and Guangdong Yudean group. Clean coal technology and associated services are likely to become more important longer-term opportunities as environmental standards and emissions targets are adopted. As part of my visit, I signed a memorandum of understanding with the China Huaneng group, the largest of China's power companies, which produces about 8.5 per cent of China's domestic-installed generating capacity. The memorandum of understanding is aimed at developing a cooperative relationship in mineral resources and energy and will see closer cooperation on clean coal technologies. In fact, this group is a member of the FutureGen project in partnership with the United States. It also is involved in a GreenGen proposal to install a new clean coal-fired power station in Tianjin in 2009 to be linked with resources off shore for storage.

Showing New South Wales is "Open for Business" was the constant theme of the visit. In Hong Kong I met with senior executives from Hong Kong's two major power generators, China Light and Power and Hong Kong Electric, which is part of the Cheung Kong Group, to promote New South Wales coal and discuss clean energy projects. China Light and Power, which operates under the brand name TRUenergy, is the fifth largest energy retailer in Australia. TRUenergy is currently constructing a new, state-of-the-art gas-fired power station near Wollongong. That project is scheduled for completion in summer 2008-09. The New South Wales Government will continue to target China and India as priority markets to bring jobs, investment and prosperity to this State. I would expect members on the other side of the House to support us in this endeavour.

LIQUOR OUTLET REGULATION

Reverend the Hon. Dr GORDON MOYES: I ask the Minister for Roads, representing the Minister for Police, a question without notice. Is the Minister aware that the dramatic increase in the number and variety of venues selling alcohol will increase the burden on the State's police service in monitoring alcohol-related assaults, under-age drinking, antisocial behaviour and family violence? Is the Minister aware that a recent report conducted by the New South Wales Bureau of Crime Statistics and Research states:

> Between 1997 and 2007 New South Wales clubs experienced a fall in the proportion of assaults on licensed premises in NSW from 25% to just 18%? Meanwhile, hotels have increased over that time to 70% of all assaults on licensed premises. Nightclubs … still recorded nearly five assaults per venue.

Can the Minister indicate the measures that will be implemented to clamp down on violence, under-age drinking and increased hospitalisations due to the impact of the proliferation of liquor outlets in New South Wales?

The Hon. ERIC ROOZENDAAL: I will refer the member's question to the Minister for Police for an appropriate response.

BRANXTON LINK ROAD

The Hon. ROBYN PARKER: My question without notice is addressed to the Minister for Roads. Is the Minister aware of comments by the Federal member for Hunter about the F3 to Branxton Link Road that he is no longer convinced the project is the best option for the area and wants a new independent assessment? Is the Minister aware that his State colleague the member for Maitland, Frank Terenzini, told Parliament last month that the building of this link road has become a major priority, and the member for Cessnock, Kerry Hickey, said in the State election campaign that this was the top road priority in his electorate and would relieve congestion on the New England Highway and George Booth Drive? Will the Minister clarify which comments he supports and why?

The Hon. ERIC ROOZENDAAL: As I am not aware of the specific comments, I would like to check their accuracy. Any investment on Hunter roads is welcome. The Government is committed to continuing to upgrade the New South Wales roads network and we will work towards that end.

SHELLHARBOUR AND SUTHERLAND CRIME PREVENTION INITIATIVES

The Hon. IAN WEST: My question is directed to the Attorney General. What is the latest information on crime prevention initiatives in Shellharbour and Sutherland?

The Hon. JOHN HATZISTERGOS: The Government recognises that engaging local community in safety programs helps tackle the causes of crime, helps people in the community feel safer and encourages the reporting of any crimes that occur. That is why the Government's State Plan emphasises the importance of partnerships with local communities to develop crime prevention strategies at a grassroots level. Last week I was pleased to announce, together with the member for Shellharbour, that Shellharbour City Council's new Crime Prevention Plan had been endorsed as a safe community compact under the Children (Protection and Parental Responsibility) Act 1997. This means that council will be eligible for up to $150,000 of State government funding over the next three years. Significantly, it is the first crime prevention plan in New South Wales to be written by a council in partnership with New South Wales Police.

I thank my colleague the Minister for Police for his support for these crime prevention initiatives. By sharing information and resources the council and Lake Illawarra local area command will be able to develop the most effective methods of combating crime and enhancing community safety. The plan, which involved extensive community consultation, identifies three priority issues to address: property crime, with a focus on car stealing and theft from motor vehicles; drug and alcohol abuse, recognising that many crimes are committed by people who are intoxicated or looking to support an addiction; and physical and sexual violence, with a view to increasing awareness of domestic violence and reducing the vulnerability of young people.

Previously, Shellharbour City Council received more than $150,000 in State Government funding to implement crime prevention programs, such as the Koori Tracks project, which improved access to training, education and work experience for young people; a youth development project that sought to reduce graffiti and vandalism of public and private property through the promotion of young people's rights to access public space; and the Safer Women project, which raised awareness and increased the willingness of local women to access support services.

Earlier this month I was also pleased to announce—along with the hardworking member for Miranda and Parliamentary Secretary, Barry Collier—that Sutherland Shire Council's crime prevention plan had been endorsed, also making it eligible to apply for funding up to $150,000 over the next three years. Following extensive consultation with police, Sutherland Shire Council's crime prevention plan has identified four priority areas to be addressed: safety in public places; safety of families, women and children; alcohol-related crime; and increasing community involvement in crime prevention. Council will identify priority locations based on community concerns and crime data, and will take steps to make the areas safer.

Sutherland Shire Council has consistently produced innovative grassroots crime prevention programs, including an early intervention support scheme for children in violent domestic situations, a research project on

domestic violence to identify service improvement, a graffiti reduction project in conjunction with private property owners that implements rapid removal principles, and a free late- night shuttle bus aimed at reducing drink driving and alcohol-related crime. In recent years the New South Wales Government has provided more than $165,000 funding for Sutherland's crime prevention projects.

In conclusion, harnessing local knowledge to develop crime prevention strategies has proven to be the most effective way of creating safer communities. Shellharbour and Sutherland's crime prevention plans demonstrate how the Government and the community can work together to address the key factors that influence local crime.

BACTERIAL GASTROENTERITIS OUTBREAK

Reverend the Hon. FRED NILE: I ask the Attorney General, representing the Minister for Health, a question without notice. Is it a fact that recently seven New South Wales residents, including three children, have been infected with a rare bacterial gastroenteritis, which could cause kidney failure? Is it a fact that this infection is associated with contaminated meat? What action is the Government taking to contain this infection that has occurred in Newcastle, Tamworth and Sydney?

The Hon. JOHN HATZISTERGOS: I will refer the matter to the Minister for Health.

PACIFIC HIGHWAY, MOUNT COLAH, TRAFFIC LIGHTS

The Hon. JOHN AJAKA: My question without notice is directed to the Minister for Roads. Is the Minister aware of the repeated requests by the Mount Colah community and the local member, Judy Hopwood, over many years for traffic lights to be installed on the Pacific Highway at Foxglove Road, Excelsior Road or Beryl Avenue? Is the Minister aware that a Roads and Traffic Authority audit carried out in 2005 failed to include peak hour statistics for this intersection, and that in 2006 a Roads and Traffic Authority representative promised a public meeting of 100 people that a review of the audit statistics could be carried out, only to later deny such a statement was ever made? Will the Minister step up and provide traffic lights at this dangerous black spot or will a tragic accident have to occur before action is finally taken?

The Hon. ERIC ROOZENDAAL: I believe I have already answered this question, which was asked on notice.

SKOOOL LEARNING SERVICE

The Hon. PENNY SHARPE: My question is directed to the Minister for Education and Training. Will the Minister inform the House about the latest digital learning tools to be used in New South Wales public schools?

The Hon. JOHN DELLA BOSCA: Last Tuesday I had the pleasure of joining leading information technology company Intel in the launch of a new state-of-the-art classroom learning service—Skoool—at Clemton Park Public School. The Iemma Government is placing New South Wales at the forefront of digital learning, putting more than 200 high-quality multimedia mathematics and science resources at the fingertips of students and teachers. Clemton Park Public School was one of 13 schools across New South Wales in which the resources were trialled.

Skoool is connected to the New South Wales curriculum and will provide students in years five to eight with more tools to learn mathematics and science. It uses animations and activities to supplement science experiments and support students in building the knowledge they need to be able to do laboratory-based science experiments. For example, skoool resources enable students in a unit on breathing and respiration to resuscitate a virtual human being who has stopped breathing; students in a physics unit can use the Archimedes principle to test items retrieved from a robbery and find out if they are real or fake; in a unit on magnetism students use a magnet to lift different types of metal from a conveyor belt; and in mathematics the resources enable students to plot points on images and video and graph the points to create two-dimensional and three-dimensional shapes.

In years 9 and 10 students learn about electricity, including voltage currents and Ohm's law and circuits. This program will give students the opportunity to expand their scientific skills and experiment in a safe manner. This is another initiative the Iemma Government is using to boost and re-energise student enthusiasm about mathematics and science. When skoool is used with an interactive whiteboard it supports collaborative

work and group teaching. The Iemma Government's four-year $158 million Connected Classrooms Program is providing interactive whiteboard and videoconferencing technology, network enhancements and e-learning tools. This year we will spend $7 million to purchase approximately 200 interactive whiteboard and videoconferencing installations.

By placing skoool on the Department of Education and Training's teaching and learning exchange website, students will be able to access these new resources outside of the classroom with their parents. New South Wales is the first State in Australia to customise these outstanding online learning resources for its public schools. Intel World Wide Education and the Irish and United Kingdom governments developed skoool using the expertise of teachers, education experts and learning designers. It has been provided free to New South Wales' public schools, saving taxpayers the cost of buying the resources from a commercial developer or the Department of Education and Training developing them from scratch.

With no establishment or ongoing fees, skoool will deliver significant cost benefits and save many years of program development time. Schools are able to store the content locally at the school level using dedicated servers, which maximises access. The partnership with Intel is one of several that the New South Wales Government's Centre for Learning Innovation has embarked on in recent years with the aim of providing New South Wales public schools and TAFE institutes with the highest quality online services and resources. This partnership is another example of the high standard and quality of the New South Wales education system.

F5 DOUGLAS BRIDGE LONGWALL MINING

Mr IAN COHEN: My question is addressed to the Minister for Roads. Following the tragic events of June this year when part of the old Pacific Highway near Somersby collapsed from flooding, killing an entire family, and given that the Government has approved BHP Billiton's longwall mining operation near the Douglas Bridge on the F5, which crosses the Nepean River, despite advice from Roads and Traffic Authority consultants in 2005 who stated that there is "possibly a significant risk to life", that subsidence could be sudden, and that it is impossible to accurately predict the subsidence risk to the F5 freeway or the bridge, will the Minister take responsibility for any potential loss of human life resulting from the Government's decision to let BHP Billiton mine underneath the F5 and near to the Douglas Bridge?

The Hon. ERIC ROOZENDAAL: It is very important when considering tragic matters such as the Somersby subsidence of the old Pacific Highway that we not pre-empt the investigations of the Coroner. I would strongly resist any attempt to pre-empt the inquiry into what caused the terrible accident that claimed a number of lives from one family. Therefore, I am very cautious in my response in relation to these matters, particularly regarding Douglas Bridge.

I will not accept any tenet of the cause of the Somersby collapse: that is the job of the Coroner and we should allow the Coroner to carry out the investigation in a professional and independent way. But in relation to the Douglas Bridge twin bridges, I am advised that they are structurally sound. The Roads and Traffic Authority has been working with Illawarra Coal, the New South Wales Government Mines Subsidence Board and the New South Wales Department of Mineral Resources to identify all of the potential impacts local mining might have on Roads and Traffic Authority infrastructure, including the Douglas Park twin bridges. That is the appropriate strategy for the Roads and Traffic Authority to adopt: liaising with the other responsible agencies to ensure that its infrastructure remains sound and safe.

As a result, the bridges have been extensively surveyed by geotechnical, engineering and consultant bridge experts. In addition, geotechnical investigations have been carried out in the surrounding area. It is important that we rely on the appropriate investigations undertaken by experts in their field, whether they be geotechnical, engineering or bridge experts, who will examine not only the infrastructure but also the surrounding area to see whether there are potential risks from impact.

The Roads and Traffic Authority has developed a risk management plan to be implemented when the mining is underway that includes ongoing monitoring of the bridges. It is important to note that ongoing monitoring of the bridges will be conducted during this process to ensure that they remain in an appropriate state. I am advised that the Roads and Traffic Authority decided to restore the bridges to their original condition before mining begins and that the work will be managed by the Roads and Traffic Authority and funded by the mining company and industry. This work included the replacement of several bridge bearings and the realignment of decks spans on both bridges. Work began in August 2007 and was completed at the end of October 2007. I reiterate that the Douglas Park bridges are structurally sound and that the Government will

continue to carefully monitor their structure and the surrounding area while relying on the advice of geotechnical, engineering and consultant bridge experts.

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

DEFERRED ANSWERS

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

DEPARTMENT OF COMMUNITY SERVICES HELPLINE

On 23 October 2007 Reverend the Hon. Fred Nile asked the Minister for Roads, representing the Minister for Community Services, a question without notice regarding the Department of Community Services Helpline. The Minister for Community Services has provided the following response:

> Yes. The Department has received a significant increase of child protection reports from 107,394 in 2000-01 to 241,003 in 2005-06.
>
> During 2005-06, the largest number of child protection reports came from Police (33.4% of all reports). Reports received from Police involving domestic violence as the primary reported issue constitute 19.5% of all reports to the Helpline.
>
> The Government has initiated a Special Commission of Inquiry, headed by the Hon. James Wood AO, QC, to examine how child protection services in NSW can better deal with the increasing number of child protection reports and improve the care of vulnerable children. Helpline operations will be examined as part of the review.

LOCAL GOVERNMENT HERITAGE LISTINGS

On 24 October 2007 Reverend the Hon. Fred Nile asked the Minister representing the Minister for Local Government a question without notice regarding local government heritage listings. The Minister for Local Government has provided the following response:

> This matter concerns the provisions of the Heritage Act 1977, which falls within the portfolio responsibilities of the Minister for Planning, the Hon. Frank Sartor.
>
> The Honourable Member may therefore wish to refer his questions regarding this matter to the Minister representing the Minister for Planning.

POLE DANCING

On 24 October 2007 Reverend the Hon. Dr Gordon Moyes asked the Attorney General, representing the Minister for Women, a question regarding pole dancing. The Minister has provided the following answer:

> I am aware of the community concerns raised regarding children engaged in pole fitness classes and of the American Psychological Association report entitled Report of the APA Task Force on the Sexualisation of Girls.
>
> I appreciate that pole dancing and pole fitness classes are something that women may wish to participate in, however I do not believe that pole dancing is an appropriate form of exercise for young girls.
>
> The APA report cites a range of positive alternatives to the sexualisation of girls. These include such things as:
>
> - the developing and implementing school-based media literacy training programs which teach critical skills in viewing and consuming media;
> - increasing access to athletic and other extracurricular activities;
> - sexuality education programs;
> - strategies for parents and caregivers to learn about the impact of sexualisation on girls; and
> - parents co-viewing media with their children in order to influence the way in which media messages are interpreted.
>
> The Australian Psychological Society has produced a tip sheet, 'Helping girls develop a positive self image', based on the recommendations of the American report and if Members are interested I am advised that these publications are available on request from the Office for Women.
>
> The sexualisation of children through any medium is a serious issue and the Government is concerned both about the sexual objectification of women, and the sexualisation of children.

New South Wales Government strategies include:

- Introducing the Be Active After School initiative to encourage girls and boys to be more active in after school care;
- Continuing to encourage young people, especially young women, to take part in sport and physical activity. Programs include: the delivery of special sports development camps for girls aged 11 to 18 years with a disability – to increase activity for these girls and to nurture and develop talent; community based participation programs such as the Arabic Girls Multi-Sport Program; It's a Girl Thing dance program; and a girl's surfing program;
- Developing the SistaSpeak program for Aboriginal girls in New South Wales, tailored to the specific needs of 11-13 year old Aboriginal girls, with a focus on self-esteem;
- Recognising that young people can have particular mental health needs, for example, in relation to depression, anxiety and eating disorders, and committing to spending $28.6 million to develop tertiary mental health treatment services for young people 14-24 years of age and employing a Statewide service development coordinator for eating disorders;
- Proving information resources for young men and women through the Youth New South Wales website about a range of issues facing young people, including sexuality;
- Delivering a range of programs in primary and secondary schools, through the Departments of Health and Education and Training, to encourage physical activity and healthy eating by children and young people

Members may also wish to access the Youth New South Wales website which contains more details about the Government's Youth Action Plan and initiatives to encourage healthy lifestyles among young women and men in New South Wales.

Questions without notice concluded.

[*The President left the chair at 1.02 p.m. The House resumed at 2.30 p.m.*]

COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

Report: Review of the 2005-2006 Annual Report of the Independent Commission Against Corruption

Debate resumed from 14 November 2007.

The Hon. GREG DONNELLY [2.30 p.m.]: I am pleased to continue debate on the Committee on the Independent Commission Against Corruption report entitled "Review of the 2005-2006 Annual Report of the Independent Commission Against Corruption". This review was the first ICAC committee inquiry I have been involved with. The report draws Parliament's attention to issues surrounding the role of the Independent Commission Against Corruption in relation to the prosecution of offences that arise out of its investigations. The committee has focused on two areas—firstly, problems of delay between the referral of evidence from the ICAC to the Director of Public Prosecutions for consideration and the receipt of the DPP's final advice on the matter and, secondly, the extent to which the ICAC undertakes further investigation at the DPP's request after it has effectively concluded its inquiry into the matter. Another matter given consideration by the committee concerns the extent to which matters are reviewed by the ICAC where a prosecution arising from an ICAC investigation results in an acquittal.

The ICAC does not make findings of guilt in relation to a disciplinary or criminal offence and does not recommend prosecution but it can express an opinion as to whether consideration should be given to prosecution for a criminal or disciplinary offence. The ICAC also assembles admissible evidence for prosecutions where its investigations reveal evidence supporting disciplinary or criminal charges. Importantly, this not a principal function of the ICAC: those functions are to investigate corruption, and engage in corruption prevention and education measures. Moreover, evidence assembled to fulfil ICAC's primary function of determining whether corrupt conduct has occurred will not necessarily be admissible or sufficient to establish guilt to a criminal standard—that is, beyond a reasonable doubt.

The DPP considers the admissible evidence assembled by the ICAC and determines whether it establishes all elements of an offence. If necessary, the DPP may requisition the ICAC to provide additional information on a particular matter. As a matter of policy, the DPP's office will not undertake its own interviews or its own investigations and the police remain relatively uninterested in matters the ICAC is investigating.

Therefore, the ICAC for reasons of necessity continues to assemble admissible evidence once an investigation had been completed. The relationship between the DPP and ICAC is guided by a memorandum of understanding agreed to in 2005, which includes time frames for the provision of information and advice between both agencies.

On the basis of the information available to the committee, it was evident that there have been some instances of unacceptable delays in the process whereby decisions are made as to whether to initiate criminal prosecutions against a person found by the ICAC to be acting corruptly. Statistics on current matters showed that the number of days between the submission of a brief to the DPP and final advice from the DPP ranged from a minimum of 11 to a maximum of 1,508—that is, over four years. A number of matters submitted in 2005 and 2006 were still awaiting advice.

I do not intend to go through in detail what were two extensively examined case studies in the ICAC report. Honourable members who wish to do so can avail themselves of a copy of the report, and I recommend they specifically read the case study of Operation Muffat and Operation Agnelli. The committee specifically looked at those two case studies because they provided us with some valuable insights into some of the reasons contributing to, and have contributed to in the past, delays in matters being progressed. Obviously, such delays are significant. As Bruce McClintock, SC, noted in his 2005 report on the review of the Independent Commission Against Corruption Act, the issue of delay is a "significant problem" in that "convictions may be more difficult to obtain as witnesses disappear and memories fade. The affected person's reputation, employment, and family suffer while awaiting the exercise of prosecutorial discretion".

McClintock described the pattern of delay between the ICAC making a recommendation that consideration be given to prosecution and the initiation of criminal proceedings as unacceptable. He found that the ICAC and the DPP had each "in varying but unidentified degrees, contributed to [the] delay". McClintock in his examination identified some of these causes for delays. They included delay in ICAC forwarding a brief of evidence to the DPP following the release of its investigation report, delay in the provision of advice by the DPP following receipt of the brief from the ICAC and delay in the ICAC responding to requests from the DPP for further information. Like the committee, McClintock considered that the differing roles of the ICAC and the DPP lay at the heart of the problem. Accordingly, McClintock said:

> Delay is [at least in part] a consequence of separating the investigation function from that of prosecution. The lack of clarity as to who is ultimately responsible for initiating criminal proceedings has contributed to a culture where neither agency accepts that it is their primary responsibility to initiate and conduct timely and effective criminal prosecutions arising out of ICAC investigations.

Commissioner Cripps, who, as we know, is the current ICAC commissioner, summed it up well in our view with the following words in the evidence he gave to the committee:

> There is a self-evident problem associated with two agencies doing things towards a common end and neither agency is responsible to the other.

Our report also examines in some detail a number of proposed initiatives to reduce the extent for delays in commencing prosecution following an ICAC investigation. We believe they should include improving the quality and timeliness of assembling admissible evidence and improving the relationship between the ICAC and the DPP. The ICAC had shifted towards assembling admissible evidence during the investigation process, rather than compiling a brief and assembling admissible evidence at the conclusion of an investigation. Greater emphasis was to be given to alternatives to hearings as sources of admissible evidence.

As an accountability measure and as a means of transparently monitoring the extent of any delays that occur, the committee recommended that the ICAC include more information in future annual reports on the time that has elapsed between the date when it finalises an investigation report, when it sends the brief to the DPP and when it receives final advice from the DPP as to whether or not there is sufficient evidence to prosecute. At a minimum the committee will continue to examine the ICAC in public on these matters when it views each of the ICAC's annual reports.

The committee intends to review the progress made in arriving at a new memorandum of understanding in May 2008, six months from the publication of the committee's report. At that stage the committee will request an update from the commissioner on the progress made in respect of negotiations between the ICAC and the Office of the DPP on the operation of the memorandum of understanding. As the committee to date has heard evidence from the ICAC, it also wishes to obtain the DPP's perspective on the operation of the memorandum of understanding and the current situation regarding prosecution action arising from ICAC investigations.

In conclusion, I note that the good work of the committee in that members from all political parties worked in a harmonious fashion. Frank Terenzini, the member for Maitland, is the new chair of the committee. He moved into that role seamlessly from the former chair. In my view he did an excellent job. In particular, I extend thanks to the committee staff, who provided valuable assistance in the preparation of the report.

Question—That the motion be agreed to—put and resolved in the affirmative.

Motion agreed to.

STANDING COMMITTEE ON LAW AND JUSTICE

Report: Review of the Exercise of the Functions of the Motor Accidents Authority and the Motor Accidents Council—Eighth Report

Debate resumed from 14 November 2007.

The Hon. AMANDA FAZIO [2.41 p.m.]: I speak in support of the report of the Standing Committee on Law and Justice entitled "Review of the Exercise of the Functions of the Motor Accidents Authority and the Motor Accidents Council—Eighth Report". As was outlined in detail by the Hon. Christine Robertson, who chairs the Standing Committee on Law and Justice, this is the committee's eighth report into the exercise of these functions. The committee is making much more progress with reviews into the Motor Accidents Authority and the Motor Accidents Council.

In recent times the committee has tended to focus on one or two particular areas of interest each year and has broadened the number of stakeholders involved in reviews. This year the committee did not receive as many submissions as it has received in the past but that is because many issues raised in the early days when the scheme was being reviewed have been responded to quite effectively as a result of the committee's inquiries, recommendations, the Government's response and implementation of the recommendations by the Motor Accidents Authority and the Motor Accidents Council. The committee is doing good work in ensuring that the concerns of the public are being addressed.

One of the concerns that the committee is perennially being asked to address relates to submissions from the legal profession on its opposition to the philosophy underlying the scheme. That is outside the committee's terms of reference, as it was a Government decision that has been legislated. The committee is examining the operation of the scheme, not the philosophic basis of the scheme. The issues raised by the legal fraternity in relation to the actual operation of the scheme tend to be finetuning matters and the committee gives serious consideration to those matters. The committee has not as yet examined the Lifetime Care and Support Scheme for those who have suffered catastrophic injuries in motor vehicle accidents because that scheme has not been going long enough to warrant a review and any outcomes of that review would not have been worthwhile.

I turn now to the 10 recommendations that the committee has made that finetune and improve the operation of the scheme. They are not major recommendations to make changes because overall the scheme is operating very well, but result from issues raised either by medical associations about the application of the American Medical Association guidelines to the evaluation of permanent impairment and such issues. Recommendation 1 states:

> That the Chair of the Motor Accidents Council provide a response to the comments of the NSW Bar Association's representative on the Council as set out in this report regarding its effectiveness and, in particular, in relation to its role to provide advice to the Minister.

The committee is responding to issues brought to its attention and is making recommendations that allow any issues raised to be put into practice. Recommendation 2 states:

> That the Motor Accidents Authority undertake a review of Whole Person Impairment assessments to establish the extent of inconsistencies and to identify, if necessary, additional quality control mechanisms to improve consistency.

The committee felt this recommendation was necessary because some submissions and evidence demonstrated discrepancies between the levels of impairment determined for somebody at the time of the initial assessment of their medical condition and at a later assessment. Many things could explain that. The committee heard anecdotal evidence claiming inconsistencies or cases of people doing assessments of permanent impairment who were not singing from the same songbook. The information we have received from assessors appointed under

the Act outlined the excellent training and regular updates that they have received. This led me to feel confident that they are undertaking thorough and consistent reviews of people. However, as the issue has been raised the committee felt it had the responsibility to review the matter and resolve once and for all whether consistencies exist and, if so, what is causing them.

Recommendation 3 relates to the procedures and rules in relation to medical assessors and conflicts of interest because of the very vexed issue of some people thinking it would be better if medical assessors did only medical assessments rather than undertaking work for insurers or worked in other medical fields. The committee received the strong message from the Motor Accidents Authority and medical assessors that that restriction is too onerous. They felt it would prevent them from seeing the full range of cases necessary to ensure that medical assessors keep their skills up to date. They believed it was garnering the necessary level of peer support knowledge by working in the broader environment. Regulations and safeguards are in place to ensure that no medical assessor could be perceived by any reasonable person to be captive of either insurers or clients. However, as the issue was raised, the committee will ensure that there are no grounds for concern.

Recommendation 4 relates to delays in finalising medical assessments and claims. The committee received anecdotal evidence that delays were occurring. The committee will look at delays taking longer than 10 months because the vast majority of claims are completed well within the approved guidelines and only a rare few go beyond nine months. We thought we would look at what was causing the long delays in relation to some of the claims.

The committee received quite a deal of information from the Motorcycle Council of New South Wales regarding the premiums that are paid by motorcycle riders. The council felt that the premiums motorcycle riders were being charged were too high. We received a considerable amount of information and evidence on that aspect, which would indicate that, having raised the issue with the committee and having required people to focus their attention on it a little more closely, in effect motorcycle riders are probably being undercharged for their premiums. Indeed, in future years motorcycle riders may face increases in their premiums, simply because of the nature of the injuries they sustain and the fact that a large number of the accidents that cause these injuries do not involve another vehicle.

Further issues the committee looked at are detailed in the report. I believe the review process is becoming a very valuable exercise for people involved in the operation of the scheme. It provides a good check on the operations of the Motor Accidents Authority and the Motor Accidents Council. It is also a good avenue for organisations and individuals who have a specific concern about the operation of both the authority and the council to ventilate these issues on an annual basis, and it ensures that their concerns are given due consideration by the committee and are reported upon.

The Government has introduced a number of finetuning changes to the operation of the scheme as a result of these reports. I think that is because of the constructive way in which the whole review process is undertaken and the constructive way in which the members of the committee, who are from all parties, work together to try to ensure we get a good outcome for the people who have to work within the scheme, for the victims of motor accidents, and for the medical and legal practitioners who are involved in that process. As I said, the review process is a very valuable exercise in that it ensures that the concerns identified by all the players in the operation of the scheme can be given public and open scrutiny on an annual basis, that the committee will respond to the issues raised, that the people involved know that the Government in turn will respond to the committee's recommendations, and that if changes are needed they will be made.

The Hon. GREG DONNELLY [2.52 p.m.]: I will make a brief contribution to the take-note debate on the thirty-fourth report of the Standing Committee on Law and Justice, which is entitled "Review of the Exercise of the Functions of the Motor Accidents Authority and the Motor Accidents Council—Eighth Report". As honourable members would be aware, the report was tabled in the House on 8 November 2007. First I wish to thank my fellow committee members, particularly the chair of the committee, the Hon. Christine Robertson, who once again presided over the committee's work in what has become, as the Hon. Amanda Fazio said, a very useful exercise in looking at, in some detail, the functions of the Motor Accidents Authority and the Motor Accidents Council. The committee made a total of 10 recommendations, which were adopted unanimously. I believe this reflects the degree of cooperation across party lines in examining this important issue.

The Standing Committee on Law and Justice has been nominated by the Legislative Council to conduct the ongoing review of the Motor Accidents Authority and the Motor Accidents Council, as required by section 210 of the Motor Accidents Compensation Act 1999. As in previous reviews, the committee examined the

Motor Accidents Authority's overall assessment of scheme performance for 2005-06 against the four indicators of affordability, effectiveness, fairness and efficiency. Of course, the election meant that this time around we were somewhat late in our assessment of the annual report. As the Hon. Christine Robertson said in her contribution, with the introduction of the Lifetime Care and Support Scheme, which has been initiated by the State Labor Government, the Motor Accidents Authority will report on a new basis in future annual reports.

The committee found that in the last year of its current reporting structure the scheme continued to perform well when assessed against its performance indicators. During the previous review the Motor Accidents Authority advised that it was working on incorporating health outcomes for injured road users into its assessment of scheme performance. During the review the committee heard evidence of the work that the Motor Accidents Authority was undertaking with stakeholders. This was important in enabling the committee members to inform themselves about all relevant matters associated with the operation of the scheme. The committee reiterates its support for the introduction of the indicators I have referred to with respect to the scheme and the importance of using them as benchmarks.

The committee found that the Motor Accidents Authority and the Motor Accidents Council are performing their respective functions under the Act in an appropriate and competent manner. Notably, the downward trend in the price of compulsory third party premiums, both in dollar terms and as a percentage of weekly earnings, continued throughout 2005-06 and decreased even further during the course of the review. It is evident that the Motor Accidents Authority is continually seeking to improve the way the scheme performs within its current legislative framework.

The aim of many of the recommendations made by the committee in its report is to support or enhance initiatives being considered or implemented by the Motor Accidents Authority. As the Hon. Amanda Fazio said, we are talking about evolutionary, progressive improvement in some arrangements which in our estimation and assessment are fundamentally working. The committee was interested to assess the nature of the relationship between the scheme's stakeholders and the Motor Accidents Authority and the Motor Accidents Council. The committee found that the Motor Accidents Authority consults widely, is willing to discuss and explain issues, and has fostered a professional relationship with various stakeholder groups. The committee also found that generally there was a positive view of the value of the Motor Accidents Council as a representative forum in which information can be shared and differing views can be expressed. The committee heard evidence from a representative of the Bar Association who is on the Motor Accidents Council regarding what he perceived to be the difficulty in getting the council to consider making recommendations regarding the scheme through the board and to the Minister.

All the participants in the review acknowledged improvements in recent times to the general Medical Assessment Service process. From its review the committee found that the performance of the Medical Assessment Service continued to improve, including in relation to the timeliness of finalising matters. The average overall lifecycle of a Medical Assessment Service dispute reduced by 17 per cent from the last reporting period, and statutory time frames for the progress of assessments were being met in a significant majority of matters. Under the scheme, for an applicant to be eligible for compensation for non-economic loss, he or she must exceed the threshold of 10 per cent whole-person impairment, which is referred to as WPI. A significant proportion of the work of the Medical Assessment Service concerns disputes about whole-person impairment. In the reporting period, whole-person impairment disputes comprised 80 per cent of Medical Assessment Service assessments, and in 80 per cent of those assessments the outcome was not in favour of the claimant, which is similar to previous years. The 10 per cent whole-person impairment threshold was the most debated issue during this year's review.

It has been a matter of debate for some time. As the threshold is a matter of policy for the Government, the committee focused from the outset on the operation of the Medical Assessment Service in relation to the threshold rather than the threshold itself. The committee heard from both the Law Society and the Bar Association about their concerns with respect to consistencies in the assessment of whole-person impairment between the medical assessors, including on review. Both the Law Society and the Bar Association believed there was a great need for consistency among Medical Assessment Service assessors, as well as ongoing training and performance review. I invite interested honourable members to look at the evidence of those two organisations in detail. Specific examples can be seen in that evidence to validate the position of both organisations as put to the committee.

