

LEGISLATIVE COUNCIL

Tuesday 18 May 2010

The President (The Hon. Amanda Ruth Fazio) took the chair at 2.30 p.m.

The President read the Prayers.

The PRESIDENT: I acknowledge the Gadigal clan of the Eora nation and its elders and thank them for their custodianship of this land.

ASSENT TO BILLS

Assent to the following bills of the previous session reported:

Building and Construction Industry Long Service Payments Amendment Bill 2010
Casino Control Amendment Bill 2010
Registrar-General Legislation (Amendment and Repeal) Bill 2010
Workers Compensation Amendment (Commission Members) Bill 2010

NSW SELF INSURANCE CORPORATION AMENDMENT (HOME WARRANTY INSURANCE) BILL 2010

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

Motion by the Hon. Tony Kelly agreed to:

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

Second reading ordered to stand as an order of the day for a later hour.

BUSINESS OF THE HOUSE

Formal Business Notices of Motions

Private Members' Business items Nos 262 and 263 outside the Order of Precedence objected to as being taken as formal business.

PRIVILEGES COMMITTEE

Report

The Hon. Kayee Griffin, as Chair, tabled report No. 50, entitled "Citizen's Right of Reply (Mrs J Passas)", dated May 2010.

Ordered to be printed on motion by the Hon. Kayee Griffin.

LEGISLATION REVIEW COMMITTEE

Report

The Hon. Kayee Griffin, on behalf of the Chair, tabled a report entitled "Legislation Review Digest No. 6 of 2010", dated 18 May 2010.

Ordered to be printed on motion by the Hon. Kayee Griffin.

GENTRADER CONTRACTS

Production of Documents: Return to Order

The Clerk tabled, pursuant to resolution of 11 March 2010, additional documents relating to Gentrader contracts received on 14 May 2010 from the Director General of the Department of Premier and Cabinet, together with an indexed list of documents.

Production of Documents: Claim of Privilege

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

The Clerk tabled also a consolidated index of all documents provided in response to the resolution of the House of 11 March 2010.

PETITIONS

Religious Education and School Ethics Classes

Petition opposing the newly proposed secular humanist ethics course in public schools and calling on the Government to support the cancellation of the ethics course and express its support for scripture classes, received from **Reverend the Hon. Fred Nile** and **Reverend the Hon. Dr Gordon Moyes**.

Café Bones

Petition requesting the Government allow an exemption for Café Bones to amendments 14A section (1) parts (a), (b) and (c), but retain section (1) part (a), received from **Ms Sylvia Hale**.

Coogee Bay Hotel Site

Petition opposing any redevelopment of the site bounded by Coogee Bay Road and Arden and Vicar Streets under part 3A of the Environmental Planning and Assessment Act 1979, received from the **Hon. Don Harwin**.

Adoption Laws

Petitions requesting that the Parliament reject any proposed legislation or amendments to adoption laws that would take away the fundamental human right of adopted children to be raised by both a mother and a father, received from **Reverend the Hon. Fred Nile** and **Reverend the Hon. Dr Gordon Moyes**.

IRREGULAR PETITION

Leave granted for the suspension of standing orders to allow Reverend the Hon. Dr Gordon Moyes to present an irregular petition.

Relationships Register

Petition requesting that the Parliament reject any proposed legislation for a Relationships Register, received from **Reverend the Hon. Dr Gordon Moyes**.

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Orders of the Day Nos 1 to 6 postponed on motion by the Hon. Tony Kelly.

BUSINESS OF THE HOUSE**Suspension of Standing and Sessional Orders: Conduct of Business****Motion by the Hon. Tony Kelly agreed to:**

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

Conduct of Business**Motion by the Hon. Tony Kelly agreed to:**

That, notwithstanding anything to the contrary in the standing or sessional orders, on Wednesday 19 May 2010:

- (a) this House meet for the dispatch of business at 2.00 p.m.,
- (b) debate on Committee Reports take precedence of other items of business on the *Notice Paper* until 4.00 p.m.,
- (c) Questions commence at 4.00 p.m., and,
- (d) Government Business takes precedence after questions.

**STATE EMERGENCY SERVICE AMENDMENT (VOLUNTEER CONSULTATIVE COUNCIL) BILL
2010****Second Reading**

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [2.58 p.m.], on behalf of the Hon. Tony Kelly: I move:

That this bill be now read a second time.

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

Leave granted.

The purpose of the bill is to amend the State Emergency Service Act 1989 to establish the SES Volunteer Joint Consultative Council.

The Consultative Council will advise and report to the Commissioner of the State Emergency Service on matters relevant to State Emergency Service volunteers. The bill also makes provision in relation to the membership and procedure of the Consultative Council.

This bill recognises the importance of our SES volunteers as the backbone of the State Emergency Service. This Government believes that their opinions and experiences are vital to the evolution and development of the State Emergency Service into the future.

That is why this Government sat down with the peak body representing the State's SES Volunteers - the State Emergency Service Volunteers' Association, and worked on developing a solution to ensure that volunteer's voices could be heard in a formal consultative environment.

This new consultative body will give frontline State Emergency Service volunteers a formal role in helping guide the Service into the future.

Schedule 1 of the bill provides for the establishment of the Consultative Council. It proposes that the Consultative Council is to consist of 7 members, being the Commissioner, 3 persons appointed on the recommendation of the Commissioner, the President of the NSW State Emergency Service Volunteers Association Incorporated and 2 persons appointed on the recommendation of that Association with one of those persons being a deputy regional, local or unit controller of an SES unit.

This Schedule also provides that the Consultative Council has the official function of advising and reporting to the Commissioner on any matter any matter relevant to volunteer officers and volunteer members of the SES.

Further the principal Act is amended to ensure that certain membership information of the Consultative Council is to be included in the annual report of the State Emergency Service. This ensures that the volunteers involved in the Consultative Council are recognised for their efforts throughout the duration of their appointment.