The Motor Accident Authority concurred that consistency is a fundamentally important measure of the Medical Assessment Service process. The committee was advised that the service was focusing a significant

amount of development, training and resources on ensuring as much consistency and accuracy in assessment as possible. Indeed, some time was taken to provide the committee with detailed insights into the extent of training given to medical assessors. I must say I was pleasantly surprised to see how extensive and detailed that training was. It should be noted that the training is not a one-off exercise of putting someone through a half-day workshop. The authority is clearly determined to ensure ongoing training of assessors and, where necessary, refreshment training.

I conclude by reiterating my thanks to my fellow committee members for what was a bipartisan approach to producing a unanimous report. The work of the committee was well worthwhile and whilst we have not yet detailed next year's specific objectives preliminary discussions have been held. I am sure the committee will apply itself in the same way next year and produce another good report. I also take the opportunity to thank staff of the committee secretariat, who worked so hard to ensure all the evidence was provided to the committee for deliberation. A lot of work was also done in the preparation, typing and proofreading required to produce a fine report.

The Hon. CHRISTINE ROBERTSON [3.02 p.m.], in reply: I thank all members for their contribution to this debate. I will continue with my remarks on the report that I was unable to complete the first time round. Other issues raised during the review were the amount of legal and other costs recoverable by claimants under the scheme, the limit set for accident notification forms and the right to appeal to the Claims Assessment and Resolution Service.

In relation to the legal costs, currently under the Motor Accidents Scheme the maximum amount of legal costs that a claimant may recover is $1,540. This amount is set by regulation. In this and previous reviews the New South Wales Bar Association and the Law Society have argued that the amount set by the regulation is inadequate. They have also argued that this inadequacy is exacerbated in claims that are subject to medical reviews and further assessments. It was put to the committee that the amounts set by the costs regulation has in effect discouraged people from making or pursuing claims. In its seventh report the committee recommended that the Motor Accidents Authority report to the committee on its analysis of the impact of the costs regulation on claimants, with a view to determining whether the regulation significantly disadvantages claimants at the expense of insurers. We have heard from several committee members on this issue during the debate.

During the review the committee heard that after some initial delay a joint study involving the Motor Accidents Authority and the Law Society into the impact of the cost regulations on claimants is now underway. One thing that became clear during the review was that the Motor Accidents Authority's consultative processes with other stakeholders, particularly the Law Society, has been and continues to be extensive. The committee in general thought that was appropriate. The committee was of the view that if the opinion expressed to it over a number of reviews is correct—that is, that claimants are unfairly disadvantaged by the current costs regulation—then that should be remedied as soon as possible. However, the committee was mindful that the issue requires full and proper examination. Therefore, it recommended that the Motor Accidents Authority make the study of the impact of the costs regulation on claimants a priority and resource it accordingly.

In relation to accident notification forms, the Motor Accidents Compensation Act 1999 requires the Motor Accidents Authority to review each year the maximum treatment expenses for injured persons that insurers are required to pay for a claim notified by way of an accident notification form, referred to as an ANF. A maximum of $500 has remained the same since the scheme's inception. The committee was advised that the Motor Accidents Authority had developed a proposal to expand the accident notification forms scheme and this had received unanimous support when presented to the Motor Accidents Council. The Motor Accidents Authority advised that it had examined the profile of small claims up to about $5,000 to see whether they would lend themselves to being dealt with within an expanded accident notification form scheme. Following the presentation to and support from the Motor Accidents Council, the Motor Accidents Authority advised it was developing a proposal for consideration by the Minister.

The committee noted that the 1999 legislation sought to streamline the claims process to make it less adversarial and court-based and so reduce transaction costs and provide a more claimant-friendly environment. One aim of the legislation was to improve claimants' access to earlier payment for treatment, thus assisting in improved health outcomes. A key reform of the 1999 legislation was the introduction of the accident notification form. The committee supports the introduction of an expanded accident notification form scheme as a means of facilitating the early resolution of claims and faster payments for medical treatment and other types of damages. It therefore recommended that the Minister support the expansion of the accident notification form scheme as proposed by the Motor Accidents Authority and that the authority take the necessary steps to implement the expanded scheme as soon as possible.

The committee also dealt with the right to appeal Claims Assessment and Resolution Service assessments. All disputed motor accidents claims must go to the Claims Assessment and Resolution Service. There is no access to court unless the matter has first been sent to the service. The service will either assess the claim or will find the matter exempt or unsuitable for assessment and issue an exemption certificate allowing the matter to proceed to court. The Claims Assessment and Resolution Service will assess a claim with respect to liability and to the amount of damages payable. A finding by a Claims Assessment and Resolution Service assessor about liability is not binding on either party and a finding about the amount of damages is binding on the insurer but not on the claimant.

There are two avenues for appeals against Claims Assessment and Resolution Service decisions. First, if a claimant is dissatisfied with the substance of a Claims Assessment and Resolution Service assessment of the injured person's damages, the claimant can appeal to the District Court. The insurers are not afforded this right of appeal but are bound by the assessment. Second, if either party believes the correct processes were not followed, they can make an appeal to the Supreme Court for judicial review on the common law ground of lack of procedural fairness. During the review the committee was advised that since 1999 there have been only 15 summonses issued in the Supreme Court, all of which were issued by insurers. That is a very small number when viewed in the context of the large number of claims assessed at the Claims Assessment and Resolution Service.

However, it came to the attention of the committee that the Motor Accidents Authority has no means by which to monitor how many Claims Assessment and Resolution Service assessments for damages are appealed by claimants. The Motor Accidents Authority advised that the acceptance or rejection of an assessment is a matter between the complainant and the insurer and that there is no easy mechanism within the Claims Assessment and Resolution Service to record the acceptance or rejection rate. The committee was of the view that information on the rate of acceptance or rejection by claimants of the amount of damages as assessed by the Claims Assessment and Resolution Service would provide a useful indicator of the service's assessment process. The committee therefore recommended that the Motor Accidents Authority liaise with the Insurance Council of Australia and the compulsory third party insurers to investigate the feasibility of obtaining information about the number of Claims Assessment and Resolution Service assessments regarding the damages that are accepted or rejected by claimants and that, if possible, the Motor Accidents Authority report this information in the future in its annual reports.

I look forward to the Government's response to the committee's recommendations. I thank the committee members for their contribution to the debate and the process. I recognise the right of the Hon. John Ajaka and the Hon. David Clarke to place on record their issues of concern about policy and legislation relating to the Motor Accidents Authority. The committee received evidence about some of the issues the members raised. I have spoken to some of those issues today and several of the committee's recommendations deal with them. However, the evidence referred to low levels of errors in medical assessments and associated legal issues. As previous speakers have said, the committee will collect more information on this issue following the next annual report, which we have already begun reporting on, but errors in assessments are low in comparison to successful outcomes for victims of motor accidents.

The committee tries to ensure that the views of all committee members are addressed. That is why the review of the commission was given to this committee in the first place, a long time before I was appointed a member. As I said, further issues will be canvassed next year. The review of the Motor Accidents Authority is an ongoing process and the committee properly considers the issues on behalf of the House. I look forward to the Government's response to our report. I thank the committee secretariat, whom I referred to earlier in the debate, and I thank the committee members for their work on this review. I trust that our next inquiry, which promises to address some interesting issues, will be just as satisfying as the review of the Motor Accidents Authority.

Question—That the motion be agreed to—put and resolved in the affirmative.

Motion agreed to.

COMMITTEE ON CHILDREN AND YOUNG PEOPLE

Report: Review of the 2005-2006 Annual Report of the Commission for Children and Young People

Debate resumed from 14 November 2007.

The Hon. CATHERINE CUSACK [3.12 p.m.]: It is my pleasure to speak on behalf of the Opposition to the annual report of the Commission for Children and Young People. The Office for Children includes the Commission for Children and Young People and the Office of the Children's Guardian. I clarify at the outset that the committee's review covers only the Commission for Children and Young People, and it is to the commission that I direct my remarks. I congratulate the commission on another fine year of work. It is strongly supported by all parties in the Parliament. I particularly congratulate the Children's Commissioner, Gillian Calvert, who was appointed in 1999. I first met Gillian in the 1980s when she was the executive officer of the Child Protection Council. She is one of the most experienced and committed people in Australia in this area. New South Wales is most fortunate to have her good services. I congratulate the commissioner on becoming a grandmother with the birth of her grandchild, Riley, on 10 November 2007. I congratulate Riley, his mother and Gillian. I am sure his birth will open new doors and experiences for Gillian as the Children's Commissioner. On behalf of all the members of the House, I wish them a happy future. I gather they have got off to a fine start, which is good news.

The New South Wales Commission for Children and Young People in the year ending June 2006 grew slightly in staff numbers from 40 full-time equivalent positions to 43.3 full-time equivalent positions. I note that three-quarters of the staff at the commission are female. I suppose that is consistent with the nature of the work at the commission, which has traditionally attracted a workforce of women—very high-calibre women, I might say. The commission has revenue of $8.5 million and expenditure of $8.6 million, which includes additional capital expenditure for the previous financial year. Its main purposes are to fulfil the requirements of the Child Protection (Prohibited Employment) Act 1998, the Child Protection (Offenders Registration) Act 2000 and its own Act, the Commission for Children and Young People Act 1998. Child safety, particularly child protection, is one of the more high-profile aspects of the commission's work and brings the commission in contact with most businesses in the State through its requirement to undertake background checks for child employment. Although that is its main service delivery role, it is important to note that that component of its work is overshadowed by the research component, which attracts fewer resources and staffing. The commission is undertaking groundbreaking research work in fulfilling its charter to improve the wellbeing of the children of New South Wales.

I refer to some important research projects the commission undertook over the past financial year. The commission's recommendations from its research into children and work were tabled in this place late last year. That groundbreaking research will guide not only New South Wales but also all jurisdictions throughout Australia. The commission has undertaken research work on children and wellbeing, and that work is ongoing. This project highlights the fact that the commission is concerned about all children. The work the commission undertakes in relation to children who, for whatever reason, have come into interaction with the welfare system is vitally important. In particular, the recommendations of the groundbreaking Child Death Review Committee have been taken up all around Australia. That rigorous committee is independent of and separate from government. Its research can be relied upon by both sides of politics and influences the policies of departments and agencies throughout Australia. That committee's work is typical of the standard the commission has set and achieves and continues to promote.

I also refer to the commission's research work into children and wellbeing. Again, that research relates to all age groups and all types of children. It does not relate only to children in trouble, although the commission is an important advocate for them. The commission is very interested in youth, their interests, their needs and their aspirations. It is a unique agency in that it seeks to represent such a broad view. The commission is an important advocate for young people. Although the commission is only eights years old, by my reckoning, its credibility, its high standards and the amount of work it has undertaken advocating on behalf of young people and children mean that we can look forward with great optimism to its future achievements on behalf of young people. As a member of Parliament I am very glad that we have the commission. Although many constituencies in our community are highly organised and highly vocal, young people have been invisible or below the radar for too long. As a parliamentarian I have taken the opportunity to contact the commission for advice on various matters. I have found its staff only too willing to assist and the credibility of its information is second to none.

In the year ahead the commission will undertake research into the built environment, child poverty and children's participation in society. A further study into children at work will be particularly valuable. Obviously the first research study was most valuable, but a further study will show whether we are moving forward or going backwards. I look forward to the results of that research. Children and the built environment is an incredibly important area for the committee to delve into.

Apart from anything else, it is about child safety. For example, a big issue is the location of skate parks. Because they are often associated with noise, skate parks are not popular facilities in local communities amongst

residences. Nevertheless, they cannot be tucked away in the back pockets of parks concealed by trees, where such a facility might be a magnet for child predators, the result being that the young people who use it are endangered. We need to be more thoughtful about our built environment. We need to locate facilities for young people in places that provide good strong visual surveillance and in which they are less likely to get themselves in trouble and less likely to become victims of predators.

We need to ensure also that our built environment is for everybody, not just for older people. I was astonished by a report published about a year ago that stated that Rockdale council was playing Barry Manilow music in one of its most popular parks in a bid—successful it seems—to make the locations unattractive to young people. We need to study these issues and to think deeply about what we are doing. Are we providing a community for everybody or are we excluding too many groups? As a parent of two young boys it has concerned me that too often young people are regarded as second-class citizens. I see young people standing in shops, waiting politely and courteously for an eternal amount of time, as adults are consistently served before them. Children are people too: they deserve the same respect others enjoy. The existence of the commission is a good way to educate people and to constructively highlight the relevant issues.

The highly qualified staff of the commission are genuinely committed, and the work of the commission is a very encouraging sign that young people are being advocated for in a constructive way and that constructive engagement is the way to go. This is not about creating new classes of victims; it is about raising awareness of young people and celebrating their energy, their thoughts and their ideas, because they are the future. It is not about us standing up and saying we are here for the kids but then not doing anything to match our words. I am thrilled to be a member of the Committee on Children and Young People this year: I have been asking to be appointed to the committee for some time. I note that the committee reports to the Parliament, and that is very unique. The commissioner is independent, and it is a great thing for our democracy to have that independent advice. I congratulate the commission again on the work it does. It is a privilege to participate in the review of its annual report for 2005-06.

The Hon. GREG DONNELLY [3.22 p.m.]: I too make a contribution in this take-note debate on the report of the Commission for Children and Young People. The review was the first report for the fifty-fourth Parliament of the joint parliamentary Committee on Children and Young People. As honourable members know, the committee is chaired by Ms Carmel Tebbutt, MP, the former Minister for Education and Training, and Minister for Youth. In her contribution to this debate the Hon. Kayee Griffin outlined a number of the highlights of the work of the Commission for Children and Young People during 2005-06 to which the committee had made reference in exercising its important oversight role.

I do not intend to revisit and reflect on the observations of the Hon. Kayee Griffin, but members may be aware that I have a particular interest in the welfare of young people with respect to their important participation in the workforce in New South Wales. The Commission for Children and Young People touched upon this issue previously, but I draw the attention of honourable members to a report of which some members may not be aware, entitled "Children at Work". As far as I can determine, this is the first Australian study of its kind in terms of its extensive coverage and the issues examined.

With respect to this report, the commission surveyed 11,000 high school students in years 7 to 10 in 22 government and non-government schools across New South Wales about their experience at work. The report noted that the most common areas of work that young children undertake are babysitting, food and drink sales, leaflet and newspaper deliveries, cleaning and general farmhand work. The commission's report examined a number of matters of public importance. It looked at what proportion of children in years 7 to 10 in New South Wales participate in paid and unpaid work; what types of activities constitute paid and unpaid work for children in this age group; what conditions children work under, including hours of work, when they work, where they work, who they work for, levels of pay or reward and whether they engage in hazardous work; whether certain work situations are associated with positive or negative work experiences; and whether work is associated with the child's quality of life.

Work was defined as "any jobs or work activities identified as such by the young participants, with the exception of routine household tasks and schoolwork". Work that was unpaid, one-off, temporary or short-term was also included. Children aged 12 to 15 were the focus of the study, as there had been no formal statistical collection on the work of children in this age group previously. Children in New South Wales are involved in work across all sectors of our labour market. I suspect most honourable members will have fond memories—and some not so fond—of their own participation as a young person in work, both paid and unpaid work. The various types of work can involve high levels of skill, knowledge and responsibility. Generally, young males

dominate fields of work involving physical activity, while females are more commonly involved in care and service work.

The report provided a valuable snapshot of the experience of young people in New South Wales. Sixty-one per cent of children work for formal employers, while 25 per cent work for their immediate family. Ten per cent work informally for friends or neighbours, 3 per cent for extended family and 1.3 per cent for other community groups or schools. As children get older it is more likely they will work for a formal employer. Most children work less than six hours per week, but approximately 9 per cent work more than 15 hours per week. As they get older, the pattern is that children are more likely to work longer hours.

Pay and reward are two of the main reasons children work. Just over three-quarters of children are paid for their work, 12 per cent are compensated with some form of non-monetary reward such as food and clothes, and 11 per cent are not compensated at all. Indeed, younger workers are more likely to receive no pay or reward. When children are paid, the rate is relatively low compared with adult pay rates. Females are more likely than males to work for informal employers, with fewer guaranteed conditions, and to work moderate hours. Females are also less likely to receive compensation or to receive non-monetary reward. When they are paid they receive lower rates of pay generally, are paid less on average within job type and predominate in some of the lowest paid types of work.

Despite these factors, children are satisfied with their work and are generally satisfied with their work conditions, even though these are poor when compared with those of adults. Four basic factors were found to influence children's satisfaction with work: recognition, support, control and autonomy derived from work, and income. Children were most satisfied with the recognition and support they received and least satisfied with their income and their degree of control and autonomy—perhaps that may not differ too much from the experience of their parents. As they get older, children move into work that offers relatively improved conditions but involves greater time commitments and few supports. The report also found that children in the least disadvantaged areas of the State were more than twice as likely to work as were children in the most disadvantaged areas. Children from the least disadvantaged areas are most likely to have positive work conditions, to work for formal employers, to do regular work, to receive reasonable rates of pay and to work shorter hours.

For children in the most disadvantaged areas, work is most likely to be one-off and to involve long hours, and they are more likely to be seriously injured. In addition, children living in rural inland areas appear to have fewer guaranteed conditions than young workers in other parts of the State. One might expect the opposite to apply. However, the situation appears to be linked to unequal distribution of work opportunities between these types of areas, and the availability and affordability of work opportunities was undoubtedly a factor.

The commission recommended that relevant Commonwealth agencies look at ways that formal and informal work opportunities for children can be improved in the disadvantaged areas, that employer organisations can be encouraged to direct or urge their members to provide activities involving paid employment during school holidays for children in disadvantaged areas, that the Ministry for Transport can promote concession cards for such children, and that the Regional Transport Coordination Network can develop transport projects with children and young people in mind to make transport more accessible and affordable in non-metropolitan areas.

While it is also of concern that children from cultural and linguistically diverse backgrounds are half as likely to work as those from Anglo-Australian backgrounds, it is pleasing to note that children from Aboriginal and Torres Strait Islander backgrounds are only marginally less likely to be engaged in work. Members can hope that this involvement of indigenous young people will eventually be replicated in lower rates of unemployment generally in the indigenous population in Australia.

In 2006 the Commission for Children and Young People established a task force to develop recommendations from the Children at Work research. The task force comprised young people and representatives of employer organisations, community organisations, unions and government agencies. It is heartening to see representatives from a diverse range of organisations coming together with the aim of extending the benefits children receive from work. The task force recommendations were released in December 2006 and focused on a number of areas that the commission felt would improve children's experience at work. I do not have time to discuss the points dealt with in that report, but I encourage members who are interested in this issue to look at it. I commend this committee report to members. It contains a range of interesting information and addresses issues affecting young people. I acknowledge the work of the secretariat, which obviously enabled the report's publication.

The Hon. KAYEE GRIFFIN [3.35 p.m.], in reply: I thank all members who contributed to the debate this afternoon. I reiterate that the work undertaken by the Commission for Children and Young People is very important to young people in our community. I look forward to working on the committee during this Parliament and dealing with the Children at Work research, the commission's work on the implications of developing a child-friendly community, other important work on the Child Death Review Team and with children checks. I thank all concerned for the work they have done, particularly Commissioner Gillian Calvert and her staff.

Question—That the motion be agreed to—put and resolved in the affirmative.

Motion agreed to.

BUSINESS OF THE HOUSE

Postponement of Business

Budget Estimates—Take Note Debate postponed on motion by the Hon. Eric Roozendaal.

CRIMES (DOMESTIC AND PERSONAL VIOLENCE) BILL 2007

Bill received from the Legislative Assembly, and read a first time and ordered to be printed on motion by the Hon. Eric Roozendaal.

Motion by the Hon. Eric Roozendaal agreed to:

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

Second reading set down as an order of the day for a later hour.

ROAD TRANSPORT (GENERAL) AMENDMENT (HEAVY VEHICLE USER CHARGES) BILL 2007

ROAD TRANSPORT LEGISLATION (BREATH TESTING AND ANALYSIS) BILL 2007

Second Reading

Debate resumed from an earlier hour.

The Hon. ERIC ROOZENDAAL (Minister for Roads, and Minister for Commerce) [3.38 p.m.]: As I said earlier, the Road Transport (General) Amendment (Heavy Vehicle User Charges) Bill 2007 will provide an opportunity for individual heavy vehicle operators to pay only for the roads they use and not for the activity of other trucks. This is a very important step forward. Not only will these reforms get the right truck on the right road for the right price, but it will also ensure that the money follows the truck.

The bill will amend the Road Transport (General) Act 2005 to extend the exemptions that can be issued for heavy vehicles to include a dimension, load restraint and/or access requirement. The bill will also create a regulation-making power regarding the application of incremental pricing charges to these exemptions, including mass limit exemptions issued under the Act. The regulations for incremental pricing are not yet available because the detailed arrangements governing the operation of incremental pricing are still being finalised. These arrangements will replace the current provisions for charging vehicles over 125 tonnes currently listed in the Road Transport (Heavy Vehicle Registration Charges) Act 1995.

The bill will also strengthen the evidentiary provisions of the Intelligent Access Program by specifying that evidence under the program may be rebutted only by a person who has relevant specialised knowledge. The regulations, which are to be developed over the coming months, will contain the detail about how incremental pricing will operate and the charges that will be applied. They will also govern the collection and use of information obtained through incremental pricing to ensure that privacy concerns are appropriately addressed. This is a voluntary scheme, and if the charges are too high for the operator, they may choose not to participate.

The bill will also allow regulations to require any funds raised through incremental pricing to be returned to the relevant road authority. This includes local councils that allow vehicles operating under

incremental pricing to access their roads. For the first time, local councils and the Roads and Traffic Authority will be able to receive compensation from heavy vehicles directly related to the cost impact of specific heavy vehicle activity. Councils will still have to give their approval before the Roads and Traffic Authority will allow the vehicles to operate on the council's roads. It is important to emphasise that councils still have to give their approval before the Roads and Traffic Authority will allow the vehicles access. The Iemma Government is committed to improving productivity for the road freight industry while maximising road safety and managing the infrastructure of the people of New South Wales. This bill further strengthens that commitment.

The purpose of the Road Transport Legislation (Breath Analysis) Bill 2007 is to amend the Road Transport (Safety and Traffic Management) Act to allow the New South Wales Police Force to measure and report concentrations of alcohol in both a person's blood and/or breath. The bill will ensure that New South Wales continues to meet national standards concerning evidential breath analysers, and it will ensure the results from these breath analysing instruments are admissible in court. Extensive consultation has been undertaken on the proposals in this bill. The Roads and Traffic Authority has met with the New South Wales Police Force, the Ministry for Police, the Ministry of Transport and New South Wales Maritime to discuss the proposed changes. The bill has the support of all of these agencies.

The matters addressed in the bill have arisen primarily from changes to the specifications of evidential breath analysers by the National Measurement Institute. The New South Wales Police Force has used breath analysing instruments to measure the blood alcohol concentration of drivers since 1968. The results from these instruments are used for evidentiary purposes in court when prosecuting drink-drivers. Current evidential breath analysing instruments work by obtaining a sample of breath and measuring the amount of alcohol in the breath before converting it to the concentration of alcohol in a person's blood. The results of evidential breath analysing instruments are currently expressed in New South Wales legislation as grams of alcohol in 100 millilitres of blood. The national standards have been changed so the results of evidential breath analysers must now be displayed as the concentration of alcohol present in grams of alcohol in 210 litres of breath rather than in grams of alcohol per 100 millilitres of blood. Changes to the specifications of evidential breath analysers are governed by the National Measurement Act 1960 and the National Measurement Regulations 1999, and all Australian States and Territories are bound by this legislation.

All Australian jurisdictions have either amended or are undertaking amendments to their road transport legislation to comply with the new national standards. The bill does not change the current level of prescribed concentration of alcohol for offences since grams of alcohol per 210 litres of breath is an equivalent measure to grams of alcohol per 100 millilitres of blood. For example, if a person currently returns a blood alcohol concentration of 0.05 grams of alcohol in 100 millilitres of blood the result will be reported as a breath alcohol concentration of 0.05 grams of alcohol in 210 litres of breath. The bill does not create any additional offences. Any offence relating to the prescribed concentration of alcohol present in a person's breath or blood will be a single offence regardless of whether this concentration is measured in the person's breath or blood. While it is essential that the legislation be amended to allow the reporting of alcohol in a person's breath, it is also necessary to keep references to "blood" in the legislation. This is because there will be occasions when persons have a blood test to determine the concentration of alcohol in their blood, such as people who are car crash patients or people who are involved in a fatal motor vehicle crash. The results from these blood tests will continue to be recorded in grams of alcohol per 100 millilitres of blood.

The New South Wales Police Force also carries out breath analysis on boat operators, ferry operators, train drivers, bus drivers and police officers. Therefore, consequential amendments will need to be made to other relevant legislation as necessary. The current approved evidential breath analysing instrument used by the New South Wales Police Force is the Draeger Alcotest 7110. This machine currently reports the results of breath analysis in grams of alcohol per 100 millilitres of blood. These machines have proved reliable since they were introduced in 1992 and are currently able to operate under approval from the National Measurement Institute. However, the New South Wales Police Force in partnership with the Department of Commerce has conducted a tender process to select the next generation of evidential breath analysing instruments for use in New South Wales, which comply with the new national standards. After a lengthy testing regime it was determined that the Lion Intoxilyzer 8000 fulfilled all the requirements.

The Road Transport Legislation (Breath Analysis) Bill 2007 allows for the New South Wales Police Force to use either of the evidential breath analysing instruments that report in blood or breath. This will enable the New South Wales Police Force to continue to use the existing instruments until a complete rollout of the new instruments is complete. These new evidential breath analysing instruments will reduce the amount of time required to conduct the breath analysis procedure, as well as improving statistical information and reporting for

future planning and educational strategies. The amendments I have outlined today are sensible and necessary and send a clear message that drinking and driving will not be tolerated in New South Wales. The New South Wales Government is committed to improving the safety of all road users and these bills further strengthen that commitment. I commend the bills to the House.

Debate adjourned on motion by the Hon. Duncan Gay and set down as an order of the day for a future day.

BUSINESS OF THE HOUSE

Suspension of Standing and Sessional Orders: Order of Business

Motion by Reverend the Hon. Fred Nile agreed to:

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Member's Business item No. 103 outside the Order of Precedence, relating to an extension of the reporting date of the Joint Select Committee on Royal North Shore Hospital, be called on forthwith.

Order of Business

Motion by Reverend the Hon. Fred Nile agreed to:

That Private Members' Business item No. 103 outside the Order of Precedence be called on forthwith.

JOINT SELECT COMMITTEE ON THE ROYAL NORTH SHORE HOSPITAL

Reverend the Hon. FRED NILE [3.45 p.m.]: I move:

1. That the reporting date of the Joint Select Committee on the Royal North Shore Hospital be extended to Thursday 20 December 2007.

2. That this House requests the Legislative Assembly to agree to a similar resolution.

The committee has heard evidence from more than 70 witnesses. Some of those witnesses have indicated that the inquiry itself is having a negative effect on the operation of the hospital. It is important, therefore, that the inquiry takes no longer than is necessary to achieve its objectives—to investigate the problems at the Royal North Shore Hospital and to bring forth recommendations to deal with those problems. However, a matter has been raised during the committee meetings regarding the Anderson coronial inquiry. The committee has heard evidence that Mr Anderson believes that some material that may come forth in the Coroner's report next year—after February—may be relevant to our inquiry. As a result, the committee resolved that if matters relevant to the inquiry are raised in the Coroner's report next year the Joint Select Committee on the Royal North Shore Hospital would be reconstituted in order to consider those matters. This motion is conditional on matters being in the Coroner's report that are relevant to the inquiry and that are not matters about which we have already taken evidence from witnesses, similar to that taken from Mr Anderson.

The Hon. ROBYN PARKER [3.49 p.m.]: The Opposition supports the extension of the reporting date for the Joint Select Committee on the Royal North Shore Hospital to 20 December 2007. We have discussed this matter at length and it has been discussed in the public arena. Many people, including the family of the late Vanessa Anderson, believe that the reporting timetable for the joint select committee is too short. The Opposition maintains that the joint select committee should have been able to table an interim report by 20 December and that its final report should not be tabled until the State Coroner has reported on the death of Vanessa Anderson, which would have allowed the committee to take into account any relevant recommendations or findings in presenting its own report to Parliament.

I note the comments of Reverend the Hon. Fred Nile with respect to reconstituting the committee. That is a clumsy way of doing things and would mean coming back to Parliament. I am not sure there would be the same level of confidence; indeed, a report would have to be tabled. It would be simpler to take a different course of action. I place on the public record evidence that Vanessa Anderson's father gave to the inquiry into Royal North Shore Hospital on Thursday 22 November 2007. Warren Anderson stated:

> We are pleading with you to recognise there is a major problem here. In the past two years since Vanessa died my wife and I have been disgusted at what we have discovered in relation to Royal North Shore Hospital and the health system it has been part of. There is so much information that we would love to read to this Committee, information that we believe would be valuable

> that it needs to be publicly discussed. But we cannot breathe a word due to being required to give an understanding to enter into an agreement at the Coroner's that requires us to remain confidential in return for being made privy to that information. The omission of this information from the inquiry in our eyes will trivialise Vanessa's death. Because of this, I implore you not to close this inquiry on 15 December because it will compromise the findings of the inquiry.
>
> If you are genuinely interested in playing a role to bring about change, you must take into account the final evidence and the findings of that Coroner's inquiry into the death of our daughter. Vanessa did not die from one person's mistake. She died because many people made mistakes at every level in that hospital. She died because the public hospital system was not safe. She died because budgets are prioritised over patient safety. Two years later, has anything changed? We suspect not. Evidence presented to the Coroner's Court so far as not given any confidence that this hospital has really learnt anything from the loss of our daughter's life. From our perspective, the focus in the last two years has been one of cover-up rather than learning from the mistakes that were made.

He went to state:

> Mr Chairman, prior to the commencement of this inquiry you shared that you felt if it was justified you would consider to extend this inquiry. From the evidence that we have heard today, and certainly today, surely this is now a foregone conclusion that the problems at Royal North Shore Hospital cannot be sorted out simply by taking evidence over a mere three days. Thank you.

He was asked the following questions and he gave the following answers:

> **Mrs JILLIAN SKINNER:** I know you have made a plea to the Committee to extend the reporting time and I know that you are constrained in what you can say but can I ask you in general terms to advise us as to whether you believe that there will be matters that come out of the coronial inquest, not necessarily just relating to Vanessa's death but other matters, that will be fundamental for us to consider as part of our terms of reference to fix the problems at North Shore?
>
> **Mr ANDERSON:** From the evidence that I have heard in this forum here, I am 100 per cent sure that what that information contains is very, very relevant to what we are talking about here.
>
> **The Hon. JENNIFER GARDINER:** Mr Anderson, are you able to advise the Committee as to the estimated date on which the Coroner's report is expected? Do you know that?
>
> **Mr ANDERSON:** First or second week of February I am told. I think we sit on 21 January and then early February I would imagine.

From that perspective it is important to ensure that, rather than going through the clumsy mechanism of presenting a report to Parliament and possibly reconstituting the committee, Mr Anderson's request be considered. It has been the view of the Opposition all along that the joint select committee should be able to table an interim report by 20 December and that its final report not be tabled until after the State Coroner has reported on the death of Vanessa Anderson, whenever that might be. If we are about transparency, getting to the bottom of the problems at Royal North Shore Hospital and ensuring that Vanessa Anderson's death is not in vain, the committee must do everything in its power to allow the right amount of time to adequately hear all evidence and relevant information.

I understand the urgency in getting results quickly, but it is important not only to Vanessa Anderson's family but also to everyone in New South Wales that we get as transparent and as timely information as possible in the most expedient manner. In conclusion, the Coalition will not oppose the extension of the reporting date. However, I loudly and clearly support Mr Anderson's call for inclusion of the Coroner's report.

The Hon. AMANDA FAZIO [3.57 p.m.]: I support the extension of the reporting date for the Joint Select Committee on the Royal North Shore Hospital and in doing so I raise a few of the issues already on the public record in relation to this inquiry. I do not have a transcript so I shall refer to my memory of evidence given by people who are employed at the hospital. The committee has had 3½ days of hearings. In those 3½ days we had many witnesses appearing and lengthy hearings, far longer than most members of this Chamber are used to. We tried to hear evidence from as many people as possible in the time frame available.

The evidence we heard from the nurses was that the nursing shortage at Royal North Shore Hospital is around 100 equivalent full-time positions. We heard from the nurses that nurses from the United Kingdom who had indicated they would be taking up positions at Royal North Shore Hospital advised the hospital that they declined to take up the positions when they became aware of the inquiry into the hospital. The longer the inquiry went the more we would exacerbate staffing shortages at the hospital—

The Hon. Catherine Cusack: Is it the inquiry or the mismanagement?

The Hon. AMANDA FAZIO: —and the ability to allow the hospital to recruit people and retain people locally. This is a very serious issue so I shall not respond to puerile interjections from members opposite

who, if they had any decency and respect, would have noted that Government members did not interject on the Hon. Robyn Parker. The fact that there have been interjections simply shows that the Opposition, in the main, is operating on a purely political level and has no concern for the staff of Royal North Shore Hospital. Dr Hughes, one of the senior surgeons who gave evidence to the inquiry, responded to a question about the impact that the inquiry was having on staff morale and operations of the hospital. He described the inquiry as being completely destructive and not at all constructive. He said it had a negative focus.