The bill makes provision in relation to the terms of office of the members of the Consultative Council once they are appointed by the Minister. To ensure flexibility and participation the bill also allows for the appointment of deputies of members, in case for example where a volunteer is unable to participate in a particular meeting of the Consultative Council.

The proceedings of this new formal consultative body will be formal, in addition to the many informal opportunities for volunteer consultation which the SES undertakes. Matters relating to the Chair of the Consultative Council and other matters relating to the constitution of the Consultative Council, including the procedures of the Consultative Council such as requirements for a quorum, voting, subcommittees and the minutes of meetings are also detailed in the bill.

It is critical that any volunteers are protected from any potential liability resulting from their participation in Consultative Council matters. Schedule 1 of the bill provides for protection from personal liability for members of the Consultative Council in relation to the exercise of the functions of the Consultative Council, provided that the matter or thing in question was done in good faith.

This Government has always placed the highest priority on listening to the opinions and needs of our volunteers, indeed, we are happy to have been able to work with the NSW State Emergency Service Volunteers Association on creating the concept of this Consultative Council.

The experience and feedback of the volunteers on the ground is integral to the success of the Service's work and has directly led to increased funding for unit headquarters, emergency vehicles, training and improved information technology in recent years.

This new Council will provide a formal forum for the volunteers to be consulted and their views incorporated into the Service's decision-making and management as it continues to develop and expand to meet the challenges of the future.

Thanks should go to the executive of the NSW State Emergency Service Volunteers Association on working with the Government in preparing the concept of the bill. The SESVA have made extensive efforts to ensure the voices of SES volunteers around NSW are heard.

Once again, I would like to offer this Government's thanks to the volunteers of the State Emergency Service for their tireless and selfless work in assisting the NSW community during times of need. This bill recognises their efforts and ensures they are given a voice in the management of the organisation for which they volunteer.

I commend the bill to the House.

The Hon. MELINDA PAVEY [2.58 p.m.]: As the shadow Minister for Emergency Services I state at the outset that the Liberal-Nationals Coalition will not oppose the State Emergency Service Amendment (Volunteer Consultative Council) Bill 2010 or the creation of the volunteer consultative council. As noted, the purpose of this bill is to amend the State Emergency Service Act 1989 to establish the State Emergency Volunteer Joint Consultative Council. The council will comprise seven members—the State Emergency Service commissioner, at present, Murray Kear; three members of staff of the State Emergency Service appointed by the Minister on the recommendation of the commissioner; the president of the New South Wales State Emergency Service Volunteers Association, at present, Charlie Moir; and two persons appointed by the Minister on the recommendation of the State Emergency Service Volunteers Association, one of whom is a volunteer officer who is deputy to a regional controller or is a local controller or a unit controller.

The council will advise and report to the commissioner on any matter relevant to volunteer members of State Emergency Service units. It is worth pointing out that it has taken the New South Wales Labor Government more than 15 years to give proper recognition to the contribution of our State Emergency Service volunteers. Since that time, State Emergency Service volunteers have been contributing millions of hours of service in tasks as diverse as responding to storms, floods, road crash rescue, land search, community first responder tasks, bushfire support, as well as a number of other tasks.

This legislation would not have come about if not for the efforts of members in this Chamber and my amendment to the Government's State Emergency Service Amendment Bill 2009, which specifically sought to preclude local government councillors from being appointed as controllers of State Emergency Service units. By forcing the Government to take on board the State Emergency Service Volunteers Association's concerns, we achieved better communication between the association and the Government—a process that led to the drafting of this bill.

The State Emergency Service Volunteers Association was formed in 1998 when Greg Perry, a volunteer division controller, saw the need for a greater voice for volunteers at State Emergency Service headquarters and with government. He should be proud that, 12 years later, finally legislation has been introduced that involves consultation with government through the consultative council. From its inception, the State Emergency Service Volunteers Association has focused on achieving, in its words, "A fair go for volunteers". The executive of the State Emergency Service Volunteers Association consists of the president, vice-president, secretary, treasurer and a public relations officer. The State council includes one representative from each region. The objectives of the State Emergency Service Volunteers Association are to provide a forum for consolidated representation of volunteer views with State headquarters and the State Government, combine the efforts of volunteers to achieve a greater result, and provide scholarships to volunteers for educational or training purposes related to the State Emergency Service.

Some achievements of the State Emergency Service Volunteers Association over the past 12 years include: red and blue lights now able to be displayed legally on all State Emergency Service operational vehicles, input into the new leadership insignia, establishment of a State protocol officer, the introduction of a yearly scholarship for volunteers, the creation of bimonthly magazine the *Volunteer* and an annual calendar, creation of a 50-year medallion recognising the service of longstanding State Emergency Service members, and the granting of tax concession charitable status for the service since 1 July 2007. The State Emergency Service Volunteers Association has many other aims and objectives that it plans to work through with government through the consultative committee.

Many of these aims and objectives were pointed out to me in early February when I met with Charlie Moir, the association president, Frank Wilson, the vice-president, and Peter Lalor, the secretary. I was delighted to offer initial support for the council—subject, of course, to feedback from my Liberals-Nationals colleagues. It makes every sense in the world that a volunteer association is an appropriate mechanism through which the Government can consult properly to ensure that the voices of volunteers continue to be heard. I place on record the gratitude of the Liberals and The Nationals for the work of the State Emergency Service Volunteers Association and its unbiased professional advice on many matters relating to the State Emergency Service.

The Liberals and The Nationals support any policy that re-empowers communities by devolving centralised bureaucracy. The bill can be viewed in this light. During debate in the other place on this legislation the member for Davidson queried why volunteer members do not have the numbers on the council and why the council, which is to be charged with advising and reporting to the commissioner, will be chaired by the commissioner. The member for Wakehurst also sought an assurance that the consultative council will have a formal process through which its recommendations are addressed transparently by the commissioner and other members of the hierarchy of the State Emergency Service. Not surprisingly, the Minister did not specifically respond to these questions, but noted rather generally in his response:

The Government sat down with State Emergency Service Volunteers Association representatives and asked them what they wanted; that is how the actual make-up came about.