The committee must balance the concerns of some individuals whose family members have experienced adverse incidents at the hospital and who want to wait until we have a Coroner's report into the cause of a death—which the Hon. Robyn Parker seemed to automatically assume would be the result of some sort of medical malpractice at the hospital, but no-one knows that at this stage; the Coroner is yet to hand down a decision on that matter—with the concerns of the hospital's nursing staff, medical administrators and doctors in terms of their hope that the result of the inquiry will be some positive recommendations before Christmas so that in the New Year they can go forward with recruitment policies. The published submission shows that the hospital staff have all been putting in ambit bids for increased resources, both recurrent and capital, for their various departments.

The committee has taken these difficult issues into account and on balance has decided to take the course outlined by the chair of the committee, Reverend the Hon. Fred Nile—that is, to propose an extension of the committee's reporting date to 20 December. The committee was very mindful of the plea made by Mr Warren Anderson. For that reason, it proposed the extension to the reporting date with a proviso that the chair be able to report publicly that the committee would recommend, as the committee members agreed to unanimously, that if there are any recommendations in the Coroner's report that are relevant to the committee's terms of reference, a motion would be moved to re-establish the committee so it can consider those recommendations in light of the committee's terms of reference. That is what needs to be looked at here. I remind members that we do not yet know when the Coroner's report will be handed down. It is expected that it will be handed down in the first quarter of next year but we do not know exactly when; more evidence is to be heard by the Coroner on 21 January.

No member of the committee has been trying to make political capital out of the people who have experienced adverse incidents at Royal North Shore Hospital. The committee has a responsibility to report by the date that has been set by both the Legislative Council and the Legislative Assembly. The purpose of the additional six days or so was to allow the committee to hear evidence from further nurses—which is the reason we held a half-day hearing on 26 November. The old dichotomy between nurses and doctors was playing out again. Many doctors came before the committee to give evidence, but very few allied health professionals and nurses came forward to give evidence. Quite rightly, the nurses who had their own specific set of concerns that were being investigated as part of the terms of reference felt that they needed to have greater representation and be provided the opportunity to give evidence to the committee, so the committee agreed it would hold an extra half-day hearing to do that. We also recognised that, given the tight timeframe, we would need a few extra days to consider and prepare the report.

I believe the proposal the committee has come up with is extremely fair and reasonable, and that the extension of the reporting date to 20 December is the appropriate way to proceed so the committee can formulate its recommendations before Christmas, to settle things for the staff who are currently working at the hospital and to allow them to get on with the job of trying to recruit people to fill the 100 vacant, equivalent full-time positions of nurses and other vacancies at the hospital. It is in the best interests of the health care of the people of the North Shore and the Northern Sydney Central Coast Area Health Service that these issues be resolved as soon as possible, and that is being pursued without disregard for the heartfelt plea from Mr Anderson that the committee take into account any recommendations in the Coroner's report that the committee needs to consider because they fall within the committee's terms of reference.

The Hon. JENNIFER GARDINER [4.04 p.m.]: I wish to respond to one of the issues raised by the Hon. Amanda Fazio. The honourable member suggested that some witnesses felt that if the inquiry were extended that would have a further deleterious effect on the morale of staff at Royal North Shore Hospital. It should also be pointed out to the House that in answer to such a question some witnesses said exactly the opposite. Indeed, they said that they placed great store in the joint select committee's inquiry and that they have great hope that it will assist in the rebuilding, metaphorically and physically, of Royal North Shore Hospital, and they have pleaded with the committee not to truncate its inquiry. Mr Anderson is only one of the witnesses who have made that plea to the committee, and I believe that the views of the other witnesses who have made a similar request should also be respected.

The problem from the Opposition's point of view is that if we had confidence that the Legislative Assembly, in particular, would act upon the recommendation which Reverend the Hon. Fred Nile has correctly referred to—that the committee will put into its report, which will be tabled on or before 20 December if this motion is carried, that the joint select committee would be reconstituted if there were findings or recommendations relevant to the terms of reference of the joint select committee, which would have been wound up by then, contained in the Coroner's report in relation to the death of Vanessa Anderson—and if we were truly confident that the Executive Government would allow such a reconstitution, we would not be speaking to Reverend the Hon. Fred Nile's motion now.

However, we have a bit of doubt about the will of the Government in that matter, so in order to honour the witnesses who have made such a plea to the committee we wanted to place on record that whilst we support the extension of the reporting date we believe it should have been extended for a longer period. We also seriously believe that the Parliament should take into account any findings and recommendations from the inquest into that tragic event at Royal North Shore Hospital in relation to Vanessa Anderson that are relevant to the terms of reference of this inquiry.

Reverend the Hon. FRED NILE [4.07 p.m.], in reply: Firstly, there is no certainty as to the date on which the Coroner's report will be made public. As we heard from Mr Anderson, who had legal advisers assisting him during the inquiry, it is a major Coroner's inquiry so it could go longer than anticipated. I believe, as I am sure other committee members believe, that that uncertainty is a major factor; it would leave our committee almost in limbo until the Coroner's report is finally made public. I cannot force both Houses of Parliament to reconstitute the committee but, given that it is a joint select committee and members of the Government and the Opposition agree on the proposal, I am very confident that the committee would be reconstituted. I certainly give my personal assurance that I would ensure that that happens next year.

Our other concern, to which I referred earlier, is that if the committee were not to give a final report it would leave the staff at Royal North Shore Hospital in limbo and a state of uncertainty. It is important that the committee's recommendations be finalised and presented to this Parliament, and that the Government, through the Parliament, be allowed to implement the recommendations as a matter of urgency. Some of the issues need to be addressed urgently, to ensure that the hospital is improved in a number of areas. Some issues may be involved, whereas others may be quite straightforward. The sooner we can get the hospital operating as a number-one hospital in this State, the better. That is the whole purpose of my motion.

Question—That the motion be agreed to—put and resolved in the affirmative.

Motion agreed to.

Message forwarded to the Legislative Assembly advising it of the resolution and requesting that it agree to a similar resolution.

CRIMES (ADMINISTRATION OF SENTENCES) AMENDMENT BILL 2007

Bill introduced, and read a first time and ordered to be printed on motion by the Hon. John Hatzistergos.

Second Reading

The Hon. JOHN HATZISTERGOS (Attorney General, and Minister for Justice) [4.10 p.m.]: I move:

That this bill be now read a second time.

The Crimes (Administration of Sentences) Act 1999 is the principal Act that governs the administration of sentences in New South Wales. The object of the Crimes (Administration of Sentences) Amendment Bill 2007 is to amend the principal Act and its principal regulation. In order to improve the administration of sentences and the management of correctional centres, the bill includes amendments related to inmates' money, the date upon which an inmate becomes eligible for parole, drug and alcohol testing of offenders under a community service order, the appointment and functions of compliance and monitoring officers, stop orders on forwarding mail to exempt persons and exempt bodies, the powers of the commissioner, and minor, consequential and ancillary matters.

I now turn to the details of the bill. Although incarcerated, an inmate has various sources of money including money in their possession when they first enter into custody, earnings from work conducted within the

correctional centre, earnings from day-leave employment, money given to inmates from visitors, moneys transferred from inmates' bank accounts and other welfare payments which are payable upon release, such as rental assistance from Centrelink. The interest earned from this money is used by the Department of Corrective Services to purchase items for the benefit of visitors and inmates, such as equipment for children in visiting areas.

In the unlikely event that a court finds that the Department of Corrective Services holds inmates' moneys on trust, ordinary trust obligations would be imposed upon the Department of Corrective Services. Consequently, certain actions of the department's, such as pooling the money into one account and using the interest, could be deemed a breach of trust. The Crown Solicitor has advised that whilst this is improbable the matter is not entirely free from doubt. Therefore, the bill proposes an amendment to make it clear that ordinary trust obligations are not imposed upon the Department of Corrective Services with respect to moneys held on behalf of inmates.

This bill proposes an amendment, which will affect parole eligibility dates. It is proposed to amend the Crimes (Administration of Sentences) Act 1999 so that if an offender is arrested and admitted into custody whilst on parole that any time served, until the State Parole Authority has formally revoked the parole order, counts toward the 12-month wait before parole can be re-considered. This will be achieved by amending the definition of the "parole eligibility date".

This bill proposes an amendment to allow probation and parole officers to test offenders for alcohol and drug use whilst under community services orders. Offenders serving a community service order must not be under the influence of drugs or alcohol. However, probation and parole officers do not have the authority to test for drugs or alcohol if they suspect that the offender is under the influence of alcohol or drugs. This amendment will allow probation and parole officers to use the result of alcohol or drug testing as evidence that an offender has either breached a community service order on the grounds of being under the influence of alcohol or drugs or not breached an order.

Presently, the functions of compliance and monitoring officers in section 235G of the Act are confined to full-time inmates on external leave from a correctional centre, periodic detainees, home detainees and offenders under community service orders. In order to improve community safety, and in keeping with priority R2 of the State Plan to reduce reoffending, the bill proposes to extend the range of offenders for whom compliance and monitoring officers' functions relate to include parolees, offenders subject to an extended supervision order or interim extended supervision order under the Crimes (Serious Sex Offenders) Act 2006, and offenders subject to a good behaviour bond. The bill also expressly permits compliance and monitoring officers to use as much force as is reasonably necessary in the exercise of their functions.

The bill proposes to amend the principal regulation with respect to inmate mail to enable an exempt body or person to specifically write to the Commissioner of Corrective Services to request that mail from a particular offender not be sent to them. This may be done in circumstances where, for instance, a member of Parliament who is an exempt person under the regulation has previously received abusive or threatening letters from that offender. The bill also includes an amendment to allow the commissioner to authorise any person to exercise the functions, duties and responsibilities of a correctional officer. The proposed amendments would allow the commissioner to authorise people to conduct specialised services for the department. The remainder of the bill includes minor and consequential amendments, including an amendment to ensure that the law reflects the correct ranking of correctional officer positions. I commend the bill to the House.

Debate adjourned on motion by the Hon. John Ajaka and set down as an order of the day for a future day.

LAW ENFORCEMENT AND OTHER LEGISLATION AMENDMENT BILL 2007

Bill introduced, and read a first time and ordered to be printed on motion by the Hon. John Hatzistergos.

Second Reading

The Hon. JOHN HATZISTERGOS (Attorney General, and Minister for Justice) [4.15 p.m.]: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Law Enforcement and Other Legislation Amendment Bill 2007. The bill deals with amendments arising out of the Ombudsman's review of the Cronulla riots emergency powers, implementing the Government's election commitment to introduce move-on powers targeted specifically towards groups of intoxicated people; various amendments to clarify the operation of the Crimes (Serious Sex Offenders) Act 2006; and amendments to the Terrorism (Police Powers) Act 2002 arising out of a legislative review.

I refer to schedule 1, part 6A, Cronulla riot powers. Part 6A was enacted following the Cronulla riots in December 2005, the scale and severity of which was unprecedented in New South Wales. These powers are emergency powers, designed to allow police to prevent and control large-scale public disorder, of the type witnessed in 2005, when existing general policing powers are not sufficient. With these powers police can act swiftly and decisively to deal with an emergency situation in extraordinary circumstances. At the time these powers were created, the Iemma Government provided for a two-year Ombudsman review. The Ombudsman has provided his review and has found, as would be expected, that these powers have been used rarely and judiciously. In his conclusion the Ombudsman observed:

> Police appear to have been responsible and appropriately measured in their use of the Part 6A emergency powers to date. The available evidence indicates that authorisations to use the powers were only granted in circumstances where senior police were genuinely of the view that other, less intrusive policing measures would be insufficient to restore order or prevent further attacks.
>
> Significantly, there were a number of public order incidents, or threats to public order, where senior commanders considered whether to authorise the use of the Part 6A powers, but opted not to as other effective and appropriate options were available to police.
>
> On the rare occasions that use of the Part 6A powers was authorised, such authorisations generally appear to have been well founded, and in accordance with the legislative requirements and the intention of Parliament.

In summary, the Ombudsman's review found that the authorisation process was an important safeguard, the use of cordons and roadblocks had been effective, and the emergency use of powers without authorisation happened only once and with good effect. The review noted that the powers had not been tested fully as they had not been used that often. There have been occasions when police have considered using the powers but were able to deal with the situation with general police powers. Based on the experience of the New South Wales Police Force, and in particular the Public Order and Riot Squad, these powers are a useful set of back-up powers to have in policing extreme examples of public disorder.

The Cronulla riots shocked the public. There is support within the community for police to have a greater range of measures to control or quell such disturbances. Police are conscious of the gravity of these powers and respect the confidence that the Government holds in its Police Force. The Commissioner of Police and his senior officers are acutely aware of the importance of considered and appropriate authorisation of such powers in urgent and extreme situations. As permanent powers, ongoing oversight and accountability will be ensured via detailed police reviews each time the powers are used. A report of these reviews will be provided to the Ombudsman, who will have continuing powers to review and report on the use of the powers. This bill provides for further safeguards in relation to the authorisation and use of the powers.

An amendment to section 87D provides that the nature and extent of the authorisation should be appropriate to the type of emergency that is occurring. This will ensure that the powers, when used, should be tightly focused. For example, if there is large-scale public disorder occurring in one suburb in Sydney, the size of the target area should be fashioned to deal with that situation. The entire city should not be made a target area. Recommendation 2 of the Ombudsman review proposed that Parliament consider whether further safeguards are required to provide an assurance of the right to peaceful assembly. The Government is firmly of the view that these emergency powers are intended to be used only in the most extreme circumstances and cannot be used for assemblies that are peaceful. Currently under the Act an authorisation cannot be given unless there is, or there is threatened in the near future, a large-scale riot or other civil disturbance that gives rise to a serious risk to public safety and that the exercise of the special powers is reasonably necessary to prevent or control the public disorder. The Government is therefore of the view that no legislative requirement is required to guarantee the right of peaceful assembly. The Act is clear that authorisations are not for circumstances like peaceful assemblies. However, in implementing recommendation 4 the Government will provide further safeguards in relation to the right of peaceful assembly by ensuring that part 6A, police procedures regarding the authorisation and review process, includes particular reference to peaceful assemblies.

Senior police officers who are making an authorisation will therefore be required to articulate the reasons for granting the authorisation. Clearly, an application for an area to be the target of an authorisation that

relates only to a peaceful assembly should not be granted. An amendment to section 87M will allow police officers to seize and detain any item that is likely to be used to contribute to or inflame a public disorder—for example, clothing and iconography with inflammatory or derogatory messages—when there is an authorisation in place. This would allow police to seize items such as the t-shirts and materials with racist messages that were seen in the Cronulla riots. A new section 87MB will enable police to deal with large groups of people who marshal outside a target area with the intent to travel to and participate in a riot. This was a phenomenon that we witnessed during the Cronulla riots.

Existing section 87N will be amended to make the test clearer and to add two additional safeguards. Section 87N allows the emergency use of the powers under the division in circumstances where an authorisation under section 87D has not yet been given. The first safeguard is that the emergency use of the powers must now be pre-approved by a senior police officer of or above the rank of inspector. This pre-approval can be given in writing or orally, and it can be given over the phone or police radio. Secondly, there will be a three-hour time limit on the use of these emergency powers before an authorisation under section 87D must be given. A redrafted section 87O will ensure that the Ombudsman will continue to keep these powers under scrutiny. It is hoped that there will not be other occasions to use these powers. But if they are employed the Ombudsman will be free to report on the incidents in his annual report. These are emergency powers and in making them permanent the Government believes that the right balance has been struck between necessary safeguards and providing the New South Wales Police Force with the tools to proactively, swiftly and efficiently deal with imminent or occurring large-scale public disorder.

Schedule 2 to the bill contains amendments to the Law Enforcement (Powers and Responsibilities) Act 2002 that relate to the dispersal of intoxicated persons. These amendments implement a commitment made by the Government at the March 2007 election. Item [2] enacts new section 198 to confer on police officers the power to give directions to a person in a group of three or more seriously intoxicated persons in a public place for any such person to leave the place and not return for a period that does not exceed six hours. The power is exercisable if the police officer believes on reasonable grounds that the person's behaviour is likely to cause injury to other persons, damage to property or otherwise gives rise to a risk to public safety. The new powers, which will complement the existing "move-on" provisions in part 14 of the Act, are directed towards putting a stop to crime and antisocial behaviour before it occurs. These powers will allow police to take a proactive approach to the problem by diffusing potentially volatile situations before they get out of hand.

Schedule 3 amends the Crimes (Serious Sex Offenders) Act 2006 and the Bail Act 1978 as part of the Government's ongoing commitment to ensure the protection of the community from serious recidivist sex offenders. Item [1] amends section 3 to make it clear that the primary object of the Act is to provide for the extended supervision and continuing detention of serious sex offenders so as to ensure the safety and protection of the community. Items [2], [6], [7] and [18] are administrative amendments that provide that applications are to be brought in the name of the State of New South Wales. Item [21] inserts proposed section 24A, which entitles the Attorney General to act on behalf of the State of New South Wales for the purposes of applications under that Act. Item [5] amends section 11 to enable a condition that a person resides at an address approved by the Commissioner of Corrective Services to be imposed on an extended supervision order or interim supervision order. Item [9] inserts proposed section 14A into the Act, which enables an application to be made to the Supreme Court for a continuing detention order against a person who has been found guilty of the offence of failing to comply with the requirements of an extended supervision order or interim supervision order.

Item [15] amends section 17 to require the Supreme Court to consider the nature of the breach before making a determination in relation to an application under proposed section 14A. Item [16] inserts proposed section 17A, which revokes any existing parole order if the person is made the subject of a continuing detention order under proposed section 14A. Item [20] amends section 22 to provide that if a matter the subject of an appeal is remitted by the Court of Appeal to the Supreme Court the order concerned continues in force. The Court of Appeal may make an interim order revoking or varying an extended supervision order or a continuing detention order if a matter is remitted to the Supreme Court. Item [19] amends section 20 to allow for the arrest of a person in respect of whom a warrant of commitment has been issued as a result of a continuing detention order but who is currently not in custody.

Schedule 3.2 makes amendments to the Bail Act 1978 to provide for a presumption against bail for the summary offence of breaching an extended supervision order and to add an offence to the serious personal violence offences listed for the purposes of the presumption against bail for repeat offenders. Item [1] inserts proposed section 8F into the Bail Act 1978. The proposed section creates a presumption against bail for a person who is accused of the offence of breaching an extended supervision order or interim supervision order. Item [2]

amends section 9D of the Bail Act 1978 to add the offence of attempting or assaulting with intent to have sexual intercourse with a child between 10 and 16, under section 66D of the Crimes Act 1900, to the list of personal violence offences for which a repeat offender may only be granted bail in exceptional circumstances. Item [3] amends section 32 of the Bail Act 1978 to make it clear that the section that contains the matters to be taken into account when considering a bail application applies to offences to which proposed section 8F applies but does not prevent consideration of matters relevant to the question of whether bail should not be refused. Item [4] amends section 38 of the Bail Act 1978 to require an authorised officer or court to record the reasons for granting bail for an offence to which proposed section 8F applies.

Schedule 4 to the bill makes various amendments to the Terrorism (Police Powers) Act 2002 arising from a legislative review of that Act. Sections 18 and 22 are amendments to clarify the existing power to stop, enter and search vehicles, vessels and aircraft. Section 26U is amended to provide that when a preventative detention order is in force in relation to a person, the power to enter and search premises for the person includes the power to enter and search vehicles, vessels and aircraft for the person. Section 27A is amended to extend the covert search warrant provisions to the search of vehicles, vessels and aircraft.

Section 23 deals with the identification and other details that a police officer is required to disclose when exercising a special police power. The amendment clarifies that the information may only be provided after the power is exercised if it is not reasonably practicable to provide the information before or at the time of exercising the power. This makes the provision consistent with similar provisions in the Law Enforcement (Powers and Responsibilities) Act 2002.

The Preventative Detention Scheme in part 2A of the Act does not permit orders to be made against children under the age of 16 years. Section 26E is amended to provide that if a child under the age of 16 years is inadvertently detained, the child should be released into the care of a parent or other appropriate person. This change takes up a submission made by the Department of Community Services. Section 26ZA is amended to make the provision more consistent with the Law Enforcement (Powers and Responsibilities) Act 2002. Section 27U of the covert search warrant scheme is amended to clarify that occupier notices are to be served on each person who was believed to be concerned in the terrorist act for which the warrant was executed and who were occupiers of the subject premises at the time of the search.

Schedule 4.2 makes an amendment to the Terrorism (Police Powers) Regulation dealing with delegations. Currently, the regulation is drafted with reference to specific position titles, and those titles may change over time. The amendment refers to assistant commissioner positions with reference to the relevant area of responsibility, rather than by reference to the specific title position. I commend the bill to the House.

Debate adjourned on motion by the Hon. John Ajaka and set down as an order of the day for a future day.

CIVIL LIABILITY AMENDMENT (OFFENDER DAMAGES) BILL 2007

Bill introduced, and read a first time and ordered to be printed on motion by Mr John Hatzistergos.

Second Reading

The Hon. JOHN HATZISTERGOS (Attorney General, and Minister for Justice) [4.32 p.m.]: I move:

That this bill be now read a second time.

The object of the Civil Liability Amendment (Offender Damages) Bill 2007 is to amend the Civil Liability Act 2002 to make a number of amendments to part 2A of that Act, which makes special provision for offenders in custody. Last year the Government made amendments to this Act, among others, when it introduced the Crimes and Courts Legislation Amendment Act 2006. The second reading speech to that bill noted that these amendments arose from the Supreme Court case of *Bujdoso v State of New South Wales*, and that the amendments would be expected to overturn that decision.

The Court of Appeal judgment in Bujdoso found that one of the limbs of the Supreme Court judgment, relating to section 3B of the Act, was erroneous, but decided the matter in favour of Bujdoso on reasoning that was outside the scope of the other amendments to section 26A. A subsequent matter, *State of New South Wales v*

Napier Keen Pty Ltd, was decided based on the Court of Appeal decision in Bujdoso. The offender damages trust fund provisions of the Civil Liability Act 2002 were inserted in 2005 to introduce a scheme to quarantine awards of damages and compensation made by a court to offenders, into a trust fund, thereby enabling victims to lodge claims against them in the knowledge that the offender would not be able to dissipate the award of damages in order to avoid a claim.

The Act that introduced these provisions, the Civil Liability Amendment (Offender Damages Trust Fund) Act 2005 contained savings and transitional provisions for the amendments to apply to all awards of offender damages that had not been satisfied before the commencement of the amendments—which commenced upon assent on 29 October 2005—including awards in respect of proceedings commenced and causes of action that arose before the commencement of the amendments, and regardless of whether the litigation that led to the award of damages was conducted under the Civil Liability Act 2002 or at common law. The second reading speech to the Civil Liability Amendment (Offender Damages Trust Fund) Bill 2005 noted that, "This bill introduces a Government initiative that is the first of its kind in Australia." It is evident that the initiative has provided courts with scenarios that are the first of their kind in Australia, and some subsequent court decisions have failed to adhere to the intention of the amendments as advised to Parliament in the second reading speech.

This present bill seeks to make it unquestionably clear that the provisions of division 6 of part 2A of the Act apply to all awards of personal injury damages to offenders, without exception, from the date of assent. Division 6 provides for offender damages trust funds, while part 2A makes special provisions for offenders in custody. For the purposes of division 6 of Part 2A of the Civil Liability Act 2002, the bill also clarifies when proceedings are finally determined so that the clock may begin to run on the period when damages awarded to an offender may be held in a trust fund, to enable a victim of the offender to begin a victim claim against the offender, if the victim so chooses. I now turn to the detail of the bill.

Section 26A of the Act, which defines terms used in part 2A, is amended to include definitions of "injury" and "personal injury damages". Although these terms are currently defined in another part of the Act, the inclusion of definitions of these terms within part 2A makes it clear that the limitations on the operation of that other part do not also extend to these terms when used in part 2A. Amendments to section 26M and 26R and new clause 1A of schedule 1 are intended to make it clear, for the purposes of part 2A and the savings and transitional provisions of the Act, that proceedings are not finally determined until any period for bringing an appeal has expired and any pending appeal has been disposed of. Two of the judges in Bujdoso criticised the existing expressions of "any final determination of legal proceedings" in division 6 of part 2A of the Act.

The intention of the 2005 legislation was that "final determination of legal proceedings" referred to the legal proceedings between the parties that finally determine the issue of negligence and the amount of damages. One Court of Appeal judge held, however, that the "final determination of legal proceedings" occurred when the Supreme Court determined the most recent of all proceedings which led to the appeal before the Court of Appeal: the proceedings that concerned what was to happen to the damages awarded upon the determination of negligence. It is only upon final determination of legal proceedings between the parties, when a court judgment is given and damages are awarded, that the offender damages trust fund provisions may be invoked. If there are any subsequent proceedings pending between the parties whereby liability or quantum of damages are challenged—such as an appeal—then the proceedings between the parties are not finally determined to enable invocation of the offender damages trust fund provisions, notwithstanding the recognition in case law that judgments are final and determinations of the rights of the parties, even though there may be a right of appeal, are not interlocutory determinations pending the exercise of the right of appeal.

Legal challenges to the application of the offender damages trust fund provisions—that is, questions about what happens to the damages that have already been finally determined, or whether an offender is subject to those provisions—are separate proceedings that do not finally dispose of the rights of the parties between each other since that disposition has already occurred. The Bujdoso matter in the Supreme Court and the Court of Appeal was such a matter: liability and quantum of damages had previously been finally determined in the District Court and the new proceedings concerned Bujdoso's challenge to being subject to the offender damages trust fund provisions.

Therefore, this bill replaces existing clauses 25 (5) and 26 (4) of schedule 1 of the Act with new more specific clauses to clarify the operation of the transitional provisions relating to the 2006 amendments to the Act dealing with offender damages trust fund provisions so that it will be absolutely clear that the amendments extend to cases in which offender damages were awarded before the commencement of the amendments.

New section 26D (3A) makes it clear that a dispute about whether the degree of permanent impairment of an injured offender is at least 15 per cent—which is the threshold for an award of offender damages—cannot be referred for medical assessment unless the offender has provided a medical practitioner's report that assesses permanent impairment to be at least 15 per cent. The need for this amendment has been highlighted by the Supreme Court case of *Hiron v State of New South Wales*. In this matter, the offender submitted medical evidence that did not contain an assessment of whole-person impairment in satisfaction of section 25C of the Act. The Government provided medical evidence including an assessment below the 15 per cent threshold.

The offender contended that the Government's medical evidence was incorrect, that this contention constituted a medical dispute, and that he was therefore entitled to an assessment by an approved medical specialist. The court found for the offender, holding that the definition of "medical dispute" contemplates a dispute between the parties, and not a dispute between medical practitioners, about a specified matter or a question about any of them—these matters being of a medical nature—and that there was therefore a medical dispute in this matter.

In fact, the WorkCover Guidelines—which are incorporated into part 2A of the Civil Liability Act 2002 by section 26D—contemplate that an assessment of permanent impairment is to be exercised by a medical professional and not to be as asserted by a litigant or legal practitioner unsupported by medical evidence. Any party needs to provide medical evidence in support of whatever contention the party proffers. On a proper construction of the guidelines, in order for there to be a medical dispute, there needs to be competing medical reports.

The ramifications of the Hiron decision are that, without the amendments proposed in this bill, offenders and their solicitors could file process seeking damages for personal injury, cause the Government to expend significant legal and medical costs in investigating the claim, both medically and on the issue of liability, not serve any medical evidence, and then simply apply for the Workers Compensation Commission to determine the threshold question of whether the 15 per cent whole-person impairment threshold has been reached. If the assessment were determined in the Government's favour, the Government would have little prospect of recouping costs expended in relation to work done in investigating the claim, since most offender plaintiffs are impecunious. Costs incurred can be quite substantial. For that reason I commend the provision. I also commend the bill to the House.

Debate adjourned on motion by the Hon. John Ajaka and set down as an order of the day for a future day.

ASSISTED REPRODUCTIVE TECHNOLOGY BILL 2007

Second Reading

Debate resumed from 27 November 2007.

The Hon. LYNDA VOLTZ [4.45 p.m.]: I support this important bill. The central assisted reproductive technology donor register will allow donor-conceived children to find out the identity and other information about their donor. In certain limited circumstances—when the child's life or health is at risk—parents and guardians of donor-conceived children will also be able to access information that identifies the donor. In circumstances in which the child is over the age of 18 and voluntarily supplies information to the register, the donor will be able to access that information.

The assisted reproductive technology register access provisions reflect the principle that donor-conceived children have a right to know about their genetic parents. The interests of those children are of primary importance. If they wish to share information with adult donor siblings, they may do so, but are under no obligation. Donors are allowed access to identifying information only if the adult child consents.

Clause 37 of the bill provides that on becoming an adult a donor-conceived child may access the following information: identifying information regarding their donor; non-identifying information regarding other children born using the gametes of that donor; and identifying information regarding other children born from that donor's gametes where those children have registered their consent. Clause 38 of the bill allows parents or guardians of children conceived using donor gametes to ascertain non-identifying information about the donor and non-identifying information about other offspring of the donor. Birth parents may also obtain identifying information about the donor if that information is necessary to save the child's life or to prevent

serious damage to the child's health and the information cannot be obtained by other means. If a parent is unable to apply for the information, the director general of the Department of Health may grant access to an appropriate person. An "appropriate person" is someone who is a representative of the child with a genuine interest in the child's welfare.

Clause 39 of the bill provides that a gamete donor is entitled to obtain non-identifying information relating to a person born as a result of assisted reproductive technology treatment using the donor's gametes and other information that an adult donor offspring has consented to being released to the donor.

Since 1996 the National Health and Medical Research Council's ethical guidelines on the use of assisted reproductive technology in clinical practice and research have provided that anonymous donations should not be accepted. It is understood that very few, if any, clinics in New South Wales now accept anonymous donations. It is true that in other jurisdictions the outlawing of anonymous donations had an impact on donations and the availability of donor sperm. However, that impact was of reasonably short duration and the experience is that there has been no long-term impact on the availability of donated sperm or ova.

The Assisted Reproductive Technology Bill does not deal with research on embryos except to provide in clause 20 that gametes or embryos can be used in research only with the consent of the gamete provider, or in the case of an embryo, the gamete providers. In all other respects embryo research is regulated by the Human Cloning for Reproduction and Other Prohibited Practices Act 2003 and the Research Involving Human Embryos (New South Wales) Act 2003 and their Commonwealth equivalents.

It is appropriate that this bill does not seek to regulate those matters that involve highly contentious ethical issues. This bill concerns the use of assisted reproductive technologies and the rights of the people involved in their use, most particularly the children thereby created. It would be a terrible shame to see the rights of those individuals adversely affected by ethical concerns that are better addressed elsewhere.

The Assisted Reproductive Technology Bill contains comprehensive provisions dealing with the storage of gametes and embryos. Clause 23 of the bill provides that the gametes of a dead person may be used only if that person consented to their storage and use after death and the recipient consents to receive the gametes of a dead person. If the dead person did not consent to their storage and use post-mortem then they may not be stored and must be disposed of.

Clause 25 of the bill provides that gametes and embryos may be stored only for the period for which the gamete provider, or providers, has given consent. Clause 26 of the bill provides that donated gametes or embryos are not to be used for assisted reproductive technology treatment more than 10 years after donation. The rationale behind these limits is that allowing gametes and embryos to be stored and used for indefinite periods will increase the chances of donor-conceived children missing the opportunity of knowing their genetic parent. Such a situation is not in the best interests of the child. The bill's approach to storage and use of gametes and embryos is consistent with the provisions of the National Health and Medical Research Council's ethical guidelines on the use of assisted reproductive technology in clinical practice and research.

Reverend the Hon. Dr GORDON MOYES [4.49 p.m.]: The Assisted Reproductive Technology Bill provides a broad framework for the regulation of the social and ethical aspects of assisted reproductive technology. It provides a broad framework for the practice and conduct of assisted reproductive technology services. The development of this legislation has been guided by three important principles: Firstly, to recognise obligations already imposed on assisted reproductive technology providers by the existing laws, such as the Medical Practice Act 1992; secondly, to recognise the rights of individuals to have control over the use of their genetic material; and thirdly, to recognise the best interests of the child and acknowledge the paramount importance of this final principle.

The Assisted Reproductive Technology Bill enhances the current system to clarify and protect the rights and obligations of people involved in assisted reproductive technology. This is a complex and longstanding issue. I remember being a member of the ethical group established by the University of Sydney and the Royal Prince Alfred Hospital to examine the ethical implications of such technology.

This complex issue includes the rights of children born as a result of that treatment. Under the new legislation, for which, generally speaking, I congratulate the Government and the Minister on introducing, a central donor register will be established to allow donor-conceived children to access important information about their donor parent once they turn 18 years of age. This will include information such as the donor's name,

date of birth and education, as well as important medical information. Therefore, the bill strengthens the position of the primacy of the interests of children conceived using assisted reproductive technology. It will also allow donor-conceived children to access information about the donor parent, usually the biological father, once the child turns 18 years of age. This is currently not the case, and some IVF clinics do not record donor details for the purpose of passing onto the child.

It is a fundamental human desire to want to know more about where we have come from and who are our forebears. Yet many adoptees and the offspring of donor insemination are being systematically denied knowledge of their origins. This not only impinges on the inherent need for identity; in a world of genetic medicine, if one does not have knowledge of one's biological heritage, one is placed at a severe disadvantage, particularly if one suffers the onset of disease later in life. As the diagnosis and treatment of illness and disease moves towards the routine use of genetic research, knowledge of one's biological identity is crucial to health outcomes. If that is so, continuing to deny individuals access to information about their biological heritage would appear to be a serious potential harm.

For years, the donation of sperm and eggs has been shrouded in secrecy. Like sex in the 1950s, the subject has been taboo. Donors remained anonymous, parents never talked about it and donor children knew nothing. Yet, 1.5 per cent of all births in Australia have been achieved through some form of assisted conception. In other words, about 3,600 children are born each year because one or both parents had problems conceiving a child naturally. Since Australia's first in-vitro fertilisation birth in 1980, more than 37,000 IVF babies have been born in the country. The Commonwealth Government has not universally legislated for the practice of assisted reproductive technology. However, Australian Health Ethics has issued guidelines. This means each State and Territory is responsible for the implementation of separate legislation.

However, some rules are applicable in all States. First, donors cannot be paid; second, they have no legal rights and cannot be held responsible for the financial upkeep of the donor children; and, third, birth parents are lawfully deemed to be the legal parents. It is amazing that, after more than 20 years of IVF births, most donor-conceived children are still ignorant of their biological parents—they have been kept deliberately in the dark. In the first stage of a landmark case in Britain in 2003, Brisbane resident Joanna Rose, the offspring of an anonymous sperm donor, found support in her fight to find her true identity. Britain's High Court ruled in July 2002 that European and British laws must ensure that the children of sperm donors have a right "to establish a picture of identity as much as anyone else". Access to medical information was a key claim of Rose, and the co-plaintiff, a six-year old girl. According to Trevor Jordan, senior lecturer in Queensland's University of Technology:

> Knowledge on one's biological identity is becoming a key factor in assessing and meeting an individual's health needs. To not have access to that information is to be seriously disadvantaged.

If honourable members consider one aspect of my speech today, they should reflect on this one point: According to David Blankenhorn, author of the best selling book *Fatherless America*, artificial insemination by anonymous donors now accounts for 30,000 of the four million births each year in the United States. He argues that these births represent "Our society's extreme embodiment of the idea that children do not need fathers". As a former Australian Father of the Year, to me this cultural trend undermines the recent push towards greater involvement of men in family life, where men are berated for not taking their family responsibilities more seriously. This is something I have argued over the years. I ask: How is this greater involvement possible if we accept sperm dads who render fathering irrelevant. Blakenhorn states:

> The rise of the Sperm Father constitutes nothing less than father killing, the writing enactment of cultural patricide. For the individual man, being a Sperm Father is the collaboration of the male in the eradication of their fatherhood.

Daniel Callahan, Director of the Hastings Centre, a New York bioethics research institute, expressed bewilderment that the moral and social implications of the use of anonymous sperm donors have passed unnoticed. Callahan's main argument is that insemination using anonymous donors socially sanctions male irresponsibility and contributes to the systemic downgrading of fatherhood. He said:

> Women have been hurt throughout history by males who abandon their parental duties, leaving to women the task of raising the children. A sperm donor is doing the same thing. The fact that he does it with social sanction does not change the outcome: one more male has been allowed to be a father without taking up the duties of fatherhood.

However, the love of a good family, blood related or otherwise, obviously plays a vital role in determining who we become as adults. Our teachers also shape us, as do any number of other key figures that make their presence felt over the course of a lifetime. But genetics is where it all begins. Children are who they are from the start and

for good reason, and it is the abuse of the first order to deny them the chance to eventually understand why. It is not a matter of whether or not the child pursues his or her genetic origin. What matters is that it should be possible for the child to do so. This is the protection offered by legislation in Victoria. In 1998 in Victoria, all donor children had the right to access identifying information about their biological parents upon reaching 18 years of age. Interestingly, since legislation changed to favour a more acceptable policy, the number of sperm donors has more than halved. In general, men do not want to be identified.

The 1980s saw a well-publicised debate about adoption, with adoptees complaining bitterly about being raised with no opportunity to discover their true origins. Their stories led to general acceptance that many people suffer a state of confusion known as "genealogical bewilderment" when deprived of this information. In a speech in a parliamentary debate over stem cell research, former Aboriginal Democrat Senator Aden Ridgeway made the connection between the stolen generation of Aboriginal children and children conceived using anonymous sperm, arguing "There is an innate belief, a requirement and a compulsion in every human being to know what they are the sum of." Ridgeway, with his colleague Senator Andrew Murray, succeeded in having an amendment passed by the Senate urging the Federal Government to ensure that every child "can, no later than on achieving adulthood, access information about their biological parents".

The Assisted Reproductive Technology Bill enshrines children's right to know their biological identity—a right included in the United Nations Convention on the Rights of a Child. Therefore, I welcome the Assisted Reproductive Technology Bill, and I commend it to the House.

The Hon. TREVOR KHAN [4.58 p.m.]: I have received a variety of submissions on this matter, and I regard it as appropriate in the circumstances, when the Chamber is debating such a matter, that some of that material be put on the record. I have received a submission from the Gay and Lesbian Rights Lobby. I understand that a number of other members have also received this material. I acknowledge that some views expressed by this group may not be shared by many. I acknowledge also that the position its members put may be contrary to the beliefs and expectations of others. Nevertheless, the submission is deserving of consideration if only for its quality. The Gay and Lesbian Rights Lobby had this to say:

> Donor consent and discrimination
>
> Clause 17 of the ART Bill allows donors to stipulate their wishes for the use of donated gametes. This includes the ability for donors to expressly discriminate against particular people or classes of people, including lesbian women.
>
> The Gay and Lesbian Rights Lobby are not in favour of the ability for donors to qualify their consent in a way which discriminates against potential receivers of the donation, including lesbian women. We feel such discrimination is not justified and has the potential to negatively impact on the health outcomes for lesbians seeking fertility services. The reasons follow.
>
> **1. Discrimination on the grounds of sexuality cannot be justified in the best interests of the child.**
>
> In the introductory speech given to the ART Bill by Ms Reba Meagher MP, the Health Minister forwards an argument for allowing donors to give qualified consent which includes discrimination on the basis of various grounds. The Health Ministers says:
>
> It is believed to be in the best interests of the child for the genetic parent to have given consent to the circumstances surrounding the child's birth and upbringing. To put this in another way, it will not be in the child's best interests to discover late in life that the genetic parent has a fundamental objection to their existence or the social and cultural circumstances in which they were raised.
>
> With respect to the Minister, we disagree with this proposition in relation to discrimination on the basis of sexuality and other irrelevant grounds. We believe it is not in the best interests of a child to have a donor who would qualify their love and regard for a child on the basis of that child's "social and cultural circumstances". A donor should be encouraged to value any child that is born to loving parents, regardless of the sexuality of their parents, or other similarly irrelevant "social and cultural circumstances". Indeed, there is the chance that a child may later identify as lesbian or gay to themselves, or several of the "conditions" that a donor expressly does not desire in prospective parents. The law should not set a standard that effectively and unreasonably sanctions the conditional acceptance of a child on the basis of their parent's social and cultural circumstances. Children are likely to be born with many differences, including diverse abilities, skills, as well sexualities. The law should encourage donors to equally value all children. The broad exemption given to donors to discriminate on *any* ground cannot be justified in the best interests of the child. They merely reflect the "best interests" of a prejudiced donor.
>
> Specifically with regards to sexuality, all credible research shows that the sexuality of a child's parents bears no detriment on their wellbeing or development. Therefore, there is no justifiable reason for allowing a donor to discriminate against lesbian women.
>
> The consent provision in the ART Bill is so broad that it is conceivable that a donor could qualify their consent with restrictions based on the ethnicity, sexuality, age, appearance, educational background, marital status locality, socio-economic status or **any other characteristic** of the prospective parents. Arguably, this provision allows a fertility service to sidestep the *Anti-Discrimination Act* in NSW, and may bypass the 2004 McBain decision which found that Victorian legislation

discriminating against women on the basis of marital status was inconsistent with the *Sex Discrimination Act*. In effect, the ART Bill achieves the aim of covertly amending the protections provided to women under the *Sex Discrimination Act*.

The recommendations that the lobby group made were as follows:

1. Donors should not be permitted to articulate conditions for their consent which discriminate against women on the basis of their sexuality. If the ART Bill is not amended to prohibit discrimination on the basis of sexuality and other similar grounds, we recommend that regulation be put in place to guide the process of procuring consent to ensure a donor's decision is informed and guided with credible research that, in particular:

    a. Rebuts stereotypes and misconceptions on the ability of lesbians to make good parents,

    b. Highlights the comparable wellbeing and developmental outcomes for children raised in lesbian families, and

    c. Presents real-life success stories of diverse families that have been formed through ART services.

Many other recommendations are contained in the report but time does not permit me to put them on the record. I acknowledge that there would be a diversity of views about the submission of the Gay and Lesbian Rights Lobby. However, it has sought to put forward an articulate submission and it deserves the respect of being read, at least in part, onto the record.

Dr JOHN KAYE [5.04 p.m.]: The Greens support the Assisted Reproductive Technology Bill 2007, which provides improved health and social outcomes from assisted reproductive technology. In particular, by creating a regulated environment it is probable that it will reduce the need for an instance of self-insemination and consequently will reduce the exposure of women to sexually transmitted diseases, at least for some recipients. The bill also regulates surrogacy by removing commercial options, which, on balance of consideration of the issues, is a highly appropriate public policy outcome.

The bill resolves issues of contact between gamete donors and their offspring in a highly sensible way. It balances issues associated with privacy of the donor, privacy of the recipient and privacy for the child produced by assisted reproductive technology. The bill sensibly creates mechanisms that will minimise the risks of incestuous relationships and, most importantly, it promotes the best interests and the rights of children produced by assisted reproductive technology by resolving what we recognise to be a very difficult balancing act between sensitive ethical issues and sensitive social issues. On balance, it looks like the bill largely got it right.

The bill is the result of a long and detailed process of drafting and consultation. Over its life the bill has benefited from that process of consultation. It is based on the ethical guidelines developed by the National Health and Medical Research Council, which the Greens strongly support. The bill is therefore based on guidelines that are medically and scientifically derived—a sensible set of guidelines upon which to base this bill. We welcome the positive developments in the bill. The bill specifies minimum standards for provision of assisted reproductive technology services. In particular, only registered medical practitioners must give treatment. This is certainly a step forward and will avoid women coming in contact with unqualified staff or, worse still, backyard operators.

The bill specifies that counselling must be made available to both gamete donors and gamete recipients. This sensible provision will ensure that both donors and recipients are aware of the consequences of the actions they are undertaking. Most importantly, the bill creates a compulsory donor registry. By doing so, it creates the right of children in the future, on turning 18, to access information about their donor parents. This will resolve some of the problematic issues about the rights of biological parents and the ability of children to contact them.

The bill separates out infection control for semen from that which is applied to blood products. It is a distinction that is again based on science. It recognises that it is possible to test semen samples and their donors to effectively eliminate the risk of transmissible diseases in a way that simply is not possible for blood or tissue products. In particular, semen samples can be frozen and the donors can be tested over the required period to ensure that at the time of donation they were not carrying a transmissible disease, in particular, HIV-AIDS. This enables gay men to become donors of gametes in a way that it is not possible for them, in many cases, to be donors of blood products.

If clause 17 passes unamended—and we certainly hope that it does not—these provisions will at least ameliorate constraints on the supply of gametes to single women and lesbians. The bill bans commercial surrogacy. The Greens oppose the idea of human bodies for rent and see this ban as a highly positive step. We do not support the commercialisation of reproduction. We have some reservations about the way commercial

surrogacy is defined, which I shall refer to later. However, the Greens have major concerns with clause 17 and will move a series of amendments in Committee to try to allay these concerns. Clause 17 grants the right to donors to give "directed donations"—that is, donors can restrict even the use of their gametes, egg cells or sperm cells to certain classifications of people. The issue is clarified in the Minister's second reading speech as follows:

> Clause 17 of the bill allows a gamete donor to place conditions on their consent including a condition that directs that their gametes can only be used by a particular person or a particular classification of people. For example, people of a particular cultural or ethnic background may only consent to the use of their gametes by a person from a similar background.

I make it clear that the Greens do not oppose the right of a gamete donor to specify a nominated recipient. We do not seek to restrict the right of a gamete donor, an egg cell donor or a sperm cell donor to donate to a specific nominated individual. What we object to is the specification of a class of recipients. We believe that this is legally sanctioned discrimination, where the choice is made based on factors that are simply not relevant to good parenting. The provision set out in clause 17 ignores two decades of progress towards a society that rejects discrimination. It lays out the welcome mat to bigotry and discrimination. Clause 17 provides that it is okay for donors to go to an assisted reproductive technology provider and say, "My gametes cannot go to Jews, Asians, Muslims, lesbians or unmarried women."

The Hon. Greg Donnelly: Or Christians.

Dr JOHN KAYE: Or Christians—Catholics, Protestants.

The Hon. Rick Colless: Or Greens.

Dr JOHN KAYE: Or Greens, for that matter. The provision grants legal sanction to bigotry and prejudice. By passing this provision we will send an appalling message. We will be saying it is acceptable to discriminate on grounds that are irrelevant to good parenting. The Greens accept that there is already a de facto ability to discriminate in the current unregulated environment. The worst feature of clause 17 is that it institutionalises that right into the law. It is the legal sanction itself that damages community attitudes. What we are seeing is state-sanctioned bigotry, and this is very bad news.

The Victorian Law Reform Commission's 2007 report identified that laws influence prejudicial community attitudes. Laws can promote either positive community attitudes or negative community attitudes. As reported in this morning's *Sydney Morning Herald*, medical ethicist Leslie Cannold from Melbourne University described clause 17 as "offensive". It is offensive simply because it gives sanction to the small element of our society that still thinks it is okay to act in a discriminatory fashion.

The bill also risks reducing the availability of donor sperm and egg cells to single mothers and lesbians, thus increasing the incidence of self-insemination. This can have negative health consequences in some cases. The bill allows assisted reproductive technology providers to present potential donors with forms that offer the option of excluding specific religious and ethnic or sexuality groups as recipients. We cannot allow the flames of prejudice to be fanned by forms that sanction bigotry. Over the last decade our society has made considerable progress in transforming community attitudes on sexuality, race and religion. Unfortunately the donor consent provision of this bill would be a step backwards.

In her agreement in principle speech in the other House the Minister for Health argued that because a child of assisted reproductive technology can identify and contact his or her biological parents, it is in the best interests of the child "for the genetic parent to have given consent to the circumstances surrounding the child's birth and upbringing". The Minister identified that it was not in the interests of the child if he or she "discovers later in life that their genetic parent has a fundamental objection to their existence or the social and cultural circumstances in which they were raised". Behind the Minister's reasoning lies the image, for example, of a homophobic donor meeting a child who has been raised by a lesbian couple, or an anti-Semitic donor who meets a child that has been raised by a Jewish family.

The argument was reiterated by the Premier at noon today on ABC radio. The Greens simply do not accept the arguments of either the Minister or the Premier. Specifying a class of people to whom gametes can or cannot be donated gives no guarantee that the biological parent will approve the raising of the child or the type of person that the child turns into. The concerns of the Minister and the Premier are not based on science. The statistical chances of a child raised in a heterosexual household turning out to be gay or lesbian are no different from those of a child raised by same-sex parents. Specifying heterosexual parents will not increase the chances of raising a heterosexual child.

This raises real issues about encouraging people who think they have such specific classes of recipient requirements to donate. By passing this provision we would create a false sense of security that may sow the seeds of future problems. Further, specifying that a child is born into a Christian heterosexual family gives no guarantee that the child will be raised in such a family. Families change, and they move on in their attitudes and in their lifestyles. If we are really concerned for the child, we would encourage the idea that donors need to be flexible in what they are likely to confront when they meet the product of their gametes 18 years later. The Gay and Lesbian Rights Lobby put it well in its submission:

> We believe that it is not in the best interests of the child to have a donor who would qualify their love in regard for a child on the basis of that child's social and cultural circumstances.
>
> A donor should be encouraged to value any child that is born to loving parents, regardless of the sexuality of their parents or other similar irrelevant, social and cultural circumstances.

The Victorian Law Reform Commission makes it very clear in its 2007 report that there is a remote likelihood of adverse effects of biological parents rejecting the recipients of their gametes 18 years after the donation—that is 18 years and nine months after the donation, I presume. That remote likelihood simply does not justify the damage done to community standards of antidiscrimination. Laws are important not only for what they do or do not prohibit but also for the attitudes they encourage or discourage within our society. This provision encourages all the wrong things.

Arguments have been advanced about the rights of donors to specify in what sort of lifestyle they want the products of their gametes raised. Again this is an illusion. Families are made up of many ingredients, and those ingredients change over time and it is not possible to specify the ingredients by a simple checklist. There should be only one basis for the laws we are looking at here, and that is the best interests of the child. The Greens will move amendments in Committee to ameliorate the worst aspects of clause 18.

The Greens have concerns about other aspects of the bill. We believe that the donor registry should be opened to voluntary reporting by self-inseminating parents and families. We ask that the Minister clarify whether this will be possible if all parties consent to it. We agree that commercial surrogacy should be banned, but the regulations need to be clear as to what constitutes commercial surrogacy in this instance. The Greens are particularly concerned about medical costs and pregnancy support costs. We believe that surrogate mothers should be paid the medical costs associated with pregnancy and that this should not constitute a commercial relationship. We understand, however, that the State and Federal Attorneys General will be meeting to discuss surrogacy issues later this year. We look forward to the outcome of that issue.

Finally, this bill provides a reminder that State laws continue to discriminate against same-sex couples in relation to parenting via the Status of Children Act 1996 and the Births, Deaths and Marriages Regulation 2001. Given that the newly elected Rudd Government has commitments on the Human Rights and Equal Opportunity Commission report, we look forward to the New South Wales Government joining its Federal colleagues and removing all forms of legal discrimination against same-sex couples. The Greens support this bill with the large caveat that we have grave concerns about clause 17 and the implications it will have on the progress made towards a non-discriminatory society.

The Hon. GREG DONNELLY [5.21 p.m.]: I do not intend to forensically cover all aspects of the Assisted Reproductive Technology Bill. Members who are interested in examining the detail of the bill can read the Minister's second reading speech and refer to the commentary of the Legislation Review Committee in the Legislation Review Digest No. 6 of 2007. It could be argued that the bill is not perfect in every respect and does not deal with certain issues that such legislation could codify and regulate. However, I believe the bill is worthy of support by the members of this House. I congratulate Minister Meagher from the other place on introducing the bill. I have no doubt that over time the legislation will be amended and further refined.

While I concur with the comments and opinions of a number of members who have participated in the debate so far, I strongly disagree with the views of the Greens. It is interesting to note the comments of some members about the time it has taken to bring the legislation to Parliament. On the one hand, I understand the point. However, it is equally important to understand that it is only in the last few years, as the first children born from the technology and techniques covered by the legislation have come of age and reached adulthood, that the truly human and profound nature of what we are dealing with is being comprehended. It is my view that legislators both in Australia and overseas must listen to those who were voiceless but who now can articulate for themselves and are speaking out.

I make the point that the exercise of listening will not be easy for some. It will challenge the "Can do, so let's do it" attitude of many scientists and, in particular, the economic and commercial interests of the assisted

reproductive technology and pharmaceutical industries. It will be particularly difficult on those who strongly advocate and support the notion of the freedom of the individual, as articulated by Immanuel Kant and Enlightenment philosophy. To those people I say, "This is not a debate about God and religion versus atheism and secularism. Instead, it is time we all step back, look, listen and hear." If we do not do this we will never get to the truth of the matter and our ability as legislators to make good laws for the citizens of New South Wales will be limited.

About three months ago I had the opportunity to speak to Myfanwy Walker. Myf is a young woman living in Melbourne. She is a graphic artist who has interests in ethics, human rights and philosophy. In March 2001 Myf discovered that she had been donor conceived and in November of that same year she met her biological father, Michael Linden, for the first time. Myf is a founding member of TangledWebs, a group that is challenging donor conception and similar reproductive technology practices both in Australia and internationally. I rang her because of the impact an article she wrote in the summer 2006-07 edition of the journal *Australian Rationalist* had on me. The article was titled, "Misconception" and was based on an address she gave at a forum in December 2006. I would encourage all members to read the article if they get the opportunity.

The next article in that journal is written by Myf's father and is also worth reading. I will not take up the time of the House by extensively reading the article but I would like to refer to some parts that I think are prescient and germane to the debate today. Myf deals with a number of issues in the article. Under the heading, "How do I really feel?"—referring to how she felt being a person who, after in excess of 20 years, learnt she was born from a sperm donor—she said:

> I feel as though I have three families, but that I don't wholly belong to any of them; that I exist in a limbo, torn between the *expectations of who and what should or shouldn't matter to me*. I feel as though my paternity was split down the middle; that I am a branch grafted onto a different tree. I have flourished, but my fruit is not the same and my roots lie elsewhere. I feel a great loss of not being genetically related to my dad, and of not having known Michael—

that is, the sperm donor—

> and his family for the first twenty years of my life. I feel a loss from knowing that I have three unknown half-sisters out there somewhere. It's difficult to articulate exactly how deep that emotion runs in me. I do know that just thinking about it almost always brings me to tears.

She went on:

> I do not seek to lay blame, but knowing that the truncated, cut-and-paste nature of my family tree, which has caused me this loss and complexity, is a result of a decision made before my conception, and that the people who made that decision are the same people I love and hold dear, is something I find difficult to reconcile.

She said further:

> The power of genes hit home like a ton of bricks when I first saw the face that looked so much like my own.

Myf is referring to her first meeting with her father. She continued:

> But I also felt like an intruder—I was a disruption to a pre-existing family unit. Michael's wife and step-son had to make room for my brother and I, and Michael's daughters had to contend with the idea of two new siblings, and that process has not been at all easy. It still isn't. The unknown donor became a real person and this, of course, had implications for my mum and dad also.

She continued:

> Perfectly fertile people don't choose to use donor conception, obviously because they don 't have to, but also because having a child who is genetically linked to both parents is important. Those who do use donor conception to conceive do so for the same reasons—so that a genetic link with at least one parent can be maintained and a donor can be chosen with similar or desirable physical features. This is the first major conflict between the prospective parents and the child. Because while an interest in the familial genetic link may be a primary consideration in the parents' choice to use donor conception, from the perspective of the child that same interest is ultimately limited—firstly by the donor's act of donation and relinquishment of any parental rights and responsibilities; secondly, when the child is raised by one or both parents who are not genetically related to them; and thirdly, when the child's true genetic parentage is not reflected on their primary document of identity, their birth certificate.

Myf then made a personal observation:

> *I think it is imperative to reflect on the intentionality at play here.* While in certain circumstances, and as in the previous example of adoption, it may be necessary for a child to be raised by parents to whom they are genetically related, this is a decision made *after* the child's conception and subsequent birth, usually in order to serve their best interests, health and wellbeing. In the case of

> conception, such decisions are made *before* conception. It is impossible to argue that it is in a child's best interests that they be raised anywhere other than within their own genetic family, *because they have not yet been conceived.*

She said further:

> Just because someone is created in a certain set of conditions today and, despite them, can still function relatively capably as a human being is not a sound argument for creating someone and imposing that same set of conditions on them tomorrow. People all over the world are raised in the absence of one or both of their genetic parents for various reasons, but that doesn't mean it's ethical to intentionally deny someone those relationships for the benefit of someone else.

Myf then talked about the sense of loss and grief she has experienced as a young woman. She said:

> Knowing your family members is as much about knowing factual details as it is about knowing their interests and idiosyncrasies. I know quite a lot factually about Michael, but I doubt I will ever have the same comfortable relationship with him that I have with my dad. I feel a loss of two decades, a loss of that father-daughter bond. I feel the loss of not knowing who three of my half-sisters are, where they are, whether they are okay or even alive. The loss of not having close relationships with Michael's daughters, my other three half-sisters. And there is a lingering loss for the person I once thought I was, the genetic daughter of my Australian mum and dad, with only one brother, versus the person I am now, the genetic daughter of an Australian mother and an English father, with one full brother and six half-sisters.

She continued:

> Donor conception is widely touted as a medical "treatment" for infertility, a misnomer implying that it is a cure. Donor conception is not a cure, just as sperm, eggs and embryos are not medicine. Terming donor conception as a medical treatment also limits the ways in which we can acknowledge its lifelong and intergenerational impact, because typically there is a focus only on the patient and their treatment until the desired outcome is achieved, which is the birth of a child. Real consideration for the interests of the child pre-conception, and for the complex issues which arise post-birth, is virtually impossible during treatment because of the likelihood that a child may not be conceived at all.

Myf reflects on her own views on how we can deal with the issue of artificial donation in the future. I will not go through all the points she articulated. Her concluding remarks include:

> My argument against donor conception is not one of condemnation, in that I am not seeking to condemn those who use it or *have* used it to conceive.

Her critical point was:

> My argument is against the practice itself. While I do not condone it, I *can* understand the choice to conceive via donor. I do believe, however, that given a thorough education of the wider implications of the practice, anyone remotely interested in creating a better world for our future generations would not choose to use it. We have reached a real ethical crisis in many areas of the biotech industry. My basic standpoint applies not only to donor conception but to other technologies as well. I am deeply concerned that there is a percentage of the community who are prepared to push the boundaries as far as they will go, just because they can.

The other related and significant issue associated with this debate is the right of a child to be brought into this world and raised by his or her mother and father. Let me say upfront that I acknowledge there are members of this House and the other place and the community at large who do not accept this proposition. I also acknowledge that arguments are being used that if adults cannot access gametes donated by an individual then those adults are being subject to discrimination. I do not accept that proposition. In the end, the threshold issue of the rights of the child to be brought into this world and raised by his or mother and father cannot and will not go away. I do not pretend that this is an easy matter for people to change their positions on. I understand that many adults want to have a child or children. But, in my view, those people must accept that a child brought into this world has a right to be raised by his or her mother and father.

And it will not do to use deconstructionist arguments to point out that there are deadbeat dads and mums who drink too much, therefore all we need to consider is that a child is loved and cared for. Whilst superficially appealing, this line of argument does not face up to or address what we know in our heart of hearts to be true: motherhood and fatherhood are profoundly unique in their very nature and we as a society should do everything we can to ensure that a child gets the opportunity to be raised by their mother and father, if at all possible. In my view children need both a mother and a father and we should not shirk the responsibility of asserting this loudly and clearly. The fact is that gender does matter with respect to the rearing of children. I agree with the well-known American family scholar Dr James Dobson, who observed last year in *Time* magazine:

> Admittedly, that ideal is not always possible. Divorce, death, abandonment and unwedded pregnancy have resulted in an ever growing number of single-parent families in this culture. We admire the millions of men and women who have risen to the challenge of parenting alone and are meeting their difficult responsibilities with courage and determination. Still, most of them, if asked, would say that raising children is a two-person job best accomplished by a mother and father.

In my view sentiments and feeling should not be the key drivers of this debate. Social science generally and child psychology specifically have given us over the last 20 to 30 years rich insights into the unique and particular contribution that mothers and fathers make to the rearing of children. Time does not permit me to cover in detail what we now know about the importance of mothering and fathering on children. It is true to say that the influence of mothers on their children is almost intuitively appreciated by all of us and it has been studied seriously by social science for many decades. However, we are now coming to understand better than ever before the significant impact that fathering has on children.

For those who are interested, many good books and academic papers examine this issue in significant detail. I do not intend to go through all the research and data, but I will refer to Dr Kyle Pruett of the Yale medical school and his book *Father need—Why Father Care is as Essential as Mother Care for Your Child.* Pruett says that dads are critically important simply because "fathers do not mother". The journal *Psychology Today* explained in 1996 that "fatherhood turns out to be a complex and unique phenomenon with huge consequences for the emotional and intellectual growth of children". As a parent a father makes unique contributions to the task of parenting that a mother cannot emulate, and vice versa. Time and again peer-reviewed research makes the same point: fathers and mothers matter, they both matter.

I appreciate the point that those who hold an alternative view to mine will cite different research and findings. That is of no surprise. I invite those who hold a different view to look at Sue Gerhardts' book *Why Love Matters: How Affection Shapes a Baby's Brain*, Sean E. Brotherson and Joseph M. White's book released only a few months ago *Why Father's Count: The Importance of Fathers and Their Involvement with Children*, David Popenoe's book *Life without Father*, David Blankenhorn's book *Fatherless America: Confronting Our Most Urgent Social Problem* and Daniel Lee's recent book *Going Further with Fathers: Can Fathers make Unique Contributions to the Lives of their Children?* Research in those books and in a host of other books and academic articles shows that the roles of both mothers and fathers are unique and indispensable to the rearing of children.

As outlined in the Commission on Parenthood's Future report titled, "The Revolution in Parenthood—The Emerging Global Clash Between Adult Rights and Children's Needs", released late last year, we find ourselves, particularly legislators, in a difficult situation where we have to make a judgment between what are competing interests: the claims of adults and the rights of children. It is my view that we must be very careful to ensure that the rights of children are clearly understood in the community and that we as lawmakers protect those rights. This bill takes an important step towards protecting those rights. I commend the bill to the House and ask honourable members to support it.

Reverend the Hon. FRED NILE [5.41 p.m.]: I speak on the Assisted Reproductive Technology Bill 2007. The Christian Democratic Party supports the aims and objectives of this very important bill because it will correct some of the original policies in earlier legislation. The bill requires those who take part in assisted reproductive technology to be registered by the Director General of the Department of Health. The bill makes certain requirements in relation to the provision of those services, including a requirement that assisted reproductive technology services be undertaken by and under the supervision of a registered medical practitioner, which we support because it will give medical certainty and professionalism to the treatment. Counselling services are to be made available.

A number of restrictions will be put on the use of gametes, which covers semen, ovum and embryos. Assisted reproductive technology providers will be required to collect information from persons involved in the treatment and from donors. The director general will be required to establish a central assisted reproductive technology donor register, which will permit persons involved in the assisted reproductive technology treatment and donors to obtain further information about other persons. A person born as a result of assisted reproductive technology treatment using a donated gamete—either semen or ovum—will be permitted to obtain information about the donor of the gamete when they are 18 years of age. The bill prohibits commercial surrogacy and makes such agreements void. We support that provision because we do not believe the commercial world should be involved in this area of reproductive technology. I researched the debate in 1984 in this House on the Artificial Conception Bill and the Children (Equality of Status) Amendment Bill. Some of the remarks I made in my contribution on that occasion are still relevant today. On 28 February 1984, as recorded in *Hansard* on page 4691, I said:

> These bills involve more issues, and simply to say they do not or should not is to speak nonsense. Many sections of the church would have strong reservations about these bills, though they follow on the principal bills which legalized these procedures. A number of moral theologians would regard the whole process we are discussing today as a form of adultery. Whether it wishes or not, the Parliament is drawing up moral codes in these areas.

I note that the legislation passed in 1984 and updated in 1986 in the Status of Child Act specifically stated that the sperm donor has neither the rights nor the obligations of paternity. He is presumed not to be the father of the child, whether the recipient woman is married or not, and that presumption is irrebuttable. Therefore, in the case of a child conceived by assisted reproductive technology and born to a woman who is not married, in law there will be no father. I am pleased that this bill will bring some sense to the whole process of reproductive technology treatment and particularly a change in procedure so that the donor is registered and his or her name can be made available to any child who has turned 18 years of age who was conceived as a result of that person's donation of semen or ovum.

I note also that the legislation indicates there will be certain requirements that deal with the dangers of infectious diseases. That is a very important aspect of the legislation. We know of cases, particularly in the 1980s, where homosexual donors who were carriers of the AIDS virus infected some women who used assisted reproductive technology to conceive a child, and those women subsequently died of the virus. My wife and I had a great deal of contact with George and Noelene Cliff. George's wife, Noelene, was infected with AIDS through the assisted reproductive technology process and she died when the child she conceived was aged seven. Thankfully, the child, Lesley Ann, was not infected with the AIDS virus and is now 19 years of age. She is a healthy young lady but, sadly, she experienced the tragic death of her mother.

Tragic situations such as that have not occurred since that time because of the various strict controls that now operate. The legislation makes it quite clear that providers must comply with any infection control standards provided by legislation. We believe that when a child conceived through this process is 18 years of age he or she has a right to know the identifying details of the donor. We oppose the assisted reproductive technology procedure being used by homosexuals, same-sex couples or single women. We are pleased that the legislation will allow donors now to have a role in the whole process. We believe that it is a good development and one that is very much opposite to the approach taken back in 1984.

Clause 17 of the bill allows a gamete donor to place conditions on his or her consent, including a condition that directs that the gametes can be used only by a particular person or by a particular classification of people. For example, people of a particular cultural or ethnic background may consent to the use of their gametes only by a person from a similar background. The ability for donors to place conditions on the use of their gametes is especially important because any child born as a result of that donation will be able to identify their genetic parents and may wish to contact or meet them. This policy will prevent what could be a very unhappy situation when a child reaches the age of 18 and meets the gamete, semen or ovum donor. The Christian Democratic Party believes that provision is fair and just and we support it. Obviously, we will not support the Greens amendments, predictably, to remove those requirements.