While I accept it is appropriate for the Government to do that, I am concerned that the council may become a toothless tiger if it is not respected by State Emergency Service management. I discussed with Charlie Moir the possibility of moving amendments to provide greater certainty for the council. These included amendments to new section 24ZA (1) (d), part 5B, schedule 1 to the bill as to whether there should be a period after which a recommendation by the State Emergency Service Volunteers Association regarding appointees is deemed to be accepted; part 3 (9) as to whether the bill should provide for the situation when the chair—that is, the commissioner—does not want to call a meeting but the State Emergency Service Volunteers Association does; part 3 (16) as to whether the minutes of the council should be routinely placed on the website of either or both the State Emergency Service and State Emergency Service Volunteers Association in order to ensure transparency; and part 3 (17) as to whether there should be a minimum number of meetings each year. On behalf of the State Emergency Service Volunteers Association, Charlie Moir made a considered response:

I have entered into negotiations in good faith with both the current State Government and SES Management for a formal process whereby the SES volunteers could take their concerns and suggestions with confidence that someone would take them seriously. We did not have this process in place prior to this Bill, we see this as a major achievement for not only the SESVA, but the SES as a whole and are happy with the Bill as presented by the Minister.

On that basis, the New South Wales Liberals and The Nationals are happy not to move any amendments at this stage, but reserve the right to do so in future should our fears be realised and the council not live up to the State Emergency Service Volunteers Association's aspirations. It is important to have transparency in these types of processes, especially when dealing with volunteers who feel, quite rightly, that they have a right to know what is going on as they are giving their time, commitment and energy without recompense.

It is not an unrealistic expectation for an advisory council to have a set number of meeting dates and for the agenda to be posted publicly so that volunteers and State Emergency Service staff throughout New South Wales can see what is happening at council meetings. Certainly it is not inappropriate to put those minutes before the public so that people know what is going on. Of course, if matters are confidential or may breach individuals' privacy, they could be excluded from the minutes. It is healthy to be as transparent as possible in our deliberations, discussions and meetings. I encourage the State Emergency Service Volunteers Association and the State Emergency Service management to take those considerations on board. Sometimes issues get out of control when people feel they are not being heard.

I congratulate Charlie Moir and his team at the State Emergency Service Volunteers Association on reaching this point. They are delighted that, 12 years after the association's establishment, they have a formal

process that is a sign from management that it is engaging in a professional process with volunteers—our orange angels—who are there in times of enormous need. We have heard many stories over the past 12 months about the floods on the North Coast. Volunteers are woken in the middle of the night to be the first responders to car crashes. They put themselves forward to ensure the safety of our community. I never cease to be amazed by their generosity and the pleasure they take from their work.

Recently I attended the weekly meeting at the Coffs Harbour State Emergency Service unit. The room was packed—in fact, it was a good illustration of why the unit needs a new facility—with at least 40 people in attendance. The meeting started on time, it was run professionally and awards were presented—it was just a normal weekly meeting. The professionalism displayed at that meeting by the members, the controller and the deputy controller, who ran the meeting, was obvious. This happens all over the State every Tuesday night. People attend their units for training and to learn better ways to keep our community safe. They are certainly orange angels. The New South Wales Liberals and The Nationals do not oppose the bill. We congratulate the State Emergency Service Volunteers Association on pushing the Government on this matter. We will watch with interest the operations of the council and genuinely hope that the proceedings are held in the most transparent fashion so that the people who keep our State safe understand what is going on.

Reverend the Hon. FRED NILE [3.09 p.m.]: On behalf of the Christian Democratic Party I am pleased to support the State Emergency Service Amendment (Volunteer Consultative Council) Bill 2010. The bill amends the State Emergency Service Act 1989 to establish the State Emergency Service Volunteer Joint Consultative Council. The council will advise and report to the Commissioner of the State Emergency Service on matters relevant to volunteer members of the State Emergency Service [SES]. I am pleased to support the bill and to acknowledge the excellent work that volunteers do in the State Emergency Service during floods, storms, bushfires, et cetera. The Kogarah State Emergency Service unit is located in the park at the rear of my new home at Kogarah Bay. This gives me a State Emergency Service unit close at hand, but I hope I never need to call on its services. I have seen the unit training on Saturdays and engaging in various exercises to prepare members, especially new members, for carrying out their duties during an emergency.

The bill will establish the consultative council, which will comprise seven members. The commissioner will be chair of the council. Three other members of the council will be members of the staff of the State Emergency Service and will be appointed by the Minister on the recommendation of the commissioner. Another member will be the President of the New South Wales State Emergency Service Volunteers Association Incorporated. The other members will be persons appointed by the Minister on the recommendation of the New South Wales State Emergency Service Volunteers Association, one of whom will be a volunteer officer and a deputy to a regional controller, a local controller or unit controller.

I share the concern expressed by the Hon. Melinda Pavey who preceded me in this debate. A council named "Volunteer Joint Consultative Council" that presumably is a voice for volunteers and comprises seven members, only three of whom will be volunteers, may find its decisions tending more towards being supportive of a staff position rather than a volunteer point of view. Alternatively, the composition of the council may result in the non-volunteer members downplaying concerns of volunteer members, with the result that concerns of volunteers may not be reflected in the council's resolutions. All members of the House know how motions and votes work. The composition of the council may affect its decision-making. I ask the Government to monitor the council closely to ensure that the council's decisions effectively represent the views of its volunteer members. I note that members of the council will not be remunerated for their services but that costs associated with volunteers' participation may be met by the State Emergency Service at the discretion of the commissioner. To my mind, that is fair. If members of the council who are volunteers incur costs as a result of attending council meetings, it is only fair that they should be reimbursed. I support the bill.