Dr John Kaye: Is it predictable that you will not support them or that we would want to remove those requirements?

Reverend the Hon. FRED NILE: It is predictable that the amendments would be moved by the Greens; one could anticipate their amendments to this legislation. The other important aspect of the legislation—which again the Greens are attacking—is the problem of a donor becoming the father of two, three, four, five or even 100 children.

Dr John Kaye: We have withdrawn that amendment.

Reverend the Hon. FRED NILE: The legislation makes it clear that that number should be limited. The bill recognises the interests of people involved in treatment by limiting to five the number of women who can be provided with gametes from the same donor. This allows families to have several genetically related children while reducing the risk of donor offspring unknowingly entering into a relationship with a blood relative. That is another positive and just provision in this legislation. Dr Kay interjected that the Greens' amendment has been withdrawn. I am thankful for that, but it should never have been proposed. This legislation is a vast improvement on all previous legislation dealing with this issue. As stated by the Hon. Greg Donnelly, this issue is still controversial, and I fully agree with many of his comments. The Christian Democrats support the bill.

The Hon. AMANDA FAZIO [5.54 p.m.]: I support this bill. I initially had some concerns about it and my belief was probably not in accord with the Government's belief. However, I do believe that by ensuring full disclosure about people who donate sperm or eggs in effect we will cause a number of people who have been prepared to do so to cease because they have been happy to participate on the basis of anonymity. I know that

can cause problems, particularly when people are trying to establish their medical history. I have had friends who were adopted and who encountered difficulties sorting out genetic problems. Although I accept that is a difficulty, I accept that in this age of openness and disclosure that will happen.

I also had concerns about the provision allowing people to be selective about who can use their donations. When I first became of aware of that provision I thought it was very unfortunate because it would allow discrimination against large numbers of people in our community who in the past would have been able to receive and use these donations. Then I thought that perhaps some donors might have been inhibited because of their beliefs and that this provision might create a new pool of people prepared to donate.

The point of this legislation is to ensure openness and that people who have made donations can find out what has happened—whether they have any offspring—and that people born as a result of assisted reproductive technology can find out who the donor was, whether it be a male or a female. That would require the young person to have been told by their family that they had been born as a result of assisted reproductive technology. That in itself could be a very unsettling difficulty that they must deal with in their teen years when they are struggling with many other difficulties that we all know confront them. Then to find out that the donor was homophobic, bigoted or racist would add another layer of difficulty. Perhaps it is best that the wishes of people who are so selective about who can use their donations are acceded to so that their bigotry or bias is not imposed on an 18-year-old who tries to make contact with the parent who donated the gamete that led to their birth. On balance, I decided that I could support the bill because it will protect young people potentially from finding out that the donor of the gamete that led to their existence was someone whose values would be rejected as abhorrent by the majority of people in our community.

The Hon. HENRY TSANG (Parliamentary Secretary) [5.58 p.m.], in reply: I thank honourable members for their contributions to this debate. I acknowledge the presence of Leonie Hewitt and Dr Liz Marles in the gallery. This bill recognises the primacy of the best interests of the children conceived using assisted reproductive technology. Children have a right to know about their identity and their genetic heritage. There will be no more anonymous gamete donations in this State. In the early years during the development of assisted reproductive technology treatment the focus was very much on protecting the rights and privacy of the adults involved in the procedure—the prospective parents and the donors. Now the children conceived in the early years have grown into adults and have demanded their rights, most importantly the right to know their genetic parentage. Advances in medical science—particularly the increasing knowledge about the links between genetic material and certain medical conditions—have increased people's interest in and awareness of their genetic inheritance. The bill provides a sound regulatory framework for the ethical and social issues raised by assisted reproductive technology procedures. It addresses the concerns of donors, parents and offspring while complementing the regulatory requirements already in place.

I will take this opportunity to address a concern that has been raised by the Fertility Society of Australia regarding families who have already had children with anonymous donors or who have created embryos with anonymous donors. The National Health and Medical Research Council's Ethical Guidelines recognise this situation and provide that those families may continue to use the anonymously donated gametes or the embryos previously created with anonymous gametes to complete their families and to ensure that all their children have the same biological parents. This is a reasonable and balanced approach during the transition to the new regulatory regime. I give a commitment that a transitional regulation will be made to allow families who find themselves in this position a reasonable period to complete their families. Stakeholders will be consulted in the preparation of a transitional regulation.

In response to the matter raised by Dr John Kaye, I can advise the House that nothing in the bill prevents the director general from entering into the register the details of the donor-conceived children, families and donors where conception has occurred in an unregulated private setting. I can give a commitment that where an application is made for information to be entered in the register in these circumstances, and the director general is satisfied that donor consent has been obtained, the information will be entered into the register. Of course, administrative fees will be associated with the inclusion of information on the register and these fees will apply equally to private individuals and registered assisted reproductive technology providers.

I also acknowledge that the Standing Committee of Attorneys-General will be undertaking a comprehensive review of surrogacy laws on a national basis. Any further regulation of surrogacy should be addressed in that context. In response to the submission of the Gay and Lesbian Rights Lobby and matters raised by the Greens, I emphasise that the Government rejects any suggestion that the ability of gamete donors to direct the use of their genetic material in any way constitutes discrimination. Again I thank honourable members for their valuable and thoughtful contributions to this debate. I commend the bill to the House.

Question—That this bill be now read a second time—put and resolved in the affirmative.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 5 agreed to.

Dr JOHN KAYE [6.02 p.m.]: I move Greens amendment No. 1:

No. 1 Page 4. Insert after line 25:

6 Act subject to Anti-Discrimination Act 1977

(1) This Act is subject to the *Anti-Discrimination Act 1977*.

(2) A person is not required to comply with any provision of this Act if that compliance would result in a contravention of the *Anti-Discrimination Act 1977*.

(3) A gamete provider does not contravene the *Anti-Discrimination Act 1977* merely because of any statement that the gamete provider includes in a written notice given to an ART provider under section 17.

This amendment removes doubt that the Anti-Discrimination Act applies to providers of assisted reproduction technology services. It makes clear that providers of those services are bound by the provisions of the Anti-Discrimination Act. It also makes clear that those providers cannot use the provisions of the Assisted Reproductive Technology Bill to promote discriminatory consent restrictions on the use of gametes. There is real concern that clause 17, without this amendment, could provide the basis for a legal argument that assisted reproductive technology providers are exempt from the provisions of the Anti-Discrimination Act. It is important that we make clear that this bill does not in any way undermine the Anti-Discrimination Act. It is important legislation and it ought to apply uniformly across our society. Since there has been debate in the community about this issue, it is appropriate that we pass a provision that makes it absolutely clear that nothing in this bill can in any way be used to undermine or challenge the action of the Anti-Discrimination Act 1977.

The Hon. HENRY TSANG (Parliamentary Secretary) [6.04 p.m.]: The Government does not support this amendment. The amendment is unnecessary as the provisions of the Anti-Discrimination Act already apply to the provision of services to people by assisted reproductive technology providers.

The Hon. JENNIFER GARDINER [6.04 p.m.]: The Opposition does not support this amendment either. As I pointed out in the second reading debate, a Department of Health discussion paper was produced on this important topic in 1997, and the Government produced a draft exposure bill in December 2003—in fact, the New South Wales Opposition was critical that it took so long to convert that draft bill to the bill now before the Chamber. In the meantime, the Opposition, particularly through the shadow Minister for Health, Mrs Skinner, has had a dialogue with the main contributors to the debate for about 12 years, and certainly that main group did not have any major concerns with the bill as it evolved to what it is today. So the Opposition will not be supporting this amendment.

Reverend the Hon. FRED NILE [6.05 p.m.]: The Christian Democratic Party does not support the amendment either. It is not necessary but it may by implication cause confusion about the application of the bill.

Dr JOHN KAYE [6.06 p.m.]: The Greens do not accept the argument that it is unnecessary. There has been considerable community debate about provisions in the bill and a key component of that debate has been a profound concern expressed, in one case by a professor of law at an Australian university and in another case by a medical ethicist, that the provisions of clause 17 of the bill will undermine the action of the Anti-Discrimination Act. It comes down to this for all members: do we accept—

The Hon. Greg Donnelly: Don't speak for the Government.

Dr JOHN KAYE: I certainly would not seek to speak for the Government. Do we accept that anti-discrimination is an underlying fundamental principle in all of our actions or do we see it as something that is flexible and can be overridden and cast into doubt? With this amendment we are saying that it is important for

this Chamber to make a solid statement that we see anti-discrimination as something that cannot be open to compromise. If the amendment is unnecessary the Greens do not see that as a block to the passage of the amendment. We maintain it is an important statement to the community that the Greens see anti-discrimination as an important and inviolable principle. Therefore, we commend the amendment to the Committee.

Question—That the amendment be agreed to—put and resolved in the negative.

Amendment negatived.

Clause 6 agreed to.

Clauses 7 to 16 agreed to.

Dr JOHN KAYE [6.09 p.m.], by leave: I move Greens amendments Nos 2 and 4 in globo:

No. 2 Page 10, clause 17. Insert after line 21:

(3) Any requirement or request by a gamete provider that his or her gamete be used, or not be used, in relation to a class of persons is not to be taken as part of the gamete provider's consent.

No. 4 Page 11, clause 19 (b), line 24. Omit "the woman or classes of women". Insert instead "any particular woman specified in the consent.

These amendments remove the ability of sperm donors and gamete donors to specify a class of recipient. These amendments do not in any way interfere with the ability of a gamete donor to specify a nominated recipient for the gametes nor does it interfere with the right of a recipient to specify a class of donor or gametes. It purely seeks to remove the right of the donor to specify a class of women to whom their gametes would be provided.

I outlined during my contribution to the second reading speech the Greens argument in support of these amendments. I emphasise that without these amendments there is a risk that the legislation will enshrine legalised discrimination into our laws. Reverend the Hon. Fred Nile suggested that clause 17 will prevent unhappy situations from occurring and the Chairman suggested that it would avoid the exposure of young people to bigotry and bias, or words to that effect. The Greens accept those as desirable outcomes but we do not accept, as a matter of analysis, that this clause will do that.

People change. Over a period of 18 years households and families change in attitude, in religious orientation and in the way they operate. As many members would know from personal experience, children are not necessarily mirror images of the attitudes or values of the parents who raise them. In many cases children reject those attitudes and values. There are no guarantees. It raises false hope to suggest that these provisions, unamended, would guarantee an absence of stress that many members seek to protect young people from.

Reverend the Hon. Fred Nile: It would reduce it at least.

Dr JOHN KAYE: There is no guarantee that it would even reduce it. Without the amendment, the provision severely inhibits the progress that has been made over the last two decades towards a common acceptance of a non-discriminatory society while providing little protection for children. The Greens are also concerned that if the clause is not amended we are encouraging highly unrealistic expectations amongst gamete donors that they are getting what they specified. In doing so we are encouraging people to enter the business of gamete donation who possibly should not be donating gametes. They may think their gamete donation is restricted to a particular class; that the children will be of that particular class and therefore they are comfortable with gamete donation. However, 18 years and 9 months later when they meet the children the product of their donation there will be a greater likelihood of a surprise or an unhappy situation in which there is conflict. When one considers the effect that clause 17 will have on anti-discrimination and weighs that against the putative benefits that clause 17 provides, the balance falls in favour of my amendments and I commend them to the Committee.

The Hon. HENRY TSANG (Parliamentary Secretary) [6.15 p.m.]: The Government does not support the amendments. The amendments seek to remove the ability of the gamete donor to direct how the gamete is to be used. It would not be in the best interests of the child born as a result of a donor procedure to discover later in life that their biological parent does not approve of the circumstances surrounding the conception or upbringing. The fundamental principle underpinning the bill is the best interests of the child and the amendments undermine that principle. The amendments are not supported.

The Hon. JENNIFER GARDINER [6.15 p.m.]: The Opposition does not support the amendments.

Reverend the Hon. FRED NILE [6.16 p.m.]: The Christian Democratic Party does not support the Greens amendments either. Dr John Kaye spoke as if he was restricting what could occur to one or two areas and he made no reference to ethnic or cultural factors, which would not change.

Dr JOHN KAYE [6.16 p.m.]: I accept that cultural and ethnic factors are complex. We are not seeking to restrict the right of recipients to make decisions about the class of gamete that they are receiving, which we think deals quite adequately with ethnicity and culture. We contest the Parliamentary Secretary's statement that the amendments are not in the best interests of the child. Indeed, it is certainly not in the best interests of any child born in Australia in 2008 and beyond to be born into a country that steps backwards from the progress we have made towards a society that does not discriminate on factors that are irrelevant such as religion, ethnicity, culture, sexuality and marital status that are simply not relevant to the best interests of the child.

We are supported by the Victorian Law Reform Commission in its 2007 report, which made abundantly and obviously clear the argument that whatever damage would or would not be done to the child by meeting with biological parents who may or may not accept the kind of upbringing they have received would be outweighed by the enormous damage caused by the legislation, in its current form, described as offensive by Leslie Cannold, an ethicist at the University of Melbourne.

It is unrealistic to expect that we are protecting the best interests of the child by saying to children that everything will be fine when they meet their biological mother or father and that they will approve of who or what they are. It is a picket-fence view of the world that we grow up as mirror images of the people who raise us and that families remained static. Families and households are incredibly dynamic and any child born in the first decade of the twenty-first century is likely to experience some kind of family change and attitudinal change through that period. It is important that we have legislation that recognises and supports that. It is important also that no-one in this country will be discriminated against on the basis of factors that are simply not relevant to good parenting. I commend Greens amendments Nos 2 and 4 to the Committee.

Question—That the amendments be agreed to—put.

The Committee divided.

Ayes, 4

Ms Hale
Ms Rhiannon
Tellers,
Mr Cohen
Dr Kaye

Noes, 27

Mr Ajaka	Mr Lynn	Mr Tsang
Mr Brown	Mr Mason-Cox	Mr Veitch
Mr Catanzariti	Reverend Dr Moyes	Ms Voltz
Mr Clarke	Reverend Nile	Mr West
Ms Cusack	Ms Parker	Ms Westwood
Ms Ficarra	Mrs Pavey	
Miss Gardiner	Mr Primrose	
Mr Gay	Ms Robertson	*Tellers,*
Ms Griffin	Ms Sharpe	Mr Colless
Mr Khan	Mr Smith	Mr Donnelly

Question resolved in the negative.

Amendments negatived.

Dr JOHN KAYE [6.28 p.m.]: I move Greens amendment No. 3:

No. 3 Page 11, clause 17. Insert after line 6:

(7) If a gamete provider's consent requires that his or her gamete is not to be used to provide ART treatment to a certain class of women, the ART provider is to take reasonable steps:

(a) to provide the gamete provider with material that encourages equality of opportunity, and

(b) to encourage the gamete provider to reconsider the matter in the light of that material.

This amendment offers a fall-back position. It provides that if a gamete donor specifies a class of people to whom he or she wishes his or her gamete to be restricted, or a class of people to whom he or she wishes the gamete not to be given, the donor is to be provided with material that encourages equality of opportunity, and is to be encouraged to reconsider the matter in light of that material. The purpose of the amendment is to provide at least some protection against the damage that the legislation will do to the principles of antidiscrimination. A gamete donor will at least be made aware that there is another view and that a restriction on his or her donation will be specified.

They are at least made aware that there is another view and that view is sanctioned by this Parliament, by the other State Parliaments around Australia and by the Parliament of the Commonwealth of Australia. That view says that it is not appropriate to discriminate on issues that are inappropriate. It still leaves open the opportunity for donors to continue their discriminatory and restrictive behaviour but it makes sure they are aware of the alternative view and the consequences of what they are doing. The Greens regard this as a minimal level of protection of the principles of antidiscrimination, non-discrimination and equality of opportunity. I commend Greens amendment No. 3 to the Committee.

The Hon. HENRY TSANG (Parliamentary Secretary) [6.31 p.m.]: The Government does not support the amendment. A person who has made the complex and important decision to donate their gametes to assist other people to have children will certainly have very carefully examined their conscience and made a decision as to how their gametes may be used. The amendment is not supported.

Dr JOHN KAYE [6.32 p.m.]: I fail to see the relevance of the Parliamentary Secretary's response to this amendment. He is correct in pointing out that many gamete donors do the right thing, and probably the overwhelming majority of gamete donors do so from a sense of altruism. But the sense of altruism of gamete donors is not relevant to the provisions of this amendment, which alerts those who seek to place restrictions on the use of their gametes by the specification of a class of recipients and makes them aware of the alternative view. It is not to say they have done the wrong thing or that their motives should be questioned. It is purely to encourage them to consider the alternative view, which is one of equality of opportunity.

The Hon. Matthew Mason-Cox: Patronising.

Dr JOHN KAYE: I note the interjection by the Hon. Matthew Mason-Cox that it is patronising. I reject that totally, as do the Greens. It is simply making gamete donors who seek to place restrictions on the use of their gametes aware that there is an alternative view—a view held by a consensus of the Parliaments of this country, by the representatives of the people of this country, and by the people of this country.

Question—That the amendment be agreed to—put.

Division called for and Standing Order 114 (4) applied.

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): Order! I advise members that the reason for the delay in calling for the doors to be locked is that Dr Kaye asked me whether he could withdraw leave to have the bells rung for only one minute in accordance with Standing Order 114 (4). The standing orders do not allow for leave to be withdrawn in such circumstances. Consequently, any member who got the benefit of the additional 30 seconds or so to make his or her way into the Chamber is indeed fortunate.

The Committee divided.

Ayes, 4

Mr Cohen
Ms Rhiannon
Tellers,
Ms Hale
Dr Kaye

Noes, 27

Mr Ajaka	Mr Lynn	Mr Tsang
Mr Brown	Mr Mason-Cox	Mr Veitch
Mr Catanzariti	Reverend Dr Moyes	Ms Voltz
Mr Clarke	Reverend Nile	Mr West
Ms Cusack	Ms Parker	Ms Westwood
Ms Ficarra	Mrs Pavey	
Miss Gardiner	Mr Primrose	
Mr Gay	Ms Robertson	*Tellers,*
Ms Griffin	Ms Sharpe	Mr Colless
Mr Khan	Mr Smith	Mr Donnelly

Question resolved in the negative.

Amendment negatived.

Clause 17 agreed to.

Clauses 18 to 74 agreed to.

Schedules 1 and 2 agreed to.

Title agreed to.

Bill reported from Committee without amendment.

Adoption of Report

Motion by the Hon. Henry Tsang agreed to:

That the report be adopted.

Report adopted.

Third Reading

Motion by the Hon. Henry Tsang agreed to:

That this bill be now read a third time.

Bill read a third time and returned to the Legislative Assembly without amendment.

INTERNET BETTING EXCHANGES

Production of Documents: Return to Order

The Clerk tabled, pursuant to the resolution of 14 November 2007, documents relating to betting exchanges and corporate bookmakers received this day from the Director General of the Department of Premier and Cabinet, together with an indexed list of the documents.

Production of Documents: Claim of Privilege

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

[*The President left the chair at 6.41 p.m. The House resumed at 8.00 p.m.*]

LOCAL GOVERNMENT AMENDMENT BILL 2007

Second Reading

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, and Vice-President of the Executive Council) [8.00 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 not granted.

The bill reflects the Government's commitment to keep the Local Government Act continually under review to provide a transparent and effective legislative framework for the administration of local Government in New South Wales. The proposed amendments address issues highlighted by the Department of Local Government that arise out of the operation of the Act and that require legislative amendment. First, the bill proposes to clarify matters in relation to the use of tendering and public-private partnerships in local government. The Act was originally amended in 2004 to allow a council an alternative to the tendering provisions of the Act when considering whether to enter into a contract to use a public-private partnership model to progress a council's project or works. I seek leave to have the balance of the second reading speech incorporated in *Hansard*.

Leave granted.

Previously, where a council was approached by a private developer with a proposal to provide a public facility or infrastructure on, for example, council owned land, a council was required to seek tenders.

This discouraged private developers from entering into public private projects with councils.

It also encouraged some councils to attempt to avoid the tendering requirements by arguing that "extenuating circumstances" brought the contract within the exemption for compliance with the tendering provisions.

The Local Government Amendment (Public Private Partnership) Act 2004 provided councils with an alternative method of engaging in a transparent and accountable process for selecting its partners for a particular project.

However, concerns have been raised in the local government industry that the provisions as currently drafted are ambiguous.

Some doubt has been expressed whether these provisions operate as was intended, namely, to enable councils to choose either to go to tender as required by section 55 of the Act or use the public private partnership provisions for certain projects.

The aim of this bill is to make this choice, and its corresponding procedural requirements, clearer for councils, developers and the public.

The amendments proposed in this bill enable councils to apply the most appropriate method of testing the market for a project, that is, determining whether to proceed with a development by tender or by public-private partnership.

Arrangements that may not constitute a contract but otherwise are a PPP arrangement will be required to be dealt with under the PPP provisions, commencing at section 400B of the Act.

For example, a memorandum of understanding between a council and a private developer to enter into an arrangement for the development of council owned land to provide a public facility that would be owned and operated by a third party would trigger the PPP provisions.

Central to this is a change to the definition of "public-private partnership" in the bill.

The new definition will now provide that a public-private partnership means an arrangement: (a) between a council and a private person to provide public infrastructure or facilities (being infrastructure or facilities in respect of which the council has an interest, liability or responsibility under the arrangement), and (b) in which the public infrastructure or facilities are provided in part or in whole through private sector financing, ownership or control, but does not include any such arrangement if it is of a class that has been excluded by the regulations.

This amendment will remove any uncertainty about the types of services that fall within the "public-private partnership" framework.

Importantly, the new definition will capture services delivered to a council that are associated with the provision of infrastructure, but will exclude any ongoing maintenance or operation of that infrastructure.

For example, it is now very clear that councils do not have to follow the PPP provisions for every cleaning contract for a public toilet block.

A charity providing a bench in a public park is not entering a PPP arrangement.

A not-for-profit organisation such as Rotary providing lawn mowing or garden maintenance for a public area is not a PPP arrangement.

The proposed amendments enhance the recent changes to local government public-private partnership legislation, removing any ambiguities that have occurred in practice.

By ensuring certainty in a council's processes, all sectors of the community will benefit from increased transparency and flexibility in the models available for infrastructure development in local Government.

Secondly, the bill proposes amendments to the Act to clarify the manner of levying certain annual charges for stormwater management.

Currently, councils can levy annual charges under the Act for services such as waste management and water and sewerage management.

These charges can be applied to individual lots, strata lots or company title properties.

In accordance with government policy, councils have the ability to levy a capped annual charge for their stormwater management services.

This charge allows for the improvement of stormwater management throughout the urban areas of New South Wales.

In particular, it will facilitate the planning, construction and maintenance of drainage systems, constructed wetlands, stormwater harvesting systems and gross pollutant traps.

It also allows the continued monitoring and maintenance of general water quality and flow.

To better support the application of this charge, the Bill seeks to strengthen the existing provisions in the Act that allows a council to levy annual charges on individual strata lots and company title properties.

There will be corresponding amendments to the Strata Titles legislation.

These amendments will not impose a new charge on landowners.

These amendments merely clarify existing arrangements.

In conclusion, while different in focus, each area of reform proposed in this bill is founded on the improvement of local government procedures, policy and service provision.

The tendering and public private partnership amendments provide greater public transparency, and the stormwater levy amendments provide greater public resource management.

I commend the bill to the House.

Debate adjourned on motion by the Hon. Rick Colless and set down as an order of the day for a later hour.

CRIMES (FORENSIC PROCEDURES) AMENDMENT BILL 2007

Second Reading

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, and Vice-President of the Executive Council) [8.04 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.

The Government is pleased to introduce the Crimes (Forensic Procedures) Amendment Bill 2007.

The bill amends the Crimes (Forensic Procedures) Act 2000. The amendments implement a 2007 Government Election Commitment to expand the range of offences in respect to which DNA samples may be taken without a person's consent.

Currently, police can only take DNA samples from people accused of indictable offences like murder, sexual assault and robbery unless they consent to the forensic procedure. The changes will expand this to include all offences, including non-indictable offences such as loitering by convicted child sex offenders and minor drug offences.

> The amendments also clarify the legal test that must be met before a police officer can take a DNA sample from a suspect without his or her consent. This test has two important limbs.
>
> First, the police officer must reasonably suspect that the person committed an offence.
>
> Second, there must be reasonable grounds to believe that the DNA sample might produce evidence tending to confirm or disprove that the suspect committed that particular offence.
>
> Police will not be taking DNA samples from suspects just for the sake of it. Police will not be able to compel a person to provide a DNA sample if there is no information indicating that there is DNA material taken from, or available at, the crime scene—against which the intended suspect sample can be compared.
>
> There are already other safeguards in the Crimes (Forensic Procedures) Act. Part 10 of the Act requires that a suspect's forensic material be destroyed if the suspect is acquitted of the offence or no criminal proceedings are commenced within a 12-month period. Exceptions to this rule include instances where a magistrate has approved the extension of this period or the person is the subject of an arrest warrant.
>
> The bill makes a related amendment to ensure that the destruction provisions apply in the same way to a sample taken for one offence, where proceedings are taken in relation to another offence arising out of the same act or omission by the suspect. This will ensure that the forensic material is available for those criminal proceedings.
>
> The bill implements important election commitments regarding DNA sampling, and provides clarity as to the tests that must be met before a person's DNA sample can be taken without their consent.
>
> I commend the bill to the House.

The Hon. JOHN AJAKA [8.04 p.m.]: The Crimes (Forensic Procedures) Amendment Bill 2007 seeks to amend the Crimes (Forensic Procedures) Act 2000 to allow a senior police officer or magistrate to request or order a suspect to undergo a non-intimate forensic procedure involving the taking of a sample of the suspect's hair or the carrying out of a self-administered buccal swab in relation to the investigation of any offence, rather than only indictable offences and other prescribed offences, and to clarify that a forensic procedure may be ordered in relation to a suspect for the purpose of obtaining evidence tending to confirm or disprove that the suspect has committed an offence only if there are reasonable grounds to believe that the suspect has committed that offence. The Opposition does not oppose the bill. The landscape of crime prevention, detection and investigation is constantly evolving. The Opposition is committed to optimising access by police and the courts to new technologies at the forefront of crime fighting insofar as that access does not infringe the civil rights and liberties of those subjected to these new technologies and procedures.

The bill will expand the range of offences for which DNA samples may be taken without a person's consent. Currently, police can take DNA samples only from people accused of indictable offences. The amendments will expand this to include all offences. The proposed changes to section 88 (2) (c) of the Act ensure that the forensic material taken in relation to one offence will be available in proceedings in relation to another offence arising out of the same act or omission by the subject. I note that the original bill in 2000 was strongly opposed by the Aboriginal Legal Service, the Bar Association, the New South Wales Privacy Commission, the Ethnic Communities Council, the Law Society, Civil Rehabilitation Committee Justice Support, the Council for Civil Liberties, the Positive Justice Centre and Justice Action. These parties remain opposed to such legislation.

It has been argued, firstly, that the proposed amendments represent an unnecessary expansion of already inherently intrusive powers to request non-intimate forensic procedures and, secondly, that the bill challenges the principle that people have the right to remain silent to ensure that they are not compelled to say anything that may impugn them of a crime. The compulsion of forensic evidence could be equated to a breach of this right. Indeed, in not opposing this bill we must be assured that it will, in fact, achieve its objectives: to assist the officers of the law in proving or disproving guilt as pertains to an offence with a consideration of the probative value of evidence obtained through non-intimate forensic procedures; and to create greater certainty in the prosecution of criminals.

Another concern that has been raised is that currently under the principal Act the intrusiveness of authorised forensic procedures is proportional to the severity of the suspected offence. However, under the proposed changes even those reasonably suspected of having committed a relatively less serious offence can be subjected to requests or orders for non-intimate forensic procedures. The proposed amendments may therefore be perceived to destroy the balance between individual rights and the exigencies of effective law enforcement. The Legislation Review Committee expressed concern that the extension of powers proposed by the bill may "trespass on a suspect's right to personal physical integrity". However, it concluded that:

> … given the various safeguards included and the public interest in obtaining relevant evidence where there are reasonable grounds to believe that the suspect has committed an offence ... the bill does not unduly trespass on personal rights and liberties.

The safeguards imposed on the use of the extended powers include:

> A senior police officer may not order the carrying out of a non-intimate forensic procedure unless satisfied:
>
> (a) that the suspect is under arrest, and
>
> (b) that there are reasonable grounds to believe that the suspect has committed an offence, and
>
> (c) that there are reasonable grounds to believe that the procedure might produce evidence tending to confirm or disprove that the suspect has committed the offence; and
>
> (d) that the suspect is neither a child nor an incapable person, and
>
> (e) that the carrying out of such a procedure is justified in the circumstances.

Secondly, in the case of a non-intimate forensic procedure:

> (a) there must be reasonable grounds to believe that the suspect has committed an offence, and
>
> (b) there must be reasonable grounds to believe that the procedure might produce evidence tending to confirm or disprove that the suspect has committed the offence.

I also note that these provisions will add to the safeguards already in the Act, such as part 10, which requires that a suspect's forensic material be destroyed if the suspect is acquitted of the offence or no criminal proceedings are commenced within a 12-month period. Having examined the scope of the extended powers, the safeguards imposed on these powers and the position of key stakeholders, the Opposition emphasises the need for adequate review mechanisms, particularly in relation to the existence of "reasonable grounds" for the exercise of the powers, as well as avenues for redress in the instance that an individual wishes to appeal an order requiring them to undergo a non-intimate forensic procedure—for example, pursuant to the Crimes (Local Courts Appeal and Review) Act 2002. For the reasons outlined previously, the Opposition does not oppose the bill.

The Hon. MARIE FICARRA [8.11 p.m.]: The Coalition does not oppose the Crimes (Forensic Procedures) Act 2007. This bill will allow a police officer or magistrate to request or order a suspect to undergo a non-intimate forensic procedure involving the taking of a sample of the suspect's hair or the carrying out of a self-administered buccal swab in connection with the investigation of any offence where there are reasonable grounds to believe that a suspect has committed an offence. The bill will ensure that forensic material taken in relation to one offence will be available in cases where proceedings are taken in relation to another offence.

Buccal swabbing is an effective, quick and painless DNA sample collection technique that involves rubbing a swab similar to a Q-tip against the inside of the cheek. The rubbing motion collects loose cheek cells, and these cells contain enough DNA for use in investigative follow-up and other applications such as paternity tests. DNA is the same in every cell of the body. A cheek cell collected through buccal swabbing contains the same DNA as a blood cell collected through a blood draw. Buccal swab samples have many primary benefits: they are easy to administer—painless and non-invasive, and can even be safely performed on a newborn infant; and they are more reliable than blood samples for patients who have recently had blood transfusions or bone marrow transplants and whose blood may show the presence of the donor's DNA.

DNA is used for forensic identification in many instances: to identify potential suspects whose DNA may match evidence left at crime scenes; to exonerate persons wrongly accused of crimes; to identify crime and catastrophe victims; to establish paternity and other family relationships; to identify endangered and protected species as an aid to wildlife officials—and it has been used to successfully prosecute poachers; to detect bacteria and other organisms that may pollute air, water, soil and food; to match organ donors with recipients in transplant programs; to determine pedigree for seed or livestock breeds; and to authenticate consumables such as caviar and wine.

DNA testing has been used for many years and is extremely reliable. Throughout the past few years forensic identity testing has been considerably transformed by the development of multiplex polymerase chain reaction [PCR] systems involving DNA amplification. These systems are ideally suited for both high throughput forensic identification and the formation of large national DNA databases for criminal intelligence purposes. Any type of organism can be identified by examination of DNA sequences unique to that species. To identify individuals, forensic scientists scan 13 DNA regions that vary from person to person and use the data to create a DNA profile of that individual—often called a DNA fingerprint. There is an extremely small chance that another person has the same DNA profile for a particular set of regions: only one-tenth of a single per cent of

DNA—about three million bases—differs from one person to the next. Scientists can use these variable regions to generate a DNA profile of an individual, using samples from blood, bone, hair and other body tissues and products.

The extensive use of biological evidence to identify victims and offenders has been significant in recent years in relation to the courts of law enforcement investigations, criminal court proceedings and victim service provider issues. Arguably, DNA evidence has become the most well known type of forensic evidence, probably because it can be uniquely identifying and because it is the genetic blueprint of the human body. For these reasons, DNA evidence has become a highly influential piece of the crime puzzle. The combined DNA index system—CODIS—blends computer and DNA technologies into a powerful tool for fighting crime.

Although DNA cannot determine a motive for a crime, it can be an important part of any law enforcement investigation, particularly one in search of an all-important lead. Forensic scientists also use DNA evidence to identify human remains, determine paternity and study human populations and medical diseases. Technological advances that have made it more reliable and efficient have increased the popularity of DNA evidence use. For example, the time needed to determine a sample's DNA profile has dropped from between six and eight weeks to between one and two days. Future advancements on the near horizon will decrease this time to as little as a few hours or even a few minutes.

Property crime offenders have higher recidivism rates—their crime and violence can escalate, and property crime cases often go unsolved. Biological evidence collected from property crime scenes can prevent future property crimes and more serious offences. There has also been an increased acceptance and use of DNA information in the courtroom. DNA evidence can help convict the guilty, acquit the innocent or exonerate those wrongly accused or convicted. This does not necessarily mean that DNA evidence alone can determine a verdict. DNA evidence is used often to corroborate eyewitness testimony or other evidence.

In Great Britain more crimes are being solved using a national database of DNA sequences of criminals and suspected criminals. Launched on 10 April 1995, this national database holds DNA profiles from more than three million people. In a typical month the database churns out hits for 15 murders, 45 rapes and sexual offences, and 2,500 car, theft and drug crimes. With DNA evidence, the average crime clear-up rate has increased from 24 per cent to 43 per cent and is growing steadily as more DNA profiles are added daily.

That is a dramatic increase in clearance rates. With a population of 60 million people in Great Britain, the three million DNA database entries make up about 5 per cent of the population. Future database growth will no doubt make it an even more effective tool for catching criminals. It would be great to see that happen not only in New South Wales but also in Australia as a whole. DNA samples from suspects from previous investigations are proving fertile ground for discovering perpetrators of other crimes. Since it began in 2001, the practice of retaining profiles of suspects subsequently acquitted has added 135,000 extra profiles to the database.

Of those, more than 7,000 have since been connected with crimes, including 68 murders, 38 attempted murders and 116 rapes. The trend towards keeping biological samples—not only the DNA profiles produced from those samples—is driven by expectations of future advances in DNA testing techniques. As DNA testing becomes more powerful, the original samples from the crime scenes that do not match samples of known individuals on the database will be reanalysed to derive more information about race, ethnicity, eye colour, skin colour, hair colour, height, and facial and other features. Existing DNA analysis techniques can already provide a great deal of racial and ethnic information. As large numbers of DNA locations are deciphered more characteristics will be deduced from the DNA sequences.

In November 2004 California passed Proposition 69 to enable the collection of samples for a DNA database not only from felons but also in 2009 from anyone arrested for a felony crime. The proposition received a 62 per cent yes vote. In California even those arrested for misdemeanours qualify for DNA sample collection if they have a previous felony conviction. California's DNA database will become much more effective as a gradually increasing percentage of all criminals in that State are placed on it. We should not be surprised to see some countries collecting DNA samples from foreign visitors for crime investigations and to combat terrorism.

Local councils now use DNA testing to assist in the conviction of irresponsible dog owners whose pets attack other animals or humans. Rangers employed by the City of Port Phillip in Victoria are trialling a dog attack evidence kit. Council officers say that nearly half of the dogs involved in attacks have been involved in previous attacks and that DNA testing will help to identify them sooner. Police now have well-documented

methods for taking samples and transporting them, but unfortunately local government does not. However, this kit—which is increasingly popular with local governments around Australia—will provide all the necessary documentation and utensils to take a sample and transport it to a laboratory so that evidentiary requirements can be upheld in a criminal prosecution, if it gets to that point. In time I believe it will act as a deterrent in local government circles, particularly for irresponsible dog owners. City hospitals treat dog attack victims every day, and that is a serious concern. As many as 100,000 dog attacks are reported every year in Australia and most of them are never solved. It will be interesting to see how far the canine DNA material investigations go in clearing up those offences.

DNA testing can be undertaken in many interesting situations. I will not detail all of them, but I have two fascinating cases to relate to the House. In 2000 scientists cracked one of the greatest mysteries in European history using DNA tests to prove that the son of the executor French King Louis XIV and Marie Antoinette died in prison as a child. Royalists have argued for many years about whether Louis-Charles of France perished in 1795 in a grim Paris prison or managed to escape the clutches of the French Revolution. In December 1999 the presumed heart of the child king was removed from its resting place to enable scientists to compare the DNA make-up with samples from living and dead members of the royal family, including a lock of his mother's hair. It was established that the heart did belong to the child king. The other case involved Snowball the cat. A woman was murdered on Prince Edward Island in Canada and her estranged husband was implicated because a snowy white cat hair was found in a jacket near the scene of the crime. The DNA in the hair matched DNA of Snowball, who belonged to the husband's parents. Many of these instances will crop up.

In general, people will support this legislation. The civil libertarians will say that liberties will be lost and that they do not like having to swab their cheeks. However, this technology is necessary and it will reduce the incidence of crime. The extraordinary usefulness of DNA testing is clear. The Coalition fully supports this bill, which will give police officers and magistrates the ability to order a suspect to be forensically tested in a non-invasive manner. As we have seen from recent overseas experience, as we develop our DNA databases such genetic information banks will be a powerful tool in assisting the police in solving crimes and addressing the perpetual challenge of keeping our community safe.

Ms LEE RHIANNON [8.26 p.m.]: The Greens do not support the Crimes (Forensic Procedures) Amendment Bill. It will massively expand the range of offences in relation to which DNA samples may be taken without a person's consent. The Greens recognise that DNA evidence can exonerate the innocent, identify the guilty and solve what would once have been elusive, unsolvable crimes. DNA evidence can provide certainty where once there was none. However, it is far from infallible; it is subject to human error. Given that DNA sampling is a massive encroachment on privacy and personal integrity, the Greens are very concerned about expanding its use beyond all but the most serious of crimes.

Section 11 of the Crimes (Forensic Procedures) Act provides that a police officer may ask a suspect to undergo a so-called non-intimate DNA procedure only in relation to prescribed offences—that is, generally indictable and more serious offences. If passed, this bill will amend section 11 to allow a police officer to ask a suspect to undergo a DNA procedure for any crime, including summary offences. More disturbingly, this bill will amend sections 20 and 24 of the Act to allow a senior police officer or magistrate to order that a DNA sample be taken without the consent of the suspect in respect of any offence. That is a significant expansion of powers. A suspect does not have to be charged to have a DNA sample taken, only arrested. Police already have the power to take DNA samples for a huge variety of crimes. The Greens believe this bill is unnecessary. The Legislation Review Committee advises that this aspect of the bill trespasses on a suspect's right to personal physical integrity.

I acknowledge that a number of so-called safeguards are provided. Specifically, a senior police officer must be satisfied that the suspect is under arrest, that there are reasonable grounds to believe that the suspect has committed an offence and that the procedure might produce evidence tending to confirm or disprove innocence. The officer must also be satisfied that the suspect is neither a child nor an incapable person and that the carrying out of such procedure is justified in the circumstances. The Greens are concerned that these safeguards contain loopholes large enough to drive a bus through. A number of them disappear in the case of orders issued by a magistrate. A magistrate need only satisfy the test that there are reasonable grounds to believe that the suspect has committed an offence and that the procedure might produce evidence tending to confirm or disprove innocence.

From my reading of the bill, it appears that a magistrate can order DNA samples to be taken from a minor or an incapable person. I would like the Minister to confirm whether that is the case and inform the House

of what, if any, additional safeguards are in place for these vulnerable people. It is important that this is spelt out and that it is on the record. Similarly, I would like the Minister to explain whether this bill will allow police officers to take DNA samples covertly without a suspect's knowledge or permission. I understand that this bill allows DNA samples to be taken without consent, but I am unclear whether that includes DNA samples taken without the knowledge of the suspect. Again, I would like the Minister to clarify this matter in reply.

I am sometimes concerned that members of this House appear to lose their reason when it comes to having debates about DNA. DNA is not a magic bullet. It is not a cure-all. We are not police officers on the set of *Minority Report* or *CSI*. DNA is no more remarkable than fingerprinting and should not be used as an excuse to infringe on privacy and civil rights. DNA can play an important role in investigating crimes, but this forensic procedure must be carefully balanced against civil liberties. In the short time that DNA testing has been around, many of the concerns raised by the Greens have surfaced. The use of this procedure has been abused in many cases.

DNA testing carries with it a serious potential for miscarriages of justice. In a recent article in the journal *Current Issues in Criminal Justice*, Sydney University legal academic Kirsten Edwards looked at the dangers of DNA databases. Ms Edwards notes the danger, firstly, of overstating the statistical significance of a DNA match. There is a wide belief that DNA evidence is more accurate than it really is—that it establishes guilt or innocence rather than being just one factor. Secondly, Ms Edwards notes that there may be many different innocent explanations for the presence of DNA at a crime scene. Thirdly, a multitude of possible errors can arise during laboratory analysis and data entry. Contamination can occur by failing to wipe down benches, not using clean gloves or even sneezing.

Coincidental matches do occur. In the United Kingdom a man with advanced Parkinson's disease was arrested and charged with a break and enter offence which occurred in a second floor unit more than 300 kilometres from his home. The man could not drive or even dress himself without assistance, yet his DNA coincidentally matched the crime scene. He was detained for seven hours. That case should be a reminder to members who have the idea that DNA testing always turns up something accurate because everybody's DNA is different—which it is. But members need to recognise that that does not mean the DNA testing that produces an apparent exact piece of evidence is correct. Finally, Ms Edwards notes the great potential for corruption and fabrication. DNA evidence is ideally suited to planting. It is easy to obtain without the person knowing and can be easily concealed and transported. Ms Edward concludes that the cumulative effect of these weaknesses "leaves the innocent with much to fear and suggests the very real possibility that an innocent person could already have been the victim of a DNA cold hit".

These weaknesses challenge the fundamental assumptions that underlie the political enthusiasm for the use of DNA database evidence—specifically that the innocent have nothing to fear from DNA databases and that DNA evidence is reliable and ironclad evidence of guilt. By forcing DNA tests upon suspects we are taking a step closer to reversing the presumption of innocence. Let us face it, when a person's DNA is matched to a crime scene the burden of proof effectively shifts—not in a formal legal sense but practically the suspect must provide an innocent explanation for the presence of the DNA, which so many people assume is automatically that person's. Again, I urge members to remember that these tests are not always accurate

The Greens are particularly concerned about the usefulness of expanding DNA sampling to non-indictable offences. We are concerned that wrongful convictions may be even more likely because convicted people may not launch a long and involved challenge during a sentence of only a few years. A challenge usually involves seeking out expensive expert testimony. Given that funding for legal aid and community legal services has been gutted, challenging DNA evidence will be out of reach of many people convicted of less serious offences. Indeed, I question whether the police themselves have the necessary resources to use DNA testing for less serious matters. DNA testing and investigation for less serious matters would require a huge funding boost for police, forensic laboratories and computer systems. Either this funding will not be provided or it will be provided at the expense of funding for the community legal sector, further tilting the system in favour of the prosecution—something I believe should trouble all of us.

This Labor Government—with the Coalition barracking from the sidelines—continues to expand the scope of DNA testing in New South Wales. Perhaps this is because DNA sampling is seen as less invasive than urine samples or blood tests. The United States academic GT Marx in a recent article called "Hey Buddy Can You Spare a DNA?" refers to the rise of DNA as soft surveillance. He has stated:

> As with other new forms of surveillance and detection, the process of gathering the DNA information is quick and painless involving a mouth swab and is generally not felt to be invasive. This makes such requests seem harmless relative to the

> experience of having blood drawn, having an observer watch while a urine drug sample is produced, or being patted down or undergoing a more probing physical search.

Intimate, intrusive or otherwise, DNA sampling has serious implications for privacy—for a person's right to physical integrity. Is the communal interest in solving crimes such as loitering and possession of marijuana proportionate to the violation of a person's right to privacy and bodily integrity? The Greens remain concerned that so much of his extensive testing that will be the result if this bill is passed will become a giant DNA database, which can then be misused. So the Greens do not support this bill. Members of the House would do well to remember the words of Benjamin Franklin, "Those who would give up essential liberty to purchase a little temporary safety deserve neither liberty or safety." They are not words that I say lightly, but this is a most serious bill and it is of great concern that both major parties are lock, stock and barrel behind it.

Reverend the Hon. FRED NILE [8.36 p.m.]: The Christian Democratic Party supports the Crimes (Forensic Procedures) Amendment Bill 2007. We congratulate the Government on bringing forward this bill tonight. It includes matters that were announced by the Premier prior to the election, so it is the fulfilment of an election promise. The bill will amend the Crimes (Forensic Procedures) Act 2000 to extend the circumstances in which a person suspected of a crime may be requested or required to undergo a non-intimate forensic procedure involving the taking of a sample of the suspect's hair or carrying out of a self-administered buccal swab, and to make it clear that a forensic procedure may be ordered in relation to the suspect for the purpose of obtaining evidence tending to confirm or disprove that the suspect has committed an offence only if there are reasonable grounds to believe the suspect has committed that offence.

The range of offences that now give rise to DNA testing and for which DNA samples can be taken without a person's consent will be expanded. Previously police could take DNA samples only from people accused of indictable offences, such as murder, sexual assault and robbery, unless they consented to the forensic procedure. This change, through this legislation, will expand the scope to include all offences, including non-indictable offences such as loitering by a convicted child sex offender, and minor drug offences. The bill will also make it clear that there are legal tests the police have to take into account. Firstly, the police officer must reasonably suspect that the person committed an offence and, secondly, there must be reasonable grounds to believe that the DNA sample might produce evidence tending to confirm or disprove that the suspect committed that offence. Obviously, police will not take DNA samples from suspects just for the sake of it. Also, police will not be able to compel a person to provide a DNA sample if there is no information indicating that DNA material is taken from or available at the crime scene against which the intended suspect samples can be compared.

The legislation also contains a requirement that a suspect's forensic material must be destroyed if he or she is acquitted of an offence or no criminal proceedings are commenced within a 12-month period. However, there are some exceptions. The Government should give consideration—I know that this would be condemned by the Greens—to maintaining a permanent DNA database, as is occurring in some other countries, to identify bodies and solve crimes. In recent murders the victims' bodies were deliberately cut up and their hands and heads were removed in an attempt to prevent police identifying them. A permanent DNA databank could be checked to identify murder victims.

Identification of drivers and passengers who suffer severe injuries is often difficult. A tragic car accident occurred near Gerringong where I live. The car exploded, the lady in the car was incinerated and it was almost impossible to identify her. A DNA databank would assist such identification. I do not believe that a DNA databank would be an attack on our human rights, and I do not have any objection to a fingerprint database. Because of terrorism threats more and more countries are using these measures and certainly fingerprints are being scanned more widely. I understand that China and other countries have introduced a fingerprint check at airports. I believe that the use of DNA and fingerprint databases should be expanded. The Christian Democratic Party is pleased to support the bill.

The Hon. JOHN HATZISTERGOS (Attorney General, and Minister for Justice) [8.42 p.m.], in reply: Ms Lee Rhiannon made a number of comments in her contribution opposing the Crimes (Forensic Procedures) Amendment Bill 2007. One of her comments was that the legislation would enable the building of a database through covertly obtained DNA samples. This bill covers the collection of DNA from the person directly—from hair or buccal samples. In this respect "without consent" does not mean obtaining the DNA covertly, but taking a sample from a person without his or her consent; in other words, the sample is a hair sample or it is taken from a buccal swab.

For DNA samples to be entered into the database, they have to be taken in accordance with the legislation, and the tests must be satisfied. Covertly collected samples would not meet these tests and so would

not be matched onto the database. In that respect I should make the point that in order to be able to meet these tests there are two important limbs. Firstly, the police officer has to reasonably suspect that the person committed an offence and, secondly, there must be reasonable grounds to believe that the DNA sample might produce evidence tending to confirm or disprove that the suspect committed that particular offence. A suspect cannot be compelled to provide a DNA sample unless the police are satisfied that the DNA sample will be useful in the investigation of the offence. So those are the relevant protections that govern the obtaining of samples in the way that I have described.

The member also indicated—and she used appalling words—that the legislation extended to children and incapable people. The bill provides a protection for those persons by requiring that, if a person is a child or an incapable person, an order of a magistrate would be required in order to be able to take a sample. The Government believes that oversight by the court provides a balance between the protection of certain vulnerable categories of people and the undeniable fact that both children and incapable people sometimes commit extremely serious crimes. For those reasons I commend the bill to the House.

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

The House divided.

Ayes, 25

Mr Ajaka	Mr Khan	Ms Sharpe
Mr Clarke	Mr Lynn	Mr Tsang
Mr Costa	Mr Mason-Cox	Mr Veitch
Ms Ficarra	Reverend Dr Moyes	Mr West
Miss Gardiner	Reverend Nile	Ms Westwood
Mr Gay	Ms Parker	
Ms Griffin	Mrs Pavey	*Tellers,*
Mr Harwin	Mr Pearce	Mr Colless
Mr Hatzistergos	Ms Robertson	Mr Donnelly

Noes, 4

Ms Hale
Ms Rhiannon
Tellers,
Mr Cohen
Dr Kaye

Question resolved in the affirmative.

Motion agreed to.

Bill read a second time.

Leave granted to proceed to the third reading of the bill forthwith.

Third Reading

Motion by the Hon. John Hatzistergos agreed to:

That this bill be now read a third time.

Bill read a third time and returned to the Legislative Assembly without amendment.

LOCAL GOVERNMENT AMENDMENT BILL 2007

Second Reading

Debate resumed from an earlier hour.

The Hon. DON HARWIN [8.53 p.m.]: I lead for the Opposition on the Local Government Amendment Bill 2007, which seeks to clarify uncertainties regarding public-private partnerships involving local government and the levying of charges by councils. I state at the outset that the Coalition will not oppose the bill. I also draw to the attention of the House comments made by my colleague the member for Terrigal in the other place about the Coalition's disappointment that this legislation is proceeding even though an inquiry being conducted by the Standing Committee on Public Works into local government private partnerships for asset redevelopment has been set up. Unfortunately, submissions were only called on Friday 12 October 2007 and the committee is unlikely to report until next year. Therefore, the Government will be unable to study a very valuable report directly on point before legislating in this important area.

That is a problem. Nevertheless, the Coalition will not oppose the bill but will seek to adjourn it until the first sitting day in 2008. I foreshadow that my colleague the Hon. John Ajaka will do that later in the debate after other members have spoken on the bill. I remind honourable members that the terms of reference of the inquiry of the Standing Committee on Public Works includes an examination of, first, the overall benefit to councils of entering into partnerships with the private sector to redevelop infrastructure assets; second, which type of council infrastructure assets are most suitable for such partnerships; third, impediments to councils of entering into such partnerships; fourth, models of managing risk to both councils and the community; fifth, the effectiveness of the current public-private partnerships legislation and guidelines for councils; and any other related matters.

The inquiry is comprehensive and would be informative for a Government that was responsibly legislating in this very important area. Sadly, that is not the case. The Opposition will give the Government an opportunity to get this legislation right by moving that the debate be adjourned. Hopefully the Government will review the report of the Standing Committee on Public Works before we have the second reading of the bill in this place.

Nearly 15 years ago, the Fahey Coalition Government introduced the Local Government Act 1993. This fundamental and comprehensive reform of local government was one of the major achievements of the Coalition's last period in government. It was the first significant review of the operating rules and of the powers and functions of councils in nearly three-quarters of a century, and it remains the basis for the operation of local government in New South Wales. Along with a wide range of other reforms, the Act gave councils the powers to enter into partnerships with non-government organisations for the purpose of providing public infrastructure and facilities that would, in whole or in part, be financed, owned or controlled by the private sector. In so doing, the Fahey Government opened an important avenue for local government.

Today public-private partnerships are increasingly being utilised by councils as a means of delivering facilities to the community more quickly and to a better standard. For many councils, such partnerships are the only practical means of providing infrastructure while retaining a balanced budget. Increasingly, councils are subject to cost-shifting by the State Government, which adds to the burden of high ongoing administrative costs with which they must already contend. Of course, local councils cannot determine the level of their rates and thus have limited scope to control their income stream. Understandably, more and more councils are seeking to take advantage of the public-private partnership opportunities that the Act provides.

It is in the context of this increased prevalence of public-private partnerships involving local government that the current Government is seeking to clarify the relationship between such partnerships and the tendering requirements. According to the original Act, when a private developer approached a local council with a proposal to provide infrastructure or a public facility on council-owned land, the council was required to seek tenders for the project. Over time this came to be regarded as a disincentive to the successful development of the public-private partnerships between local council and the non-government sector.

In 2004 Professor Maurice Daly reported into the mismanagement of the joint Oasis development by incompetent Labor councillors on Liverpool City Council. In the wake of his report the Government amended the Act to give councils an alternative framework for selecting its development partners without sacrificing the necessary degree of transparency. Regrettably, as has so often been the case with this Government, the Local Government Amendment Bill 2004 was rushed through the Parliament without members and stakeholders being given adequate time to consider and debate its strengths and weaknesses. Proper legislative scrutiny was compromised in order for the Government to avoid further criticism of Liverpool councillors. Three years later the Government has admitted that the provisions as currently drafted are ambiguous. But I wonder if it has learned anything.

With the inquiry of the Standing Committee on Public Works it appeared that there would be an opportunity for Parliament to have input into the review. Unfortunately, even though the committee has a majority of government members, I am concerned that this bill has been received in this House to be passed very quickly. Nevertheless, this bill seeks to give councils, developers and the public clarity on the choice between either going to tender in accordance with section 55 of the Act or making use of the partnership provisions permissible for certain projects. Central to this improved level of guidance on the matter is a new definition of public-private partnership as an arrangement, firstly, between a council and a private person to provide public infrastructure and facilities, being infrastructure or facilities in respect of which the council has an interest, liability or responsibility under the arrangement and, secondly, as an arrangement in which the public infrastructure or facilities are provided in part or through private-sector financing, ownership or control, but not including any such arrangement if it is of a class that has been excluded by the regulations.

By providing more certainty to council processes it is hoped that local communities will continue to benefit from the opportunities for infrastructure development in local government that the Greiner-Fahey Government's reforms made possible. The second aspect of this bill relates to another clarification. Currently local councils are empowered to levy annual changes under the Act for the provision of such services as waste management and water and sewerage management. While these charges are applicable to individual lots, strata lots and company title properties, some doubt has been raised recently in the Land and Environment Court as to whether councils can levy those charges against individual lots in a strata scheme or only against the owners of strata plans.

The bill seeks to strengthen the ability of local government to levy special charges by confirming that these charges can be levied on individual lots in a strata scheme and company title properties rather than simply levied against the owners of a strata plan. The Minister has said that better application of this charge will improve stormwater management in New South Wales. Of course, as I remarked in previous debates relating to water management, the decision by this Government to put the burden of funding and managing stormwater on local government was regrettable and one of the lasting consequences of the Government's poor record of financial management.

The Government had developed a worthwhile stormwater management scheme in the form of the Stormwater Trust Fund. Recommended in the report of the Waterways Advisory Panel in 1997, administered by the Environment Protection Authority and financed by the Government initially to the tune of $60 million, the scheme assisted councils' pilot innovation in stormwater management to undertake remedial maintenance work and introduce new technologies through public-private partnerships. Crucially, the scheme enabled projects to be originated and driven at local level while subject to coordination and oversight regionally. Unfortunately, as the State's finances floundered the scheme was abandoned in the 2004 mini budget.

Deprived of financial assistance for stormwater management they once enjoyed from State Government, local councils now must fund their stormwater projects through the imposition of levies on ratepayers. This is another example of the highest taxing State Government in the country shifting costs and taxes on to local government, and failing to follow up its water management rhetoric with pragmatic and effective funding for innovative and well-coordinated local projects. While it is unfortunate that the Government's management of water and stormwater in our State remains inadequate, this bill provides councils with clarity with regard to the imposition of levies that provide vital funds.

The bill provides more clarity also on public-private partnerships involving local council. It may well have provided even more clarity if its introduction had waited for the public works committee report. Of course, the House will have a chance to deliberate on that report later. Any step forward in providing clarity on public-private partnerships strengthens the legacy of the previous Coalition Government. Ultimately, after the House has considered the issue of the public works committee report, and subject to examining any amendments that may arise from that report, at least as far as it currently stands, the Opposition is not opposing the bill.

Ms SYLVIA HALE [9.05 p.m.]: The objects of the Local Government Amendment Bill 2007 are to amend the Local Government Act 1993 as follows:

(a) to clarify the relationship between public-private partnerships and the tendering requirements under the Act, and

(b) to clarify that certain annual charges, such as for domestic waste management and stormwater management services, may be levied on individual lots in a strata scheme and on company title properties.

The bill makes consequential amendments also to other Acts and a regulation. The Greens support clarifying existing arrangements where they are ambiguous. However, this does not mean that the Greens support public-private partnerships as a suitable means for the delivery of public infrastructure. As I outlined to the House when the public-private partnership amendments were made to the Act, in the view of the Greens public-private partnerships are a way of privatising both the cost and ownership of public facilities. The fascination with debt reduction and tax cuts has seen Australian governments shy away from incurring debts, yet overseas borrowing in Australia in the late nineteenth century allowed for both phenomenal economic development and the creation of the social infrastructure that helped generate a modern and egalitarian society.

Public schools, the Commonwealth Bank, Telecom and the national rail network all provided services to Australians irrespective of their personal wealth. The overriding objective was the provision of high-quality public services, not the maximisation of profits to private shareholders. Proponents of the private public-partnership approach argue that this is the most effective way for governments to meet the costs of public infrastructure development. With both Labor and the Coalition obsessed with small government and budget surpluses, governments increasingly are reluctant to fund essential public works from private funds. As a result, we have seen a wholesale decline in public infrastructure investment by government.

The consequence has been a stampede by the private sector to projects offering the biggest profit margin, corresponding with a flight of equal proportions from projects with less profitable areas. The result has been a decline in services to the areas of greatest need. A decline in investment in the less profitable parts of the rail network has seen a steep fall in services. Privatisation of the airline, telecommunication and banking sectors has seen a corresponding decline in services, particularly in regional and rural New South Wales. Public-private partnerships have not been and will not be a panacea for the decline in services offered by cash-starved local councils.

The real answer to funding public infrastructure is increased public investment. Hopefully the newly elected Federal Labor Government will give serious consideration to the need to provide a massive reinvestment in public infrastructure, rather than to the $30 billion worth of tax cuts that will only serve to make our tax system more regressive and will push up demand, inflation and interest rates.

I am aware that the Opposition will seek to adjourn the debate, and therefore a vote on the bill, until such time as the lower House Standing Committee on Public Works reports on councils and their involvement with public-private partnerships. I believe this is an eminently sensible move, one that all members of this House should support. It seems foolish, to say the least, to proceed when a lower House committee is examining in great detail material that is directly relevant to legislation that this House is considering tonight. The Greens will certainly support the Opposition when it seeks to adjourn debate on the bill.

Reverend the Hon. FRED NILE [9.11 p.m.]: The Christian Democratic Party supports the Local Government Amendment Bill 2007, an administrative bill which seeks to clarify the relationship between public-private partnerships and the tendering requirements under the principal Act. The bill also seeks to clarify that certain annual charges, such as for domestic waste management and stormwater management services, may be levied on individual lots in a strata scheme and on company title properties.

The bill amends the Local Government Act 1993, which sets out the requirements for participation by councils in public-private partnerships. The proposed amendments make it clear that a council may choose to either go to tender or to use the public-private partnership model for certain projects. The legislation will allow councils to enter into public-private partnerships and will provide that councils are not required to invite tenders. The legislation clarifies the nature and operation of public-private partnerships and, in particular, makes it clear that the types of services that relate to such partnerships are services that are delivered during the carrying out of any project under the partnership.

I have been involved with a number of inquiries into public-private partnerships, and the various committees I have chaired have recommended the use of public-private partnerships at a State level. I believe it is opportune that public-private partnerships be further developed at the local government level, certainly with close monitoring by the Department of Local Government to ensure that no council gets out of its depth, as has occurred in the fiasco involving Liverpool council. We do not want to see that occur again. Some councils in their enthusiasm may overreach themselves, so there must be some monitoring by the department and obviously by the Minister for Local Government. Certainly public-private partnerships can be of great benefit; indeed, we have seen them operating in a number of local government areas already.

The bill provides that annual charges for certain services provided by a council may be levied on individual lots in a strata scheme, or on a company title dwelling or a portion of a company title building. This is to prevent companies that own a block of units from having one charge applied to the whole building containing those strata units. The bill makes it clear that councils may levy charges on individual lots in a strata scheme, which seems to be just and proper.

It has been suggested that the passing of the bill should be deferred because a lower House committee is presently examining material that is relevant to the legislation. I understand that the committee's terms of reference were given by the Minister for Local Government, and that the Minister also introduced this legislation and believes that there is no conflict with the bill passing through the House and the committee continuing its inquiry and, in due course, perhaps sometime next year, making its report to the Legislative Assembly.

The Hon. JOHN AJAKA [9.15 p.m.]: As honourable members have noted in this debate, the Local Government Amendment Bill 2007 has in every sense been absolutely rushed through the Parliament this evening without any real opportunity for members to consider the impact of its amendments. Given that the Standing Committee on Public Works is currently finalising its inquiry and will hopefully hand down its report in the near future, one would assume that the Government would simply await the committee's report so that proper consideration could be given to its recommendations, together with the provisions set out in the bill. With due respect to the Government, it makes no sense whatsoever to pass the bill prior to the standing committee completing its inquiry and tabling its report. It is almost a case of shutting the gate after the horse has bolted.

As a former councillor on Rockdale City Council I am well aware of the impact that the provisions of the bill will have on councils. On the one hand, councils will welcome many aspects of the provisions. I can see many advantages in some of the provisions. First, the bill seeks to clarify the relationship between public-private partnerships and the tendering requirements under the principal Act. The fact that councils will not be obstructed in moving in a proper, commercial way with regard to public-private partnerships will be of huge benefit to councils. Clearly, the best interests of residents are paramount and this is something that can be achieved.

However, as we all know, councils continually come under the scrutiny of residents. The fact that councils must not only do the work but must be seen to undertake the work in a proper manner that is open to public scrutiny is of great concern. That is why I look forward to seeing the results of the standing committee's inquiry and its recommendations. It may well be that following the tabling of the committee's recommendations the bill will require only a minor amendment, which the Government may wish to move or it may allow the Opposition to move. For those reasons I move:

That this debate be now adjourned until the first sitting day in 2008.

Question—That the debate be now adjourned until the first sitting day in 2008—put.

The House divided.

Ayes, 17

Mr Ajaka	Dr Kaye	Mrs Pavey
Mr Clarke	Mr Khan	Mr Pearce
Mr Cohen	Mr Lynn	Ms Rhiannon
Ms Ficarra	Mr Mason-Cox	*Tellers,*
Miss Gardiner	Reverend Dr Moyes	Mr Colless
Ms Hale	Ms Parker	Mr Harwin

Noes, 18

Mr Brown	Reverend Nile	Mr West
Mr Costa	Mr Obeid	Ms Westwood
Ms Fazio	Ms Robertson	
Ms Griffin	Mr Roozendaal	
Mr Hatzistergos	Ms Sharpe	*Tellers,*
Mr Kelly	Mr Smith	Mr Donnelly
Mr Macdonald	Mr Tsang	Mr Veitch

Pairs

Ms Cusack	Mr Catanzariti
Mr Gallacher	Mr Della Bosca
Mr Gay	Ms Voltz

Question resolved in the negative.

Motion for adjournment on debate negatived.

The Hon. HENRY TSANG (Parliamentary Secretary) [9.26 p.m.], in reply: I thank members for their participation in the debate. I thank the Department of Lands for its input into the proposal to levy charges on strata title and company title lots. The amendments will improve the day-to-day running of the councils of the State. The Iemma Labor Government is committed to assisting councils to carry out their business in an effective manner. Efficient councils are what the ratepayers of New South Wales deserve. I commend the bill to the House.

Question—That this bill be now read a second time—put and resolved in the affirmative.

Motion agreed to.

Bill read a second time.

Leave granted to proceed to the third reading of the bill forthwith.

Third Reading

Motion by the Hon. Henry Tsang agreed to:

That this bill be now read a third time.

Bill read a third time and returned to the Legislative Assembly without amendment.

COMMUNITY JUSTICE CENTRES AMENDMENT BILL 2007

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [9.28 p.m.], on behalf of the Hon. John Hatzistergos: I move:

That this bill be now read a second time.

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

Leave granted.

The purpose of this bill is to amend the Community Justice Centres Act 1983 to implement a number of recommendations from the 2005 New South Wales Law Reform Commission's Report 106 on Community Justice Centres. The bill also proposes a number of other changes to the Act to improve community justice centres' management and service delivery. By supporting the expansion of mediation and other dispute resolution methods throughout the New South Wales justice system the bill will make an important contribution to the Iemma Government's commitments in the State Plan to build harmonious communities, and to reduce red tape.

Formal litigation through the courts can be a costly and time-consuming process. That is why the Iemma Government is committed, wherever possible, to encouraging more people to resolve their personal disputes involving civil matters, without the need to go to court. We want to help people resolve their disputes quickly and cheaply, without compromising the interests of justice. For more than 20 years, community justice centres have played a key role in offering alternative dispute resolution services to people across New South Wales. They offer free mediation services for disputes of a civil nature. It should be noted that they do not offer their services in relation to criminal matters.

Accordingly, community justice centres have played a vital role in keeping smaller civil disputes out of the court system, and in helping people avoid the tremendous financial and personal costs that are often associated with court-based litigation. They have helped thousands of feuding neighbours, friends, families and workmates resolve their differences, with a success rate of more than 80 per cent. The Government believes that alternative dispute resolution has the potential to play a greater role in the State's

system of civil justice. This bill will help achieve this goal by enabling community justice centres to expand their broad mandate to promote and provide alternative dispute resolution services in New South Wales.