Mr IAN COHEN [3.13 p.m.]: On behalf of the Greens, I support the State Emergency Service Amendment (Volunteer Consultative Council) Bill 2010, in particular the formation of the State Emergency Service Volunteer Joint Consultative Council. State Emergency Service volunteers, through their sacrifice and commitment to communities in distress, well and truly deserve a clear voice in directing the future of the State Emergency Service. The bill establishes a seven-member council comprising the commissioner, three members of the State Emergency Service who are appointed by the Minister, the President of the New South Wales State Emergency Service Volunteers Association, and two volunteer officers. The function of the council will be to advise and report to the commission on issues that are relevant to volunteer members of the State Emergency Service.

It is envisaged that statutory recognition of the State Emergency Service Volunteers Association by its inclusion in a formal consultation role under the State Emergency Service Act will aid the continued

development of the State Emergency Service. The creation of the State Emergency Service Volunteer Joint Consultative Council is accompanied by rules and procedures for meetings that relate to terms and vacancies, disclosure of pecuniary interests, voting, quorum, and keeping of minutes. It is heartening that a Labor Minister has moved to create committees and councils that formally engage with broad-based government departments. There is much value in drawing upon the real-world experience of front-line grassroots State Emergency Service volunteers in shaping those agencies' policy outlook. In the context of State Emergency Service volunteers, who do such extraordinary things in times of emergency and need, it is the least we can do.

The hard work and dedication of State Emergency Service volunteers has more than earned them a seat at the table with State Emergency Service management and a place within emergency planning in New South Wales. If only more Ministers had the same commitment to acknowledging the expertise and talent within our communities as an invaluable source of policy formulation, rather than solely relying upon the institutionalised tunnel vision of certain departments. Imagine how many community and volunteer-based councils and committees we could have if the plethora of ineffectual and unrepresentative committees—for example, those established by the Hon. Ian Macdonald when he was the Minister for Primary Industries—were culled and their funding redirected towards giving volunteers and active local communities a voice in shaping government policy.

The Minister for Emergency Services, Mr Whan, should be taking an axe to the fat remaining from his predecessor's bulging buffet of committees that were stacked with corporate high-flyers of multinational agribusiness. He should instead establish committees that actually represent the concerns of family farms in regional New South Wales. The Greens support the formation of the council and congratulate the Minister on working with the New South Wales State Emergency Service Volunteers Association to give State Emergency Service volunteers a voice. I commend the bill to the House.

The Hon. PETER PRIMROSE (Minister for Small Business, Minister for Volunteering, Minister for Youth, and Minister Assisting the Premier on Veterans' Affairs) [3.16 p.m.]: Having read a number of speeches on the bill in the other place, and having listened to members such as the Hon. Melinda Pavey, I am always pleased when members of the Liberal Party and The Nationals praise the right of individuals to come together in combination to pursue their interests. I support the State Emergency Service Amendment (Volunteer Consultative Council) Bill 2010. As the Minister for Volunteering, last week I drew to the attention of the House that National Volunteers Week would be celebrated from 10 to 16 May, and that New South Wales very successfully marked the occasion with several events.

The Hon. Melinda Pavey: We did not have a debate on it in the House. What happened to the debate?

The Hon. PETER PRIMROSE: I am pleased to respond to the interjection. We did not have a debate because when I raised the matter, no members of the Opposition or the crossbench decided to take it up. The slogan for National Volunteers Week was "Volunteering: Now, more than ever", and volunteering is vital to every aspect of the operations of the State. As I stated last week—a statement with which I know all members would agree—all sporting, cultural, environmental or other activities that take place in the State work far more effectively with the support, dedication and assistance of volunteers than would otherwise be the case.

The bill will amend the State Emergency Service Act 1989 to establish the State Emergency Service Volunteer Joint Consultative Council. Throughout the State there are more than 10,000 State Emergency Service volunteers from a total of approximately 1.67 million formal volunteers. The dedicated State Emergency Service men and women come from 228 communities throughout the State—from the plains of the State's west to the sprawling suburbs of our coastal cities. The past year has been among the busiest on record for these volunteers, with a succession of significant operational responses that included the floods on the North Coast of the State last May. During that emergency, more than 20,000 people were isolated by floodwater and, as floodwater threatened towns from Lismore to Taree, more than 10,000 were forced to evacuate their homes and businesses.

State Emergency Service volunteers also responded to the current flood in the north-west of the State, which is now in its fourth month, by volunteers actively assisting communities to cope with the worst flooding in 20 years. I have had the great experience of talking to a number of volunteers involved in those activities. One group very pleasingly reflected the active intent of the State Emergency Service's involvement, and that was the Aboriginal communities. I had the opportunity to speak to State Emergency Service volunteers from a number of Aboriginal communities about their experiences. They particularly mentioned that they were not put

into Aboriginal units and were not regarded as Aboriginal people, and therefore different or unique from other State Emergency Service volunteers. They joined and were quickly involved, be it in communications, logistics or some other aspect of State Emergency Service work. They were part of the team.

The Hon. Melinda Pavey: As they should be.

The Hon. PETER PRIMROSE: I agree with the Hon. Melinda Pavey. That is exactly what should happen. They were pleased that it happened. Not only did they perform brilliantly as part of the team, but they also returned to their local communities to show them the work they did and the respect they had correctly gained. They also urged other members of their communities to become involved. State Emergency Service work not only assists those people who are the victims of tragedies but also a State Emergency Service volunteer helps volunteers and their communities. More than 1,000 air missions have been flown during the floods, resupplying isolated communities with essential items, helping schoolchildren to reach their isolated properties for the Easter holidays, providing medical evacuation and undertaking flood reconnaissance and volunteer transport.