Before addressing the bill's provisions in detail I provide some background to the proposed amendments. Mediation is an effective way of avoiding lengthy, complex and costly court battles. It helps people who are involved in a dispute to develop options, consider alternatives and reach an agreement. Mediators play a key role throughout this process. They ensure that proceedings are structured, and they guide the parties through the various stages of the mediation towards an agreement or an acceptable and agreed outcome.

But, unlike judges or arbitrators, mediators do not give any advice or make any decisions about the content of the dispute or the outcome of its resolution. Rather, mediation allows the parties to reach an agreement based on solutions that they have come up with themselves. In fact, this is one of its key benefits. Unlike formal litigation, mediation can preserve and even strengthen existing business or neighbourly relationships. Mediation also brings additional benefits, including: eliminating unnecessary discovery; allowing outcomes which would not be available in a court order; expanding information on which parties make key decisions; responding to personal or business needs; and protecting the interests of third parties.

In 1980 a pilot community justice centres program was established to provide mediation services, free of charge, for disputes that conventional, court-based procedures were unable to resolve satisfactorily or cost effectively. Pilot centres were established at Wollongong, Bankstown and Surry Hills. The pilot was successful and, following a favourable review, the scheme was made permanent with the commencement of the Community Justice Centres Act 1983. Today community justice centres provide free mediation services across the whole of New South Wales. Disputes are referred for mediation by magistrates, court staff, police, legal centres, marriage counsellors, doctors, and even banks. They mostly involve neighbourhood and non-violent family disputes. Every year community justice centre mediators handle about 3,000 of these disputes throughout the State, and they meet with tremendous levels of success, with around 80 per cent of all mediated disputes leading to an agreement.

In 2002 the then Attorney General, the Hon. Bob Debus MP, asked the New South Wales Law Reform Commission to review the Community Justice Centres Act 1983. The commission reported back in 2005 and made a number of recommendations to improve the operation of the Act. The Attorney General's Department then consulted with a range of individuals and organisations about the recommendations, including the Chief Magistrate, the Aboriginal Justice Advisory Council, the Law Society of New South Wales, the Legal Aid Commission, the Women's Legal Service, the Department of Aboriginal Affairs, the Department of Local Government, the Department of Housing, NSW Police and the Combined Community Legal Centres Group of New South Wales. This bill now proposes to implement a number of the Law Reform Commission's recommendations. It also proposes further changes to improve community justice centres' management and service delivery.

I turn now to the details of the bill. The proposed first amendment in the bill will insert an objects clause into the Community Justice Centres Act 1983. Currently the Act does not have an objects clause. The Law Reform Commission recommended that the role of community justice centres in relation to training, education and promotion of out-of-court dispute resolution methods should be recognised and identified in the legislation. Accordingly, the bill proposes inserting a provision into the Act, which states that the purpose of community justice centres is to provide dispute resolution and conflict management services, including the mediation of disputes and matters incidental to the provision of such services, such as the training of persons to be mediators; promoting alternative dispute resolution; and contributing to the development of alternative dispute resolution in New South Wales by the establishment of connections and partnerships with the legal profession, courts and tribunals, the academic sector and other providers of alternative dispute resolution services. Community justice centres have the capacity to build on their expertise and to expand their role in providing and promoting dispute resolution services in New South Wales. This broad new objects clause will support and encourage such an expansion.

I move now to provisions in the bill relating to the Community Justice Centres Council. The role of the council has evolved considerably over the past twenty years. Originally, the Community Justice Centres Council was made up of people who were on the original steering committee for the pilot scheme. The council later took on the role of advising the director on administrative, financial and policy matters under the Act. While the council played a key role in establishing community justice centres, a high level council, whose members have included academics and a magistrate, eventually ceased to be relevant or valuable to a mature and experienced organisation.

Community justice centres now operate as business centres of the Attorney General's Department, which further decreases the need for a council with administrative and management functions. In fact, the council itself has actually proposed its own dissolution. In doing so, it has recommended the establishment of a community advisory committee. This accords with the needs of community justice centres, whose priority is to obtain regular feedback from clients so that they can improve service delivery and meet the needs of clients. Accordingly, they have established two reference groups to provide advice on practical matters relating to their operation: the Professional Reference Group and the Training Group. Mediators are represented on both groups.

Community justice centres are also preparing to establish a third stakeholder consultative committee to provide regular advice and feedback on alternative dispute resolution issues. It is in this context that the bill now proposes to formally abolish the council and to remove references to it in the legislation. As a result, a number of consequential amendments are required. These include amendments to give the Director of Community Justice Centres broad decision-making powers for the effective management of community justice centres; amendments to enable the director to seek advice from the various advisory committees; and amendments to require the Director of Community Justice Centres to report to the Director General of the Attorney General's Department rather than to the council.

I move now to the status of mediators. Currently mediators are appointed by the Attorney General. They are managed and supervised by the Director of Community Justice Centres, and are legally considered to be employees in the Attorney General's Department. However, the status of mediators as employees is not clear on the face of the existing legislation. Accordingly, the bill proposes to amend the Act to explicitly provide that mediators are employed under the Public Sector Employment and Management Act 2002. The proposed changes will clarify the current status and entitlements of mediators and cut red tape. Additionally, in order to participate in the proposed national accreditation system for mediators, the relationship between community justice centres and mediators needs to be clearly defined and understood. The amendments will assist community

justice centres to prepare for the introduction of the national accreditation system. I note that these amendments will not affect the current accreditation of mediators or the next round of re-accreditations, which are due in December this year. Commencement of these amendments will be by proclamation to ensure a measured and appropriate transition to the new arrangements.

I turn now to the issue of mandatory mediation. As I outlined earlier, mediation is an effective way of avoiding lengthy, complex and costly court battles. Under part 4 of the Civil Procedure Act 2005 courts have the power to refer a civil matter to mediation with or without the consent of the parties. Under the current provisions in the Community Justice Centres Act 1983 community justice centres cannot hear court-ordered mediation. Currently the only option for people subject to such an order is to use more expensive private firms. This prevents the full potential of mediation in the justice system from being realised.

The bill proposes that the Act be amended to allow community justice centres to conduct court-ordered mediation where attendance is mandatory, provided the court and the community justice centres consider the case appropriate for such mediation. Before making an order requiring parties to go to mediation the court exercises its discretion in each case to decide whether mandatory mediation might be beneficial. The discretion of the court to refer a case for mandatory mediation, and the discretion of the Director of Community Justice Centres to accept or reject such a referral, will allow any expansion of mandatory mediation services to be undertaken in a controlled manner.

In addition, the two discretions will ensure that mandatory mediation will be limited to appropriate cases and to instances where it is likely to improve rather than reduce the efficiency of the legal system. The bill also proposes that community justice centres be allowed to charge fees for providing mandatory mediation and that these fees be prescribed by regulation. The intention is to encourage parties to participate in free mediations of their own accord rather than taking to court matters that could more appropriately have been mediated. A fee waiver policy will be developed in consultation with the relevant Ministers and stakeholders to prevent financial hardship from leading to breaches of orders to attend mediation.

The intention is also for community justice centres to broaden their role in the provision of training. Community justice centres have an excellent reputation as providers of mediator training, but under the current arrangements they only provide it to mediators who have applied for work to justice centres. Accordingly, the regulation will also allow community justice centres to offer and to charge for mediator training courses for the general public. Before community justice centres can conduct court-ordered mediations it will be necessary to consult on the fee waiver policy. It will also be necessary for mediators to receive training about the requirements of court-ordered mediations. Accordingly, commencement of these provisions will be by proclamation, and will be delayed to allow appropriate preparations to take place.

I turn now to the issue of child protection and reporting obligations. Community justice centre mediators have obligations of secrecy and confidentiality regarding the mediations they conduct. However, mediators who handle disputes referred by the Department of Community Services waive their confidentiality obligations in relation to information about the risk of harm to a child or young person. The Law Reform Commission, in its report on the Community Justice Centres Act 1983, further recommended that amendments be made to require all community justice centre mediators to disclose information obtained in the course of mediations when there are reasonable grounds to suspect that a child may be at risk of harm.

Accordingly, the bill proposes the introduction of the requirement on community justice centre mediators to report to the Department of Community Services information that they may acquire in the course of their work regarding a child or young person at risk of harm. Because it will be necessary for mediators to receive training about these new reporting obligations, these amendments will not come into force immediately but will commence by proclamation once all mediators have had the opportunity to update their training. The bill will improve the operation of the Community Justice Centres Act 1983 and with it the capacity of community justice centres to manage their affairs and their staff.

It will support the expansion of mediation and other dispute resolution methods throughout the New South Wales justice system. This will ensure that more opportunities are created for appropriate disputes to be dealt with through mediation rather than through the often heavy and costly hand of formal judicial processes. This in turn will make an important contribution to the Iemma Government's commitments to the State Plan to build harmonious communities and reduce red tape. I commend the bill to the House.

The Hon. DAVID CLARKE [9.28 p.m.]: The Opposition does not oppose the Community Justice Centres Amendment Bill 2007. The bill amends the Community Justice Centres Act 1983 to streamline the operation of community justice centres and expand their role within the New South Wales justice system. Such centres have become an important part of the mediation and dispute resolution process within the justice system of our State. Originally set up in 1980, their purpose is to resolve civil disputes without the parties having to resort to litigation, which can be costly—even prohibitively so.

Of the approximately 3,000 disputes referred to community justice centre mediators a year, approximately 80 per cent result in settlement. This is a process that works to the benefit of the State of New South Wales and to those engaged in disputes. Firstly, it reduces the workload of our courts, which otherwise very often would hear time and resource consuming issues. Secondly, it is a process that is less stressful for those involved in disputes. Thirdly, it is a service provided without cost to the parties to disputes.

The bill implements a number of recommendations from the 2005 Report on Community Justice Centres prepared by the New South Wales Law Reform Commission. It first inserts an objects clause to clarify that community justice centres have the core purpose of providing a dispute resolution and conflict management service, which includes the mediation of disputes and the provision of training for mediators.

The bill abolishes the Community Justice Centres Council, whose role in establishing and mentoring community justice centres has largely become superfluous with the passage of time. Henceforth the continuing

oversight power will be exercised by the director of community justice centres, who will also have the power to seek advice from any person or body in relation to the director's functions and to establish an advisory committee for that purpose. The director will report directly to the Attorney General's Department. Because of some lack of clarity in existing legislation as to the status, control and entitlements of mediators in community justice centres, the bill specifically confirms that mediators are employed and regulated pursuant to the Public Sector Employment and Management Act 2002. As the position presently stands, such centres undertake only voluntary mediation.

Parties to such mediation must have given their consent. The bill will change that position. Henceforth the director of community justice centres can accept and pass on disputes for mediation referred by a court or a tribunal without the consent of the parties to the dispute. The bill will require community justice centre mediators to report to the Director General of the Department of Community Services information obtained during the exercise of their mediation functions about children at risk of harm and will alter the requirements as to who must consent to the admission in evidence in proceedings of certain privileged information and documents arising from a mediation session.

As I indicated earlier the Opposition does not oppose the bill; any improvements to the community justice centre mediation process are welcome. It fulfils an important need by providing alternative means of resolution for civil litigants. Nevertheless, the Shadow Attorney General, Greg Smith, has raised concerns about the operation of some of the bill's provisions. He has, for example, expressed a concerned that mediators should not be compromised or be faced with a conflict of interest by virtue of the bill's clarification that mediators are deemed to be employees pursuant to the Public Sector Employment and Management Act 2002. The effects of this bill need to be monitored carefully and the Opposition will certainly be doing that. We hope that the Government will be doing likewise.

Ms LEE RHIANNON [9.32 p.m.]: The Community Justice Centres Amendment Bill is a grab bag of reforms for community justice centres in New South Wales, some the Greens support and some we have serious questions about. The bill implements a number of reforms flowing from report No. 106 of the New South Wales Law Reform Commission, which relates to community justice centres. The Law Reform Commission undertook extensive consultation in writing that report and the Greens are pleased to support the provisions of the bill that implement the its recommendations. It is disappointing, however, that the Law Reform Commission's report was released in 2005 and it is now the end of 2007. The obvious question to be asked is: Why has the Government waited almost three years to act on the recommendations of this report? As I will show shortly, not many recommendations made their way into the bill. The Labor Government does not delay in introducing bill after bill involving tough law and order, tabloid-driven measures.

Why has it taken the Government three years to present a bill on alternative dispute resolution and community justice centres? And why, after waiting three years for this legislation, are we presented with legislation that implements only a handful of the Law Reform Commission's recommendations? On my count, only two of its 14 recommendations have been implemented—which means that 12 recommendations are still sitting on the shelf gathering dust. What does this say about the priorities of the Carr and Iemma governments? Community justice centres provide a very important service in New South Wales and have done so for 20 years. Every year mediators at community justice centres in New South Wales handle more than 3,000 disputes. I understand that mediation through community justice centres has a success rate of more than 80 per cent. We would all have to agree that is quite remarkable. Community justice centres offer free mediation services for civil disputes. Given enough funding and support, community justice centres make alternative dispute resolution accessible to all.

Anyone who has been inside a courtroom knows that formal litigation can be costly, complex, lengthy and alienating. Even small civil disputes can come with huge financial and personal costs. Alternative dispute resolution also eliminates unnecessary and drawn out legal discovery of documents and allows outcomes that would not be available in a court order. As a general rule, adversarial courtroom contests rely on lawyers to draw out differences. Rarely do relationships between parties improve over the course of a court case, especially with civil disputes between neighbours or people in the same community. It is important that where possible relationships are maintained and problems resolved. Surely mediation is a far better way to achieve this than a drawn out courtroom battle.

The Greens support the expansion of mediation and other dispute resolution methods. We support the measures in this bill to expand the role of community justice centres. Specifically we support proposed section 3, which expands the purposes of community justice centres to include trainee mediators, promote alternative

dispute resolution and contribute to the development of alternative dispute resolution in New South Wales by entry into connections and partnerships. We also support proposed section 20A, which allows community justice centres to conduct court-ordered mediation where attendance is mandatory. Under part 4 of the Civil Procedure Act courts are able to refer civil matters to mediation with or without the consent of the parties. Under the current laws, parties involved in mandatory mediation are left in the hands of expensive private firms specialising in mediation.

The Greens also support proposed section 29A, which improves child protection by requiring mediators to disclose information obtained in the course of mediation where there are reasonable grounds to suspect that a child may be at risk of harm. The Greens do have reservations, however, about sections of this bill that change the employment status of mediators. The current practice is that mediators employed at community justice centres are appointed by the Attorney General. The bill inserts a new section 12 to specify that staff of community justice centres, including mediators, are to be employed under the Public Sector Employment and Management Act. My office has heard from a mediator with experience in community justice centres who is concerned about this change. I understand there is a danger that this move could compromise the independence of mediators. The Greens believe that independence in dispute resolution is an important principle, whether the matter is resolved in a courtroom or at a round-table mediation.

The importance of mediation is obvious in cases between an individual and the Government—for example, a dispute over a fence between an individual's house and a government building. Is it right that the mediator in that matter should be a public servant? How would the individual feel about that? Would that maintain independence? The Greens have serious concerns about this aspect of the bill. I understand that there has been very little consultation with mediators at community justice centres on this point. I also note that this change goes beyond, indeed it goes against, the recommendations in the Law Reform Commission report on community justice centres. The Law Reform Commission considers that mediators should continue to be ministerial appointees, as this would give them a degree of independence from government.

The report states that "independence is important because it reassures clients and allows mediators to carry out their work without fear or favour". At the same time I understand that if mediators are made public sector employees they would move onto the award, thus providing greater job security and freeing them from the current maximum three-year accreditation. When the Parliamentary Secretary replies to the debate I would like her to respond to the Greens' concerns about the ongoing independence of mediators. She must put on the record that the Government remains committed to their independence.

The final important question that remains for the Greens is: Where is the extra funding to support the extra services? The bill seeks to expand the role of community justice centres but, frankly, where is the money? Try as I might, I could not find a big boost in funding for community justice centres in this year's budget. If the money is not there, I do not see how the Government can deliver on its commitments. The Government is a slow learner when it comes to realising that it is no use giving an already-stretched body more functions without also giving it extra resources to back them up. I am concerned that if additional money is not put on the line, the positive changes in the bill will be little more than window-dressing that succeeds only in overstretching hardworking staff.

Reverend the Hon. FRED NILE [9.40 p.m.]: The Christian Democratic Party supports the Community Justice Centres Amendment Bill 2007, the purpose of which is to implement a number of reforms to improve the operation of community justice centres in New South Wales. The bill specifies the object of the Community Justice Centres Act 1983. The Government has adopted the same approach with several other bills when the object of the principal Act was not stated specifically. Proposed section 3, "Object of Act", states clearly:

> The object of this Act is to provide for the establishment and operation of Community Justice Centres for the purpose of:
>
> (a) providing dispute resolution and conflict management services, including the mediation of disputes, and
>
> (b) training persons to be mediators, and
>
> (c) promoting alternative dispute resolution, and
>
> (d) contributing to the development of alternative dispute resolution in New South Wales by entering into connections and partnerships with the legal profession, courts, tribunals, the academic sector and other providers of alternative dispute resolution services, and
>
> (e) undertaking other matters incidental to the provision of dispute resolution and conflict management services.

The bill will also abolish the Community Justice Centres Council. I understand that the council voted for its own dissolution in 2001 and has not met since then. This is part of a pattern, as other government-sponsored bodies also exist in legislation but do not function. Obviously the Government should have taken action before 2007 either to abolish the council or to investigate whether it had a role and make it exercise that role. Bodies that are enshrined in legislation should not be left in limbo.

The bill also confers certain functions on the Director of Community Justice Centres that were exercised previously by the Community Justice Centres Council. The bill will enable the director to seek advice from any person or body in relation to the director's functions and achieving the object of the Act, and to establish advisory committees for that purpose. The role of the Community Justice Centres Council will be virtually assumed by the new Professional Reference Group and the Training Group. A stakeholder consultative committee will also be established. That appears to be a positive move, as those bodies will fill the vacuum left by the abolition of the council.

The bill also provides for mediators at community justice centres to be employed under the Public Sector Employment and Management Act 2002. The bill clarifies the legislation they are employed under and removes the need for them to be appointed by the Attorney General. Who will appoint the mediators now? I assume the director general will make those appointments. Perhaps the Parliamentary Secretary will clarify that point when she replies to the debate. The bill enables the director to accept disputes for mediation that have been referred by a court or tribunal without the consent of all parties to the dispute. At present only voluntary mediation is undertaken by community justice centres. That is a worthwhile move. If consent cannot be obtained, it may be necessary to force opposing parties to participate in compulsory mediation in order to resolve the matter.

The mediators will report to the Director General of the Department of Community Services information regarding children at risk of harm that was obtained during the exercise of their mediation functions. That provision ties in with the mandatory reporting requirement and should probably apply automatically. However, the requirement is now spelt out in the bill. Community justice centres play a valuable role in our society, and the Christian Democratic Party is pleased to support the bill.

The Hon. PENNY SHARPE (Parliamentary Secretary) [9.45 p.m.], in reply: I thank honourable members for their contributions to the debate on the Community Justice Centres Amendment Bill 2007. Community justice centres have offered dispute resolution services to people in New South Wales for more than 20 years. The amendments proposed in the bill will improve the operation of the Act and allow community justice centres to continue helping people to resolve their differences effectively. They will also allow community justice centres to pursue a broader mandate of promoting and developing out-of-court dispute resolution in New South Wales.

I will address some of the issues that were raised during the debate. Ms Lee Rhiannon expressed concern that the Government is not implementing all the recommendations of the Law Reform Commission in its report on community justice centres. This is because many of the commission's recommendations related to the now-defunct Community Justice Centres Council. In fact, it should be noted that in this bill the Government proposes to formally abolish the council. This is because the priority for community justice centres is to obtain regular feedback from clients so that they can improve service delivery and meet clients' needs. A high-level council is not an effective way of obtaining this type of feedback.

In 2001 the Community Justice Centres Council proposed its own dissolution and recommended the establishment of a community committee to advise the director. Since then community justice centres have established two reference groups—the Professional Reference Group and the Training Group—which provide advice on practical matters relating to the operation of the centres. Community justice centres are also preparing to establish a stakeholder consultative committee in line with the recommendation made by the council in 2001. This committee will provide regular advice and feedback to community justice centres on alternative dispute resolution issues. In this context the continued existence of the council is considered to be unnecessary.

Ms Lee Rhiannon also questioned why it has taken some time to implement the recommendations of the Law Reform Commission. This is mainly because much time and care was taken to consult a number of stakeholders. The stakeholders who had input into the bill include the Chief Magistrate, Aboriginal Justice Advisory Council, Law Society of New South Wales, Legal Aid Commission, Women's Legal Service, Department of Aboriginal Affairs, Department of Local Government, Department of Housing, Department of Community Services, Director of Public Prosecutions, New South Wales Police Force, Combined Community Legal Centres Group (NSW), and the Community Justice Centres Professional Reference Group.

As to the concerns expressed about mediators being public sector employees, I am advised that the Law Reform Commission report considered that mediators should continue to be ministerial appointees as this method of appointment generally gives mediation a degree of independence from the Government. Submissions to the commission by stakeholders participating in the review supported the continuation of this method of employment on the grounds that it ensured the independence of mediators. However, the independence of mediators in a dispute is not premised on their status as ministerial appointees. A mediator is, by definition, a neutral and impartial person whose role is to help people understand each other's point of view and work together to reach agreement. None of the community justice centres' counterparts in other Australian jurisdictions use ministerial appointment as the method of employing mediators. The independence of mediators derives not from their employment status but from the nature of their profession.

At present community justice centres mediators are formally accredited by the Attorney General and their legal status is that of an employee. The bill proposes to set out clearly and explicitly the status of a mediator as an employee. This is vital to ensuring certainty of the terms under which mediators work and clarity in their relationship with the department. In answer to Reverend the Hon. Fred Nile, I confirm that mediators will be appointed by the Director General of the Attorney General's Department. I thank members for their contributions to the debate and commend the bill to the House.

Question—That this bill be now read a second time—put and resolved in the affirmative.

Motion agreed to.

Bill read a second time.

Leave granted to proceed to the third reading of the bill forthwith.

Third Reading

Motion by the Hon. Penny Sharpe agreed to:

That this bill be now read a third time.

Bill read a third time and returned to the Legislative Assembly without amendment.

EVIDENCE (AUDIO AND AUDIO VISUAL LINKS) AMENDMENT BILL 2007

Second Reading

Debate resumed from 15 November 2007.

The Hon. JOHN AJAKA [9.50 p.m.]: The Evidence (Audio and Audio Visual Links) Amendment Bill 2007 seeks to amend the principal Act which governs the giving and receiving of evidence and the making of submissions and appearances in court proceedings via audio and audio visual links. The bill revises certain legislative presumptions that relate to the appearance of accused detainees in courts. The Opposition does not oppose the bill. It may be of assistance to the House if I turn briefly to the current legislative provisions before addressing the proposed amendments. Currently under the principal Act an adult accused detainee is required to be physically present in "relevant criminal proceedings", whilst appearance by audiovisual link is provided for in "preliminary proceedings". A child accused detainee is required to appear physically in both preliminary and relevant criminal proceedings. A court may, however, direct that the accused detainee appear other than as required by the legislative provisions if it is deemed necessary in the interests of justice.

The bill represents a significant departure from standard legal practice in relation to the presence of the accused. It seeks to amend current provisions in that accused detainees, whether adults or children, are not required to appear physically in committal proceedings, sentencing hearings, including redeterminations of sentence, or in appeals arising out of trials or hearings. Instead, accused detainees will appear via audiovisual link, where such equipment is available, unless the court determines that a physical appearance is necessary. In relation to committal hearings, a primary argument advanced for this amendment is that it is common for committals to be determined purely on the basis of written evidence, which makes a physical appearance by the accused detainee unnecessary. The court retains the discretion to order the accused detainee to be physically present where it is deemed necessary for the administration of justice. This maintains procedural safeguards.

In relation to sentencing hearings it has been submitted that the process is essentially procedural in nature and that the evidence is primarily paper based, which makes the physical presence of an accused non-essential. The proposed amendments have no impact on appeals to the Court of Criminal Appeal, as there is no automatic right for the appellant to be present during proceedings. In other proceedings of appeal against sentence or conviction the presumption in favour of an audiovisual link will also be subject to a court order about appearance. However, the proposed changes are a significant departure from centuries of legal precedent that allow the accused to face his accusers. For this reason an argument has been put that the presumption should remain in favour of personal appearances.

Proposed section 5BB provides that the requirement to appear physically is subject to a direction by the court that the accused detainee appear via audiovisual link. Such a direction may be given on the court's own motion or on the application of a party to a proceeding. There is significant argument for the amendments because of the resource savings consequential to the proposed changes. Transportation costs will be reduced and there will be narrower scope for logistical problems or delays in transporting the accused detainee to court. Fully implementing this system will lead to increased short-term capital expenditure as more audiovisual systems are set up, with $42.9 million budgeted in 2007-08 for the expansion of the network. In the long-term, however, there is the potential for significant cost savings as the costs associated with the transport of prisoners decline significantly. I must caution that these amendments may be interpreted as reducing the rights of the defendant to be able to provide robust debate. It may also be argued that it will be difficult for the court to interpret body language via audiovisual link and for lawyers to obtain instructions and adequately communicate those instructions.

Proposed section 5BA provides that an application for a direction that the accused detainee appear via audiovisual link will be able to be made by a designated government agency. At present only parties to the proceedings can make an application. Proposed section 5BA requires the court in determining whether to make a direction that the accused detainee appear via audiovisual link to take into account the following factors: the potential for disruption of the accused detainee's participation in a rehabilitation or education program if the accused detainee were to be transported to and appear in the courtroom or place where the court is sitting; the safety and welfare of the accused detainee; the efficient use of available judicial and administrative resources; and any other relevant matter raised by a party to the proceeding or other applicant for the making of the direction.

As to child detainees, the proposed amendments also require the court to consider additional factors pertaining to children as are specified in the rules of the court, such as the maturity of the child and the need for the detainee's legal representative to obtain initial instructions. The bill also seeks to clarify that Children's Registrars may make directions for use of audiovisual links in care proceedings. As the Attorney General noted, consideration should be given to the safety and welfare of accused child detainees during transportation where escape attempts are made and acts of violence are committed in transit. Regard should also be had to the child accused detainee's involvement in rehabilitative programs, which may be disrupted by physical attendance at brief court proceedings.

Proposed section 5BB also provides that an accused detainee will be required to appear via audiovisual link on his or her second or any subsequent appearance in relation to an alleged offence unless the court directs otherwise. The presumptions in favour of appearance via audiovisual link are not invoked where such equipment is not available. This provision accounts for resource limitations. The Opposition emphasises the importance of providing legal practitioners, particularly country practitioners, with the available resources and the necessary equipment at the courthouse to communicate with the defendant prior to the matter being called. As a legal practitioner with some years experience, I know there is nothing more frustrating for a legal practitioner than being in a position where the first time one communicates with the defendant is when the defendant is brought into court to appear before the judge. The audio or audiovisual equipment must be made available so that legal practitioners have the opportunity to have a conference with the defendant prior to the matter being called before the court.

The Opposition is committed to the responsible use of new technologies and to the efficient administration of justice. We must ensure that adequate safeguards protecting the rights of the accused, such as the right to open avenues of communication with his or her legal representative, accompany the gradual introduction of presumptions favouring appearances via audio and audiovisual link in certain proceedings. The proposed amendments also require certain government witnesses to give evidence to a New South Wales court via audio or audiovisual links unless the court directs otherwise. There is the possibility that these provisions may be perceived as overly broad, and fail to properly account for the myriad circumstances in which a government witness may be called to give evidence.

In conclusion, I note that the discretion to mandate physical appearance only in cases where the evidence is likely to be contentious is problematic, particularly as in many instances it may be unknown whether evidence is likely to be contentious. The Opposition also brings to the attention of the Attorney General the importance of sufficient training for court attendants and officers in respect of the operation of the audio and audiovisual equipment. That is essential if the technology is to be properly used to its full potential. As a legal practitioner who has been involved in a number of cases, nothing is more frustrating, in the presence of all parties, when court officers are unable to turn on the equipment and they have to scurry around to find someone who can operate it. Where possible, that must not happen. As previously stated, the Opposition does not oppose the bill.

Ms SYLVIA HALE [10.00 p.m.]: The Evidence (Audio and Visual Links) Amendment Bill 2007 amends the Evidence (Audio and Audio Visual Links) Act, and will expand the use of audiovisual links in court cases in New South Wales involving persons already in custody. In some cases an accused or convicted person will appear via audiovisual link. The Attorney General in his second reading speech said that the increased use of audiovisual links will result in a decrease in the need for accused detainees to be transported in the caged environment of a prison van, sometimes over vast distances, for brief court appearances, and a concomitant reduction in prisoner transportation costs. He referred to the logistics of getting a prisoner to a court: an early morning start, transportation of detainees in a van and escorting them to a holding cell, their appearance, returning them to the holding cell and finally transporting them back to the correctional centre. He also referred to the cost to the taxpayer of these procedures, which suggests that the bill is primarily a cost-saving measure.

I share the concerns that have just been expressed by Mr John Ajaka about the difficulties of ensuring adequate avenues of communication between a defendant and his legal representatives in instances where the process involves audiovisual links. I know in relation to appeals that current legislation already permits the absence of a convicted person from the courtroom, and I do not think that is desirable. In relation to sentencing hearings, the Greens disagree with the Attorney General, who said that, on balance, the reasons for an accused detainee to appear physically before the court for sentencing proceedings are not sufficiently compelling to require such a physical appearance. The Greens are concerned that technological advances, such as audiovisual links, are serving to render justice abstract and remote.

The defendant becomes, in effect, a disembodied other whose humanity has been lost or diminished. It may be cost-effective to depersonalise judicial proceedings but the dehumanising of the process may serve to render us indifferent to outcomes, and make it difficult for participants and onlookers to appreciate, in human terms, the implications for the individual of any decision, whether it be in a committal hearing, in an appeal or in the passing of a sentence. This is not to adopt a Luddite position of opposition to technological advance; it is merely to raise concerns about the depersonalising of the entire process.

The symbolic and real effect of the presence of the offender is that that person literally faces justice. For the family of, for example, a murder victim it may be important for them to witness the convicted person being sentenced. Our idea of justice relies upon people facing up to what they have done, to face the music. The use of the word "face" in our adages refers to turning towards and being present physically. When we say someone "just couldn't face it" or "they lost face" we are referring to an aversion to appearing in person because of shame. Sentencing is a public ritual of prescribing punishment for what our community deems to be a crime. It is not just an administrative process; it is a symbolic process as well. I would argue that it does require the presence of the convicted person in the courtroom.

Part of the justice process is the passing of judgment in the court. It is fairer for the accused person, the victim and their family and friends for the guilty person to be present in court in person when sentence is passed. I note that magistrates or judges can require the physical attendance of a detainee when they believe it to be in the interests of the administration of justice for the detainee to be there, but this legislation will make appearance by audiovisual link the default situation in committals, appeals and sentencing. As I indicated earlier, the Greens are concerned that the requirements that a convicted person appear in person for sentencing is being, to all intents and purposes, dispensed with. I also repeat our concerns that the process of audiovisual links may stymie effective communication between a detainee and his legal representative and I do not believe that is in any way conducive to a just outcome in any legal process.

Reverend the Hon. FRED NILE [10.06 p.m.]: The Christian Democratic Party supports the Evidence (Audio and Audio Visual Links) Amendment Bill 2007, which revises the legislative presumptions in the Evidence (Audio and Audio Visual Links) Act 1998 regarding the appearance of prisoners before New South Wales courts. The 1998 Act facilitated the use of audio and audiovisual technology in courts and set out the

circumstances in which evidence or submissions can be presented to a court by the use of audiovisual links where an accused person is in custody. That Act restricted when those audiovisual links would be used in a number of circumstances. This bill removes the existing presumption that accused detainees are to appear physically before the court in committal proceedings, sentencing hearings and appeals. The judge still has a discretion, probably based on the crime of which the person has been convicted, and I am sure the judge would require sentencing to be passed in public in court in the presence of relatives and others to assist the administration of justice.

Prisoners will appear via the audiovisual links in those proceedings where such equipment is available. The Attorney General has an obligation to ensure that such equipment is available in all courts unless the premises are not suitable for the use of audiovisual links or some other factor prevents it. A practical consequence of this legislation is that it will reduce the expense of transporting prisoners, vehicle costs and the cost of removing prison officers from their duties to escort a prisoner and to wait until a matter concludes. It will also reduce the danger of a prisoner in a courtroom attacking a judge. Thankfully, Australia does not have too many of those cases but in America prisoners have had access to weapons and have shot people in the courtroom.

This legislation would certainly reduce the risk of that happening. I remember the recent court case at Penrith of nine Muslim men on terrorism charges. They continually disrupted the court, abused the judge and members of the public, would not respond to the judge, refused to stand and chanted Arabic slogans. To show them there was no point in continuing their actions they could have been told that they would remain in their cells and the hearing would be conducted by audiovisual link. That would have diffused the situation immediately.

This bill amends the principal Act so that in certain criminal proceedings both adult and child accused detainees will be required to appear physically before the court on their first appearance—it seems that is obligatory—in relation to the alleged offence, and by audiovisual link, if available, on any second or subsequent appearance in relation to the alleged offence, unless the court directs otherwise in the interests of the administration of justice. I believe that is a reasonable requirement: it gives flexibility to the judge to make a decision where they require the detainee to be present in court before them, particularly for sentencing hearings. We support the bill.

The Hon. TREVOR KHAN [10.11 p.m.]: I understand why the Evidence (Audio and Audio Visual Miscellaneous) Amendment Bill 2007 has been introduced. Those of us who have practised law, particularly in local and district courts, know that one must bring a degree of humanity to the exercise and an understanding of the pros and cons of legislation. I refer first to bail hearings. Many bail hearings are mechanistic, and I understand the Attorney General's approach in that regard. Often a bail application is of little substance: it is made on instructions but with little hope of success. I refer to hearings in a country environment. A person may have to travel hundreds of kilometres to the hearing of his or her bail application. That is foolish and wasteful.

Reverend the Hon. Fred Nile spoke about the use of prison officers' time. However, we know that often prison officers are not involved in these bail applications; police officers are required to transport people to and from the courts and have to remain at the court. Rather than being involved in day-to-day policing duties, police officers perform the duties of prison officers. Plainly, from a public policy point of view, that is an inappropriate use of police time. That is a significant issue in country environments. In the constituencies I represent that is a matter of continuing and repeated concern. I fully understand why the Attorney General brings forward this bill in that regard.

Whilst it is somewhat out of order, I move on to committal proceedings. The reality is that committal proceedings are generally paper committals. That means that papers are presented to the lawyer—the police brief—and, assuming that one has the opportunity to obtain instructions, when the matter comes before the magistrate it is presented on the basis that the matter will proceed to the District Court for trial or for sentence. The prisoner's presence in court for the purposes of the committal is really quite pointless. Again, under the current law, if the prisoner is required to be there for the purposes of the exercise and is from a country environment he or she will be transported hundreds of kilometres to the court.

I refer to women prisoners. There are inadequate facilities in most of our court environments for the holding of female prisoners. Not only do we have to transport them to the court, but also they cannot be transported in the prison vans. Often they have to be flown in for a relatively short time because they cannot be held in the prison cells. That is clearly a pointless and expensive exercise if somebody is to be committed to trial

without a hearing. Once again, one fully understands why the Attorney General has approached the matter this way.

In many cases a committal hearing is preceded by what one might think is quite surprising—the necessity of taking instructions. Often there is a difficulty if a person is refused bail and taken off to be held in Sydney, Grafton, Muswellbrook or wherever. Particularly in relation to people on legal aid, the difficulty is that the only opportunity to obtain instructions is shortly prior to the committal hearing. I must say, without breaching any confidences, that very often it is just to see the prisoner in the cells and say to him or her something along the lines, "Mate, I've read the brief and it looks pretty crook." If we do not have the opportunity to do that, the reality is that people do not even have the important opportunity to converse—perhaps over a relatively brief period of time—with their lawyer to obtain what they might think is some independent and realistic advice.

One needs to know that people on legal aid are obtaining appropriate and thoughtful advice. If that contact is to be by way of telephone call, the level of interaction with the lawyer is lessened and the level of opportunity for people to be confident that they are getting proper advice as opposed to a cursory and, perhaps what they might think, impromptu brush-off is increased. I fear that happening. One would hope that the Attorney General would allow lawyers who appear particularly for legal aid clients an appropriate opportunity to provide proper advice.

Sentencing is a matter that concerns me. I understand the legislation contains a provision for justices and judges to require people to be present in court for the purposes of a hearing on sentence if the administration of justice requires it. There is always that prospect, but we do not know how that is to be interpreted. Are we really saying that there is the prospect that somebody is to be sentenced to a period of jail by video link? Having acted for clients who appeared at bail applications by video link, I know that sometimes at the end of the bail hearing when the client has been refused bail, there is a blurry, flashing screen and the punter says to you words to the effect, "What happened there?" And that is when somebody is being sentenced to jail.

It is somewhat similar to the artificially inseminated cow. They know something has happened to them but they are just not quite sure what. That is a most inappropriate outcome for somebody who is being sent to jail. I can see some Government members are somewhat bemused, but a lawyer who appears for somebody who goes to jail needs the opportunity, whether they are in court or not, to go down to the cells to that person and explain what has happened—to look him or her in the eye and essentially say, "Mate, you're gone."

The Hon. Christine Robertson: "You're stuffed!"

The Hon. TREVOR KHAN: That is another way of putting it. I note the Hon. Christine Robertson says, "You're stuffed!" In a sense, that is what one has to be able to say to the client. It would be horrible to be on the other end of a video link in that situation. In country courts often practitioners are unable to go down to a glorious cell environment and speak to their client via another video link; the only video link is in the courtroom itself. Whether it is a bail application, a committal hearing or a sentencing, if a client is refused bail or receives a jail sentence the court must adjourn to allow the practitioner to engage in a conference with the client, and the loss of court time can be significant. In the past when I used audiovisual links to communicate with a client various court officers, cleaners and other dogsbodies wandered in and out of the courtroom as I attempted to engage in what was supposed to be a confidential communication with my client. That happens because the time available to the court is limited.

We want the Government to introduce communication technology that is fully understandable in its context, but in this bill we are making it truly rough justice. Many members opposite are from country environments in which legal practitioners communicate with their clients on the courthouse steps where other people are present. Indeed, a practitioner with a folder may be sitting on a park bench and having a communication about what may be an extremely important matter in front of other members of the country town. This is another country stump for many of the people I have represented in the past, and we are inviting it to be made the norm. That is, we will make an important confidential communication in terms of the administration of justice into simply another communication that can be fitted into an otherwise busy schedule. It is important for us to debate and consider this important matter. I fully understand the considerations the Attorney General has brought to this matter. I fully understand what is sought to be achieved, but I fear for the proper administration of justice and I fear that the people we are here to represent will get swept under the carpet simply to save another dollar.

The Hon. JOHN HATZISTERGOS (Attorney General, and Minister for Justice) [10.22 p.m.], in reply: I thank honourable members who have spoken in this debate in support of the Evidence (Audio and Audio Visual Miscellaneous) Amendment Bill 2007. I acknowledge that a number of members have concerns about certain aspects of the legislation, and I will endeavour to address them in my response. At the outset can I say that what is being proposed in this legislation is not novel or new. Indeed, it is based on legislation that is operating successfully in Western Australia. It is simple because it means that in physical appearance proceedings there is a presumption in favour of a physical appearance and in shorter proceedings there is a presumption for an audiovisual link appearance as the legislation provides the court with a relatively broad discretion to displace a physical appearance in appropriate circumstances.

I acknowledge that there will be cases in which those presumptions should be displaced. Indeed, I said that in the second reading speech. For example, for a sentencing proceeding it is not cost effective or practical to have a person at the end of an audiovisual link listening to the submissions in a courtroom when the matter will be lengthy and involves a level of complexity. However, some proceedings are relatively short. For example, if all the evidence has been heard in a case and pronouncement of the decision will not be lengthy—indeed, sometimes such decisions are not read out but are simply handed down to the person concerned—it might be appropriate to enable the full presumption not to be displaced in such matters.

We acknowledge that we cannot have a one size fits all. There is a broad approach to what is a physical appearance and what is an audiovisual link, and you enable broad discretion to be utilised to displace that. As I said, similar legislation has been operating in Western Australia for a considerable time and the wall has not fallen in; the justice system continues to operate. In Western Australia there are vast distances between various communities, and this is a way of adapting modern technology and utilising it effectively. I was the Minister for Justice in the previous Government when we introduced audiovisual link technology into the Parole Authority. At that time the same sorts of arguments were raised: lawyers would not have access to their clients when their parole matter was being decided and so on. Virtually every case now considered by the Parole Authority which involves an incarcerated inmate is done by audio link.

There have been some exceptions, for example, when the person was deaf or dumb and could not participate through an audiovisual link. Those sorts of cases aside, just about every other case has been dealt with by audiovisual link. Interestingly, some inmates who have been through the process prefer to use audiovisual links. It means that they do not miss out on education and rehabilitation programs; they do not have to be carted long distances; they are able to have their court case dealt with and immediately return to work to earn money in industries; they are able to have visits with their loved ones if they are visiting on those days; and their days are not disrupted by having to get up very early to be carted long distances for relatively short matters.

I acknowledge the issues raised by the Hon. John Ajaka and the Hon. Trevor Khan about private practitioners. I have two responses to that. First, I make it clear that the issue of private practitioner access is being addressed. Meetings are taking place between the Bar Association, the Law Society, Corrective Services and others regarding private practitioner access to audiovisual link facilities. That involves a number of government agencies, including the Legal Aid Commission. One important reason this legislation will not commence on assent but on proclamation is that we are working with all the agencies and stakeholders to develop systems and protocols for the effective implementation of the amendments, in other words, to ensure that the courts are able to appropriately manage this transition and to ensure that those persons who require access to their clients are able to facilitate that in other ways. We have taken all those matters into consideration.

Recently we have held regular meetings with Corrective Services, the Legal Aid Commission, the Bar Association and the Law Society to handle matters that arise from time to time and impact on the needs of practitioners, particularly in relation to clients who are incarcerated. As I said, this matter has involved lengthy consultations. We have incorporated a number of suggestions that were made by stakeholders in the context of those consultations. To some extent, people in the country will welcome this legislation, particularly because they will be able to access audiovisual link technology on weekends. It will enable children who are taken into custody in remote areas to have their bail determinations made by an acting magistrate in Sydney as opposed to the local registrar. So the bail decision can be made by a person with greater experience in making such determinations. We will be able to facilitate that through the use of audiovisual link technology and through this legislation being passed by the Parliament. I commend the to bill the House.

Question—That this bill be now read a second time—put and resolved in the affirmative.

Motion agreed to.

Bill read a second time.

Leave granted to proceed to the third reading of the bill forthwith.

Third Reading

Motion by the Hon. John Hatzistergos agreed to:

That this bill be now read a third time.

Bill read a third time and transmitted to the Legislative Assembly with a message seeking its concurrence in the bill.

ADJOURNMENT

The Hon. JOHN HATZISTERGOS (Attorney General, and Minister for Justice) [10.32 p.m.]: I move:

That this House do now adjourn.

ILLAWARRA BUSINESS AWARDS

The Hon. GREG PEARCE [10.32 a.m.]: Tonight I draw the attention of the House to an important event that I was privileged to attend last Friday week in Wollongong. I refer to the Illawarra Business Awards, which are hosted by the Illawarra Business Chamber. In the short time that I have been the shadow Minister for the Illawarra I have been most impressed with the spirit, innovation, variety and natural beauty of the area. However, I am concerned about the lack of jobs and employment opportunities in the region. I note that as a result of the budget estimates process the Minister for the Illawarra has just advised that IRIS Research has indicated that youth unemployment in the Illawarra region rose from 8.5 per cent in October 2006 to 9 per cent in October 2007. That illustrates the very marked problem in that area.

The Illawarra Business Awards ceremony, which was held at the WIN Stadium, was a great success. It is a great facility. A wide range of awards was handed out and I will mention some of them. The Integral Energy Illawarra Business of the Year went to Geoff McQueen and the team at Internetrix for developing a company that has become a leader in the information, communication and technology field. The company provides high-tech Internet services to Japan, Hong Kong and the United States. It has become a great ambassador for Wollongong because it was chosen to join an elite global panel of 26 companies accredited as Google Analytics Authorised Consultants. Integral Energy was represented by the chairman, Michael McLeod, who presented the award. Internetrix also won the Information, Communication and Technology Award.

The Telstra Countrywide Business Person of the Year was awarded to Russell McLelland Brown's Craig Osborne in recognition of his ability to reinvigorate Wollongong's oldest legal firm. Interestingly, that legal firm also received the customer service award, which is quite a statement about law firms. The Young Business Person of the Year was Joshua Kersten, who has pursued a career in real estate. The Tourism Award, which was sponsored by Horizon Living and Fred Ferreira, was presented to Tourism Southern Highlands, which also won the Barry Smith Award for promoting the Illawarra, an award sponsored by another major player in the region, BlueScope Steel. The *Illawarra Mercury* supported the retail and wholesale awards. Keira Ford won the Retail Award and Global Coffee Solutions won the Wholesale Award. The *Illawarra Mercury's* business editor, Greg Ellis, shared the stage with a Channel Nine presenter for the overall program.

I do not have time to go through all the awards, but a number of other important organisations such as Hatch, Greenacres Disability Services, Waves at the Beach, Peoplecare Health Insurance, Project Co-ordination, JAi Events, Stolway Holdings and Southern Habitat won major awards. Those awards were sponsored by a range of local businesses, including Wards Accounting, India NRE Minerals Limited and various banks and financial organisations. One of my favourite awards was the New Illawarra Business Award, which went to Bark Busters.

The Hon. Amanda Fazio: They are very good.

The Hon. GREG PEARCE: Exactly. The company looks after dogs and, as they say, a happy dog is a happy family.

The Hon. Amanda Fazio: A happy dog is a quiet dog.

The Hon. GREG PEARCE: I acknowledge that help from the Hon. Amanda Fazio. These are very important awards and they say much about the Illawarra community, innovation and the economy. The Illawarra Business Chamber, President Terry Wetherall, the committee and the executive officer, Mark Grimson, in particular, should be applauded. If other regions had such a dynamic business and financial community they would be much better off.

JAVA MUD VOLCANO COLLAPSE

Mr IAN COHEN [10.36 p.m.]: I raise a significant unnatural disaster that is occurring a long way from New South Wales, and from Sydney in particular. I refer to the massive collapse of a mud volcano on the island of Java in Indonesia. The disaster attracted substantial media coverage for a time, which portrayed a surreal, prehistoric disaster movie. A gigantic volcano of steaming hot mud stretched as far as the eye could see and has swamped a dozen villages. Houses, factories, mosques and everything else has been swallowed by this relentless tide, which has left 40,000 people homeless, without hope and without jobs. Nothing like this has been seen before. A gargantuan fountain of mud is gushing from the bowels of the earth. On some days the crater surges wildly and on other days it quietens down, but it never stops. The mud is too thick to drain away and it is burying everything in its path.

This is a tragedy of errors backed by Australian money. Even for a top geologist, this site defies belief. Dr Mark Tingay from Adelaide University could not wait to see the grandfather of all mudflows on Indonesia's main island of Java, just west of Bali. It is so unpredictable that he was allowed just a few minutes at the crater. Dr Tingay said that geologically mud volcanos can go on flowing for hundreds of thousands of years. However, the longest he had seen a man-made eruption of this sort flow was more than 20 years. He said that the problem started when mining companies were drilling a well and encountered a chamber, or a very large reservoir, of highly pressured water. They lost control and water came up the borehole and then into another shallower level, where mud and clay is captured and then erupts to the surface.

The world's top experts agree that this disaster is the result of human error, most likely a failure to shore up the walls of the borehole with a protective casing. They are 90 per cent certain that drilling triggered this event. The only reason that companies do not set casing is to cut costs. It takes time to set casing and time is money when drilling is involved. When the eruption started a year ago, it was a small geyser of mud and steam in a rice paddy. After a few days all hell broke loose causing a frantic exodus. Levy banks and dams built in great haste collapsed just as quickly. A year later 12 villages are buried, 20 factories, roads and rice fields have been inundated and nearly 40,000 people displaced.

Lapindo, the mining company concerned, says that it is not to blame. It says that all this destruction was triggered by an earthquake in Yogyakarta, 300 kilometres away, and not by the drilling rig, which was only 200 metres away. However, geologists believe that it is unlikely that an earthquake that occurred 300 kilometres away and two days prior to the accident would have caused such an event. The entire calamity has cost lives and livelihoods. Late last year 13 people died when the mud engulfed a gas pipeline, causing a huge explosion. With little doubt that human error caused all this mayhem and with tempers at boiling point, the Indonesian Government ordered Lapindo to buy every block of land, every home and every factory as compensation. Ironically, sitting beside President Yudhoyono in the Cabinet was Welfare Minister Aburizal Bakrie, a billionaire businessman whose empire includes Lapindo. Recently Mr Bakrie has been trying to offload the company, but those owed money suspect that he is trying to offload his liability as well.

Australian investors are losing millions on the ill-fated gas well. Santos, the Adelaide-based mining giant, had an 18 per cent slice of the shares and is now lumped with 18 per cent of the losses. Santos corporate vice-president, Martin Eames, says that the company has paid out $30 million and has provision for $80 million. There seems to be no taming the flow of mud, and a new drainage channel to relieve the massive build up is just a trickle compared with what is spewing out of the ground. What is frightening is the scientists' prediction that the giant underground chasm left behind it could cave in, sucking everything down with it.

According to Dr Tingay all the water and soil that has been pulled out of the ground could cause the ground above to collapse tens of metres in just a few seconds. That would indeed be catastrophic. Australian mining interests have caused a terrible hardship to the impoverished people of East Java. Responsibility should be properly taken; Australian shareholders should compensate those people. They should be given a reasonable quality of life to make up for the terrible tragedy that occurred to them through no fault of their own. [*Time expired.*]

AUSTRALIAN AIR LEAGUE RIVERWOOD SQUADRON FIFTIETH ANNIVERSARY

The Hon. KAYEE GRIFFIN [10.41 p.m.]: Recently I attended the fiftieth anniversary dinner of the Australian Air League, Riverwood Squadron. The Australian Air League is a non-government funded, voluntary youth organisation for children from the age of eight years who are interested in planes and aviation. Its aim is to promote and encourage the development of aviation in the youth of Australia, to promote good citizenship and teamwork and to develop the creativity and resourcefulness of its members. In 1927 George Robey, an Australian soldier who distinguished himself by earning a Distinguished Conduct Medal on 25 April 1915 at the Gallipoli landing, went to Canberra to assist in the ceremonial opening of Parliament House. He brought back a toy wooden aeroplane for his son, Keith. This sparked an interest in aviation and inspired his son to learn more about it.

Five years later Keith complained about the lack of youth organisations specialising in aviation. His father and other concerned adults formed the Air Mindedness Development League and on 18 July 1934 Keith was enrolled as the first cadet member. Not long after that the name was changed to the Australian Air League. On 1 August 1934 the Australian Air League was incorporated as a limited liability company, with Robey, Captain Walter William Beale, OBE, and five others as signatories. Soon after the Governor-General, Sir Isaac Isaacs, granted his patronage and names of those prominent in the Sydney business world began to appear on the corporate members register.

The first training squadron opened at Manly on 17 January 1935. There were 30 cadets aged between 14 and 23 years, including Keith Robey, and they began their course of training. In March 1935 the Manly Branch had about 90 members and by May that same year branches had also been formed at North Sydney, Mosman, Mascot, Burwood, Warringah, Randwick, Bathurst, Cootamundra and Katoomba. Over the years the Air League has expanded across the country and it continues to grow today. On 3 September 1939 Australia was at war and this saw a dramatic increase in membership, because many young men saw the league as a stepping-stone to the Royal Australian Air Force and other armed forces. In Victoria numbers increased almost overnight to 2,000 and it was reported that total membership numbers had grown to about 10,000.

By 1942 more than 26,000 young men had undertaken training and the league had 125 operational branches throughout three States. About 5,200 were reported to have signed up to the armed forces. Large enlistment numbers meant that almost all adult members had left for war service, which resulted in the organisation experiencing difficulty in providing sufficient officers to man companies. It was then that the acceptable age limit for officers was lowered and membership became predominantly junior. Unfortunately, in Queensland the dwindling numbers took their toll on the organisation and the whole operation was forced to shut down. In December 1944 approval was given for the opening of a girls section. Officer training camps started soon afterward and before long 1,000 girls between the ages of eight and 15 were getting the opportunity of learning the aviation subjects that were available only to boys for 10 years.

As I previously mentioned, earlier this year the Riverwood Squadron celebrated its fiftieth anniversary. To mark that special milestone the squadron hosted a reunion dinner which was followed by a street parade through Riverwood. At that dinner I had the honour of being appointed as the first Squadron Patron. It was a privilege to accept the position. The Riverwood Squadron, known as the Riverwood Hornets, was established in 1957 and it has provided a continuous service to the youth of the area for the past 50 years. Riverwood Squadron is the premier Air League Squadron in New South Wales and it is actively involved in supporting the youth of the local area. The Riverwood Squadron supports the local community by participating in local activities such as festivals, fetes and parades, the annual Anzac Day and Anzac Sunday ceremonies, and it has assisted at the Premier's Seniors Concert.

The squadron takes an active role in fundraising events such as the Salvation Army's Red Shield Appeal and World Vision's 40-hour famine. Riverwood Squadron operates from a building that was originally constructed during the Second World War for the United States Army 118 Field Hospital at Herne Bay. The Squadron Hall is the last remaining building in the historic area and members are working hard to restore the building. I thank the members of the Riverwood Hornets, both past and present, for their hospitality and for honouring me with the role of patron of their squadron. I acknowledge also Group Lieutenant Chris Bailey for his commitment and hard work. The kids, parents and volunteers continue to show spirit and enthusiasm in every community task they undertake. They have a great working relationship with the local area, which clearly shows how beneficial the group is for building social skills and a sense of belonging in the community.

F3 SEAHAMPTON TO BRANXTON LINK ROAD

The Hon. ROBYN PARKER [10.46 p.m.]: As a resident of the Hunter and as the Chair of the Coalition's Hunter Task Force, I am very concerned about comments made by the Federal member for Hunter, Joel Fitzgibbon, reported in the *Maitland Mercury* on Monday 26 November 2007. The newspaper stated:

> Mr Fitzgibbon was a long-time advocate for the F3 to Branxton Link Road but he was no longer convinced it was the best option for the area and he wanted a new independent assessment of the project.

In Mr Fitzgibbon's first interview since the Federal election, the newspaper quoted him as stating:

> Is the F3 link still the best and right solution for our traffic problems? Maybe yes, but we don't know.

Prior to the election Mr Fitzgibbon said that Labor would "absolutely match" the Coalition's commitment of $780 million for the project. However, in his first interview after the election he said that he wants the project reviewed, even though he said that he had been calling for that project for more than 10 years. If Labor is so concerned about delays to build the F3 extension it has the opportunity right now to build it in partnership with its State Labor colleagues. Is that what Labor does? Does it say one thing before it is in government and another after it has been elected? We have already seen the failures of the New South Wales Labor Government on key infrastructure projects in the Hunter such as the Tourle Street bridge, the Swansea bridge and the Myall Way flyover. The Federal Labor Government has shown within a week of its election that it will treat that region with the same level of contempt as its State counterparts and ignore vital projects. On 15 September 2007 Joel Fitzgibbon issued a press release in which he launched a petition to pressure the Federal Government to fast-track the construction of the link road. He said:

> I've been calling on the Howard Government to build the Link Road between Seahampton and Branxton since before I entered Federal Parliament back in 1996 …
>
> The proper solution is the construction of the F3 link which would provide freeway-like conditions between the F3 and the Belford bends deviation just north of Branxton. Not only would it take Sydney to Brisbane traffic off the New England Highway between the F3 and Branxton, it would allow people to travel from the Upper Hunter to Newcastle and vice versa without travelling through Branxton, Greta, Lochinvar and Maitland.

That was prior to the Federal election. In a survey of candidates during the New South Wales election campaign the member for Cessnock, Kerry Hickey, was asked what was the top road priority in his electorate. He replied:

> The F3 freeway to Branxton will relieve congestion on the New England Highway.

On 17 October 2007 in the Legislative Assembly, the member for Maitland, Frank Terenzini, said:

> The building of this link road has become a major priority in the Lower Hunter region. Indeed, we are in dire need of a road that allows motorists to bypass Maitland and other cities.

The Hunter Business Chamber issued a media release prior to the election calling on the major parties to deliver on commitments for the Hunter. The President of the Hunter Business Chamber, Karen Howard, said that the F3 extension was the most important project. When the New South Wales Government unveiled its Lower Hunter Strategy in October 2006 it forecast the region's population to grow by 30 per cent by 2031. The Government said that Maitland would have an extra 26,000 dwellings and that Cessnock would have an extra 21,000 dwellings. Because of that projected growth support for the link road came from the mayors of Maitland and Cessnock. The Mayor of Maitland, Peter Blackmore, said:

> All these developments will need highway access and the New England Highway just won't cope.

The Mayor of Cessnock said:

> Cessnock's transport infrastructure not only needs to keep up but it needs to be in place to handle the influx of new residential development.

However, a senior Labor Federal member in the Hunter wants a review of the project; now that he is in government he wants a review. He is at odds with his State Labor counterparts, the Hunter business community and local government. He is now at odds with the very people who voted for him, believing that he would honour his election commitment. Today the Minister for Roads refused to say whether he supported the Federal member; he said that he was not aware of his comments. Given the number of spin doctors that the State Labor Government has, it is surprising that its media monitoring has not extended to Maitland. Perhaps if it did, the

Minister for Roads would be aware of how much local support this project has. However, what we heard before the election from the Federal Labor Party is different from what we now hear after the election. [*Time expired*]

TRANSGENDER DAY OF REMEMBRANCE

TED ROLAND

Ms LEE RHIANNON [10.51 p.m.]: Transgender people who have been killed due to anti-transgender hatred or prejudice were earlier this month commemorated at the Transgender Day of Remembrance in Sydney. Those who took part in the public forum included the Greens David Shoebridge, Labor's Penny Sharpe, Rachel Evans from the Campaign Against Homophobia, transactivist and psychotherapist Dr Tracie O'Keefe, and local identity Norrie May Welby. A La Trobe University survey of 6,000 lesbian, gay, bisexual, transgender and intersex people in 2006 found that 46.9 per cent of transgender females and 29.4 per cent of transgender males had been threatened with violence. Sadly, harassment and violence suffered by transgender people largely goes unreported. Discussion at the remembrance day focused on the small gains made by transgender activists and the need to continue fighting for equal rights. I congratulate all who participated in that event.

On another matter, Ted Roland died on 7 November 2007. Ted was an outstanding environmentalist, a dedicated worker for world peace and an endearing character. Ted was born in 1915. Like many people of that generation he left school early in the Depression years. He lowered his age so he could sign up for the Second World War. In 1980, Ted, at the age of 65, retired and from then on dedicated his life to working on environmental issues. I first met Ted in the 1990s when he was working on the environmental referendum, an issue he became famous for in the progressive movement. The early 1980s was a time when environmental issues were only new in society's conscience. Ted's family tells of how he always advocated the importance of recycling and conserving energy. I find many people of his generation understand how important it is after living through the Depression.

Ted started campaigning for increased protection for the Great Barrier Reef with Alan Catford from the Australian Conservation Foundation. His efforts were instrumental in leading to the newly formed Hawke Government declaring most of the reef a marine park. After this achievement he decided to take on the bigger issue of promoting an environmental referendum to change the Australian Constitution to incorporate preservation of Australia's natural heritage and Aboriginal heritage. He also advocated a non-nuclear policy for Australia. His efforts to achieve support for this referendum were quite outstanding. He was always running letter-writing exercises and petitions. On one occasion he collected 8,000 signatures to a petition that was presented to Federal Parliament in 1999 by Senator Vicki Bourne.

Ted was also a foundation member of the Australian Democrats and became a loyal and highly regarded member of that party. He was always taking up social and environmental issues. He was involved with the Australian Conservation Foundation, People for Nuclear Disarmament, AID Watch, the Parramatta peace group, the Bougainville Freedom Fighters group and the Wilderness Society. I hear from some of his friends that he regarded the Bougainville Freedom Fighters group as one of the best because of the good meals it provided. In the latter years Ted suffered poor health but he kept going to meetings. People who knew him would remember him in his later years carrying a portable stool, taking one walking stick and eventually two as his knees became weaker, and he would always be sitting at the front of meetings with his hearing aid stuck out, a hearing aid he had made himself and which gave him continued contact and understanding of the key issues he felt so passionate about.

As well as being incredibly politically active, Ted had a real soft spot for people in so many different ways. He was a gentle person with a passionate nature and an incredible ability to lack cynicism or judgment of others. I believe the way he lived his life could teach us so much. I extend my condolences to his children and grandchildren. Although he did not achieve the change to the Constitution that he wished for so deeply, he achieved so much in politicising so many young people and continued to be active on the issues he felt so passionate about. [*Time expired.*]

FEDERAL ELECTION 2007 AND WORKCHOICES

The Hon. IAN WEST [10.56 p.m.]: It is often said that those who do not learn from history are doomed to repeat it. That phrase applies very much to the result of the weekend's Federal election. As we all know, the Howard Government was comprehensively defeated. As I and many others predicted, one of the 28-odd seats that have changed hands is the Prime Minister's former seat of Bennelong. Only the second Prime

Minister to lose his seat at an election, John Winston Howard follows some 78 years after the first Prime Minister to lose his seat in an election, Stanley Melbourne Bruce in 1929. Like Mr Howard, the Conservative Bruce had also attacked working people and their union representatives.

In Bruce's case it had been through stripping the powers of the Conciliation and Arbitration Commission and the union-busting Dog Collar Act. The Australian people sent him packing for his sins, as they did with Winston Howard. It is a universally accepted fact that WorkChoices was the number one reason for the massive anti-Howard Government swing. The likes of the Liberal Party's Federal director, Brian Loughnane, and Liberal MP Andrew Robb have acknowledged WorkChoices hit them where it hurts. Now any Liberal with any dreams of becoming leader in the future—Malcolm Turnbull, Tony Abbott, Joe Hockey—is backing away from the WorkChoices policy at a rate of knots. I realise the political poison this legislation was and remains. Of course, this does not apply to remaining ideologues like Nick Minchin, who wants to block any changes—changes the Australian people have demanded. At least the other H. R. Nicholls crusader, Peter Costello, was decent enough to accept the umpire's decision and get out of public life.

The election result was the clear message from the people of Australia that workers rights are human rights—sacred and not to be cynically played with. The election outcome was a direct result of the work of thousands of honest, proud, hardworking trade unionists and many concerned community leaders who helped raise awareness of WorkChoices through the Your Rights at Work campaign. While the average national swing was 5.92 per cent, there was an average 8 per cent two-party preferred swing in New South Wales seats where the Your Rights at Work campaign was targeted. Howard's conservatives wrote off the unions' Your Rights at Work campaign as nothing more than a scare campaign. But to paraphrase a former Prime Minister, it was a truth campaign and the truth was scary. There was nothing deceptive about the campaign—it tapped into what was already happening.

Government figures revealed that 45 per cent of Australian workplace agreements lodged had removed all protected award conditions and almost all Australian workplace agreements lodged had removed at least one of them. The Your Rights at Work community campaigns uncovered the flesh and blood examples of those statistics. The victims were usually the most honourable—the young, the old and the unskilled. The cynical deceit of demonising the representatives of the vulnerable borders on criminality. With the backing of their local Your Rights at Work campaigns, they told their stories to the communities—person to person and through local media. Some went on to tell their stories through the national media. There was 16-year-old Amber Oswald from Sydney's northern beaches who was sacked and then rehired on a lower base wage with no penalty rates. Seventeen-year-old waitress Tenika Setter from Wollongong had money taken out of her wages if customers did a runner. Another 17-year-old, Renee Pittman, had to sign a contract that forced her to work Boxing Day, Good Friday, Easter Sunday and Anzac Day, as well as Sundays, without being paid penalty rates.

It was not just young people who were victims. Andrew Cruickshank, a 42-year-old father of two, was sacked from his job only to find the job re-advertised at $25,000 a year less. The bravery of these people in speaking up should not be forgotten. And something that should never be forgotten by any leader of the country is the consequence of taking away workers rights. I say to the conservatives: Those rights are back and they are back to stay.

BILL BROOKER

The Hon. DON HARWIN [11.00 p.m.]: Today my extended family and the Shoalhaven community farewelled Bill Brooker of St Georges Basin. The husband of my mother's sister Beryl, Bill Brooker was very well known, and with great affection, in my hometown of Vincentia as a former secretary manager of the Vincentia Golf Club for 15 years. Father of my cousins Christine, Ann, Debbie and Will, grandfather of seven and a great grandfather of three, Bill Brooker loved nothing better than a good debate, the feistier the better, around the dining table, usually over afternoon tea, which he cooked himself. His politics was, of course, of the deepest blue. He loved our Queen, our Constitution, our flag, but most of all I think the St George rugby league team, as do most—in fact all—of our extended family as the descendants or in-laws of the great Tom Killiby, who in fact scored the very first point ever scored by St George in 1921.

Bill Brooker had a very painful and difficult final illness and his death was a release. His funeral today was almost a celebration. My cousin Kevin officiated and his wife and sons provided the music. My cousin Christine gave the most amazing tribute to him and I think I cried the whole way through, and also the whole way through the photographic presentation of his life to the tune of Nat King Cole's *Unforgettable*. He was a larger than life character and, Bill Brooker, you certainly were unforgettable and we will miss you very much.

Question—That this House do now adjourn—put and resolved in the affirmative.

Motion agreed to.

The House adjourned at 11.02 p.m. until Thursday 29 November 2007 at 11 a.m.