As a volunteer service, the State Emergency Service involves its volunteers in almost every aspect of the life of the service. That is also appropriate because State Emergency Service volunteers come from virtually every part of our local communities. When I opened the Baulkham Hills office of the State Emergency Service, again as Minister for Volunteering, my focus was on the role of the volunteers. There were members of various ages with differing educational backgrounds and experiences. They were representative of their local community and they were community members helping their local community. Volunteers can undertake front-line tasks such as rescuing people from flooded properties, undertaking temporary repairs to storm-damaged buildings, extracting injured people from motor vehicle accidents, and searching for lost or missing persons. They can also be found working quietly and mostly out of the public eye performing tasks such as logistics, administration, training, media, community engagement and operations.

With volunteers so integrally involved in the mechanics of the service, it is hardly surprising that they should want a voice in the way the service is run and its future direction. Their views are important and can provide unique insights and solutions to problems, enabling greater operational efficiencies, better training and improved community engagement. To this end, in 1998 the volunteers of the service founded the State Emergency Service Volunteers Association as a means of discussing ideas and, where appropriate, referring these to the relevant departments within the New South Wales State Emergency Service. More recently, the State Emergency Service Volunteers Association has sought to formalise its engagement with the service through the establishment of a volunteer consultative council.

The new council will provide a forum for the volunteers to be consulted on a range of issues and for their views to be given appropriate consideration. I am sure that all members will join me in congratulating the New South Wales Volunteers Association, which played an important role in the creation of this bill through working closely with the Government. I congratulate also all the volunteers of the service on their vital work in helping communities during times of disaster. As the past year has shown, the volunteers of the State Emergency Service play an integral role in the safety of our community. The bill recognises their efforts and gives them a voice in the future of the organisation, of which they are the most integral part. I commend the bill to the House.

The Hon. SHAOQUETT MOSELMANE [3.23 p.m.]: I am pleased to contribute to debate on the State Emergency Service Amendment (Volunteer Consultative Council) Bill 2010, which will amend the State Emergency Service Act 1989 to establish the State Emergency Service Volunteer Joint Consultative Council. An organisation that does not listen to its membership cannot succeed. The State Emergency Service has always valued the input of its volunteers, and the establishment of the volunteer consultative council will act to formalise this input through the provision of a formal means by which volunteers will be consulted on their views. Across the State there are more than 10,000 State Emergency Service volunteers. They come from all walks of life, all religions and cultures, and range from cadets aged barely 16 to seniors well into their seventies and eighties.

These volunteers can be found within the service undertaking an enormous range of tasks, including such front-line roles as rescue, undertaking temporary repairs to damaged buildings, reconnaissance and searches. I will draw on my own dealings with the Rockdale division of the State Emergency Service and the Rockdale State Emergency Service volunteers. For decades the Rockdale City State Emergency Service has been providing critical emergency support for the community. Whether it is flash flooding, fierce storms, traffic

accidents or community safety education, the State Emergency Service volunteers are always on call. For more than 34 years the Rockdale State Emergency Service branch has been saving the lives and homes of the people of Rockdale city, as many of their colleagues do throughout the State. These dedicated volunteers are often called out to frantic and extremely dangerous situations.

It was my great pleasure, as mayor of the City of Rockdale in 2006, to announce Sam Zorbas as the city's Citizen of the Year. Sam Zorbas is an outstanding individual who has worked hard and continues to work tirelessly for the people of New South Wales. Sam's position as the controller of Rockdale State Emergency Service has meant that he has dedicated much of his time to helping people. Sam joined the Rockdale State Emergency Service in 1979. Not long after that he took on the position of controller, and he has held this position for the past 31 years. As the local State Emergency Service controller, he manages more than 35 volunteers and is on call 24 hours a day, 365 days a year. He staffs the duty office phone outside working hours and does not rest until his volunteers have notified him that the task is complete.

Some of the major disasters that Sam has attended include the Newcastle earthquake, the Boral gas explosion, the Turrumurra windstorm, the Sydney bushfires, the Thredbo disaster, the Sydney hailstorm and the Christmas fires in 2001-02, and he was the operations manager for the 2006 Lismore floods. As well as being on the front line, many volunteers like Sam can be found doing important behind-the-scenes tasks that are equally vital, such as logistics, administration, training, media, community engagement and operations. Such a diverse range of people has an enormous breadth of experience and skills. Volunteers have long sought to use these skills and experience to suggest improvements to the way in which their service operates.

As far back as the 1960s volunteers provided input to the director general on the operations of the service. It was only in 1998 that the volunteers of the service founded the State Emergency Service Volunteers Association as a formal means of representing the views of the volunteers within the New South Wales State Emergency Service. In the past few years the State Emergency Service Volunteers Association has sought to formalise its engagement with the service through the establishment of a volunteer consultative council to provide a forum for the volunteers to be consulted on a range of issues and for their views to be given appropriate consideration. To this end, the State Emergency Service Volunteers Association has worked closely with the Government and the service to establish the council. The work done by the association in this regard is to be commended, and I thank the association for its efforts.

Praise should go to the volunteers of the service for their dedication and commitment. The past year has been a particularly busy one for the service, and I am sure that all members will join me in wishing these exceptional men and women the best for the future as they undertake their important work. As the past year has shown, State Emergency Service volunteers play an important role in the safety of our community. This bill recognises their efforts and provides them with a say in the future of the organisation for which they volunteer. They are the true unsung heroes of our society. They give a lot. I believe the least we should do is give them an opportunity to have their say.

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [3.28 p.m.], in reply: The State Emergency Service Amendment (Volunteer Consultative Council) Bill 2010 is a welcome step in the continuing development of the State Emergency Service as a modern, efficient emergency service. The State Emergency Service has grown from a small volunteer body focused not only on responding to natural disasters but also on civic defence at the height of the Cold War. It has grown and developed. Its roles and responsibilities have expanded, and today it is acknowledged as a leader in emergency planning as well as response. This growth has been possible only with the full support and commitment of the service's members, whose skills and experience are integral to its reputation as a flexible, responsive and adaptable service committed to assisting and protecting the community in times of natural disaster and other emergencies.

It is entirely fitting that the members of the service have a formal channel for airing their views, opinions and issues with their management. This is the great value of the new consultative council. The volunteers can be assured that they now have a means of providing their input directly to service management. Their increased engagement in the process can only lead to better outcomes for the service, its members and, ultimately, the community of New South Wales which relies so heavily on the SES in times of trouble.

A bill such as this provides all members with an opportunity to make personal statements like those of the Hon. Shaoquett Moselmane. The Hon. Melinda Pavey spoke about the large number of Coffs Harbour SES volunteers at its Tuesday meeting. I take this brief opportunity to thank those SES volunteers at Coffs Harbour, together with the police, fire and medical retrieval teams, for their efforts in saving my brother last July after his

truck accident. Miraculously he survived after a four-hour ordeal. I thank all members who have participated in this debate. Most importantly, together with all members of this House, I thank all volunteers in the SES for their tireless efforts and dedication. We wish them well in their work on our behalf. 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. Michael Veitch agreed to:

That this bill be now read a third time.

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

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Order of the Day No. 8 postponed on motion by the Hon. Michael Veitch.

COURT INFORMATION BILL 2010

Second Reading

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [3.33 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 Keneally Government is committed to the principles of open justice and to improving the ability of the public to understand what takes place in New South Wales courtrooms. The Court Information Bill 2010 is a testament to that commitment.

The bill is designed to promote the principle of open justice and to overhaul the existing complex system governing the release of court information. It does this by creating a statutory framework to govern access to documents and other court information held by New South Wales courts in connection with criminal and civil proceedings.

Access to information held in court records is an essential feature of an open justice system. It allows the public to be informed about what takes place in the courtroom and to understand the basis on which judicial officers make their decisions.

Procedural reforms designed to improve the efficiency of courts have meant that information that used to be provided to the court orally is now often tendered to the court in the form of documentary evidence.

Therefore, the ability of the media to accurately report, and of the public in general to understand, what takes place in the courtroom increasingly depends on access to court records.

However, the means by which this information is available to the public has, until now, been complex and unclear. There are various statutory provisions and rules of court that govern access to court information in the different courts of New South Wales, most of which give judicial officers and registrars significant discretion when considering whether to grant a non-party to the proceedings access to relevant court records.

The Court Information Bill 2010 has its origins in the New South Wales Law Reform Commission's 2003 review of the "Law of Contempt by Publication", and is the result of an extensive and comprehensive consultation process.

In its report the Law Reform Commission recognised that the law of contempt by publication is intrinsically linked to the right to access court information. The report suggested that rights to access court information should be clarified and made several recommendations in that regard.

In 2004 the New South Wales Supreme Court conducted community consultation on the issue of access to court records. This consultation raised issues about the existing framework for accessing court information, including, first, debate about the extent to which privacy principles are relevant when dealing with court records; secondly, differing approaches by individual New South Wales courts; thirdly, divergent views on the extent to which exhibits should be available to the public and to media representatives; and, fourthly, processes to review decisions about access for third parties.

Following this early consultation process the New South Wales Supreme Court referred the issue to the then Attorney General's Department for development of an appropriate policy on access to court information.

In June 2006 the department released a discussion paper entitled "Review of the Policy on Access to Court Information" for public consultation.

A range of individuals and agencies made submissions to the department's review. These submissions informed the department's consideration of a new framework for managing access to court information. The resulting report by the Attorney General's Department entitled "Report on Access to Court Information" was publicly released in July 2008.

On 9 October 2009 the Attorney General released a consultation draft of the Court Information Bill, based on the recommendations contained in the report, to targeted stakeholders, including the media, the courts and the legal profession. This additional consultation was undertaken in recognition of the complexities inherent in establishing a uniform process for accessing court information in civil and criminal proceedings across all New South Wales courts.

Each of the targeted stakeholders provided comments on the consultation draft of the proposed statutory framework. These comments have been carefully considered and have informed the Court Information Bill 2010, which is before the House today.

Access to court information is a complex area of law requiring a balance between the competing considerations of open justice and individual privacy. Consequently, it has not always been possible to accommodate the concerns and views of every stakeholder in every instance, particularly where stakeholders have conflicting interests. However, the Government is confident that it has got the balance right in this bill.

The Government takes this opportunity to thank all those who contributed to the development of the Court Information Bill 2010 by participating in the various consultations. In particular, we thank the Chief Justice of New South Wales, the Chief Judge of the New South Wales District Court, the Chief Magistrate, the Law Society of New South Wales, the New South Wales Bar Association and media organisations such as Australia's Right to Know Coalition and the Australian Press Council. Their comments have all been particularly helpful and have been taken into account in this bill.

The Court Information Bill 2010 is the first stage in a two-stage process that will see all statutory provisions relating to access to court information eventually contained in a single statute.

In this first stage the bill simplifies access to court information by creating just two categories of information: "open access" or "restricted access". It then sets out the framework by which these two categories of court information can be accessed by the public, including victims of crime and others who are directly affected by criminal and civil proceedings, as well as the media.

In the second stage additional provisions will be added that will clarify and consolidate into the one statute the law relating to the making of non-publication and suppression orders by the courts. This aspect of access to court information will be informed by work currently being undertaken by the Standing Committee of Attorneys-General, which is considering the development of harmonised suppression and non-publication orders across all Australian jurisdictions.

The second stage of the access to the court information process will also consolidate into the one statute all statutory non-publication or suppression provisions that are currently spread amongst a large number of other statutes.

It must be remembered that until the second stage of the access to court information process is completed the framework set out in the bill for access to court information is not an exhaustive one.

Although the Court Information Bill 2010 sets out the statutory framework for obtaining access to most court information, the courts will retain their power to make suppression and non-publication orders in particular cases.

Nor does the bill enable a person to access or to publish court information if another law prevents access to or publication of that information. For example, the identities of children involved in care and protection proceedings or criminal matters, of parties to adoption proceedings, of victims of sexual assault, and of persons involved in mental health or public health inquiries will continue to be protected by the relevant statutes.

The objectives of this legislation are enshrined in clause 3 of the bill as follows:

- (a) to promote consistency in the provision of access to court information across New South Wales courts;
- (b) to provide for open access to the public to certain court information to promote transparency and a greater understanding of the justice system;
- (c) to provide for additional access to the media to certain court information to facilitate fair and accurate reporting of proceedings; and
- (d) to ensure that access to court information does not compromise the fair conduct of court proceedings, the administration of justice, or the privacy and safety of participants in court proceedings, by restricting access to certain court information.

I turn now to the details of the statutory framework for access to court information established by the provisions of the bill. As recommended in the Report on Access to Court Information, the Court Information Bill 2010 defines all information held in court records in connection with civil or criminal proceedings as either "open access information" or "restricted access information". "Courts" are defined in clause 4 of the bill in such a way as to include all courts in New South Wales. This definition encompasses any sub-jurisdiction within New South Wales courts such as the Drug Court, which is a part of the District Court, the Coroners Court, which sits within the Local Court, and the Youth Drug and Alcohol Court, which is a part of the Children's Court.

Civil and criminal proceedings are also defined in such a way as to encompass all the kinds of proceedings that may be heard by a court. "Criminal proceedings" is defined in clause 4 of the bill to include committal proceedings, proceedings related to bail, proceedings related to sentence, and proceedings on appeal against conviction or sentence. "Civil proceedings" are broadly defined in clause 4 as any proceedings other than criminal proceedings. Clause 5 of the bill gives any member of the public, including victims of crime and the media, an entitlement to access all court information that is classified as open access information. Courts will no longer be able to refuse access to open access information on the grounds that the person seeking access does not have a sufficient or proper interest in the case.

Clause 5 of the bill sets out the information and/or court records that are classified as open access information. This clause will give the public an entitlement, subject only to the payment of any relevant fees, to access the following information in both civil and criminal proceedings: firstly, documentation which commences proceedings; secondly, written submissions made by a party to proceedings; thirdly, statements and affidavits admitted into evidence, including experts reports; fourthly, judgements, directions and orders given or made in the proceedings, including a record of conviction in criminal proceedings; and, fifthly, the date on which a matter has been or is to be heard by the court and the name of the judge, magistrate, registrar or other court officer who heard or is officially listed to hear the proceedings.

Further, for criminal proceedings open access information will also include the indictment, court attendance notice or other document commencing proceedings. The police fact sheet, statement of facts or similar summary of the prosecution's case will also be open access information for criminal proceedings. However, in jury trials that information will only be open access information before the proceedings are set down for trial by a jury and after the conclusion of the proceedings. This will protect against trials having to be aborted due to jurors being adversely influenced by publication of unsworn and untested allegations. These changes will mean, for example, that a person who is a victim of a crime will now have an entitlement to access transcripts of the criminal court proceedings against the offender, as well as the court attendance notice or indictment, any police fact sheets and other statements and affidavits that are admitted into evidence in the proceedings and the orders made by the judge or magistrate.

In civil cases the originating process and pleadings in a civil case will also be open access information, although only after the stage in proceedings where the court has an opportunity to consider the originating process or pleadings, including any cross-claim, or the conclusion of the proceedings, whichever comes first. This will ensure that defendants to civil proceedings are not prejudiced by having documents about them made public before they are served with the pleadings, or before they have had a chance to object to proceedings that may be vexatious, scandalous or otherwise an abuse of the court's process, or before they have had an opportunity to consider making a cross-claim.

It should be noted that it will be possible to add to the list of information that is classified as "open access information" by regulations made under the bill. The ability to add additional categories of open access information in regulations made under the bill gives the statutory framework an essential flexibility to quickly react to evolving technology and court procedures. Placing this flexibility into the regulations rather than into the rules of court also ensures that when consideration is being given to including new categories of open access information there is ongoing consultation with affected stakeholders and the process is subject to parliamentary control. It also ensures that the categories of open access information created under the bill will remain consistent across all courts in New South Wales.

Under clause 6 of the bill any court information that is not defined either in the bill or in the regulations as open access information is classified as restricted access information. The bill also recognises that there is some court information that would normally fall into the category of open access information but that, due to the nature of the information contained in the record, should be restricted access information. This includes information of a personal, highly sensitive or confidential nature, such that its release could adversely impact the privacy or safety of any participants in court proceedings, such as by causing identity theft or further traumatising victims of crime, or compromise the fair conduct of the court proceedings or the administration of justice.

Clause 6 of the bill therefore classifies the following type of information as restricted access information: firstly, personal identification information, such as tax file numbers, social security numbers, Medicare numbers, financial account numbers, passport numbers, personal telephone numbers, dates of birth and home addresses; secondly, information contained in an affidavit, pleading or statement that has been rejected, struck out or otherwise not admitted into evidence; and, thirdly, information contained in a person's criminal record, or in a statement that comprises a medical, psychiatric, psychological or pre-sentence report, or in a victim impact statement, unless that information is summarised in a judgement given or orders made in proceedings. This does not mean that the public will not be able to have access to this court information. A member of the public who is not a party to criminal or civil proceedings can still make an application to the court for access to restricted access information contained in the court records of the proceedings. The court may still grant an application for access to this information taking into account specific factors set out in clause 9 of the bill, which I will outline in detail shortly.

Whilst the framework established by the bill presumes automatic access by the public to open access information, the bill also recognises that there may be particular cases where this court information ought not be accessed. Therefore in clause 8 the bill provides for the court to order that non-parties should not have or should have limited access to open access information that is contained in that proceeding's court records. In relation to both open access and restricted access information, clauses 8 and 9 of the bill provide that, in a particular case, the court can also place conditions on the way that access is to be provided or that restrict the disclosure or use of the information. Coupled with clause 21, which provides for an offence to breach any condition of access granted to court information, these provisions will ensure information is used for the purpose for which access was granted, and not for an improper commercial or other unlawful purpose.

At this point, I must reiterate that the objects of the bill require the court to start from the presumption that open access should be granted to court information, rather than the current situation where the onus is on non-parties to convince a court to allow them access to the information sought. Clause 9 of the bill also sets out the specific issues that the court may consider when such an application is made. The test that will be applied by courts when considering applications for access to restricted access information will now require a balancing of the various interests involved in granting access to that information, including the public interest, any adverse effect on the principle of open justice, the extent of any compromise to an individual's privacy or safety, any adverse impact on the administration of justice, the extent of the applicant's interest or involvement in the proceedings or other matter to which the information relates and the reasons for which access is sought.

In addition, clause 9 of the bill provides that access to restricted access information can also be provided by the regulations. This will give the framework a degree of flexibility to provide access to certain kinds of restricted access information to members of the public, or specific categories of the public, without the need for an application to the court. For example, the bill does not give government departments or agencies any special right to access restricted court information, yet regular access by some agencies to certain kinds of court information may be necessary to assist in the administration of justice. For example, research organisations, such as the Bureau of Crime Statistics and Research require access to restricted information to be able to collate statistical information about the justice system.

The regulations will be able to provide that certain government agencies that support the justice system or specific research organisations, such as the Bureau of Crime Statistics and Research, can have access to specific kinds of restricted access information for specific purposes. The regulations will, of course, be subject to parliamentary oversight. This is in addition to clause 12 of the bill, which provides that the bill is not intended to prevent or otherwise interfere with the giving of access to court information as is required or permitted under any other Act or law. The bill recognises the special role of the media in informing the public about civil and criminal proceedings. When the media is able to give a fair and accurate account of what has happened in a particular case, and to report the information on which any decisions were based, this not only expands the community's knowledge of matters of which it should be aware, but enhances the public's understanding of the justice system as a whole.

In clause 10 of the bill, news media organisations are granted additional access to information contained in court records even though the information is otherwise classified as restricted access information. For example, media representatives will now be able to automatically access information contained in a transcript of proceedings held in closed court, information contained in a court record that is only classified as restricted access information because it contains personal identification information, information contained in the brief of evidence admitted in criminal proceedings and information contained in a record admitted into evidence that is a document in written form, or that can readily be reproduced as a document in written form, such as sound or video recordings.

As clause 13 of the bill provides, additional access granted to the media remains subject to any order of a court that prohibits or restricts the publication or disclosure of that information, or any provision made by or under any other Act or law prohibiting or restricting the publication or disclosure of that information. For example, the non-publication restrictions that are already in place in a raft of other pieces of legislation, such as the prohibition on the naming of children involved in criminal proceedings, will continue to apply. In addition to these existing protections, and in recognition of the additional access granted to media organisations to otherwise restricted access information, the bill puts in place additional safeguards to protect the privacy of the parties, witnesses and others involved in court proceedings.

As I mentioned earlier, the court may impose conditions on access to court information in any particular case, but only conditions that relate to the way in which access is to be provided or that restricts the disclosure or use of the information to which access is provided. Similar to the bill's provisions in respect of the court's ability to make such orders regarding other open access information, the objects of the bill require the court to start from the presumption that access should be granted to the media to the additional information contained in clause 10. Media access to certain restricted access information is also subject, in clause 10 (3), to a prohibition on the publication of any personal identification information, except with the permission of the court or of the person to whom the personal identification information relates. A penalty applies for any breach of this clause.

I will now canvass the issue of personal identification information in more detail. As I mentioned briefly earlier, were such information readily available to the public, there is a significant risk that involvement in court proceedings, even if only as a witness, could lead to the theft of a person's identity or to being targeted for commercial purposes. One barrier to the classification of court records as open access information is that this personal identification information is contained in a significant proportion of court records. The bill addresses this problem in clause 17 by requiring each court to publish on its website, or by other appropriate means, general information that promotes awareness of these dangers, and the court's practices and procedures for limiting access to personal information.

Further, clause 18 of the bill requires a court to ensure, to the maximum extent reasonably practicable, that court records that contain open access information do not contain personal identification information. To that end, clause 18 enables the courts to develop rules to ensure that it is prepared and filed by a party to proceedings and/or that access is only granted to those court records from which personal identification information is redacted from any court record that is prepared and filed by a party to proceedings and/or that access is only granted to those court records from which personal information has been redacted. Where a court record does contain personal identification information, courts may refuse the general public, but not the media, access to this court record even if the court record would otherwise be open access information.

At the same time, clause 19 of the bill requires a court to take such security safeguards as are reasonable in the circumstances to ensure that the court information contained in court records is protected against misuse and unauthorised access, use or disclosure. Further, clause 20 of the bill makes it an offence, punishable by 100 penalty units or imprisonment for two years, or both, for a court officer to disclose or use court information in contravention of the access provisions of the bill or associated regulations, or without the consent of the person from whom the information was obtained, or unless otherwise authorised or required by law. In relation to how access to court information is to be provided, clause 14 of the bill sets out the methods of providing access, including the conditions that may be imposed on access, and the grounds on which access may be refused in a particular case.

As can be seen from the above description of the statutory framework of the Court Information Bill, additional work will be required before this bill can commence. In particular, the Government will consult on and develop transitional provisions, such as provisions to assist in dealing with court records in civil and criminal proceedings commenced prior to the commencement of the Act; regulations, such as the kinds of other court records that might be classified as open access information and access to restricted access information by way of regulation rather than court application; court rules, such as specific rules to govern how the personal identification information of participants in court proceedings will be protected by courts, how applications for access to court information should be made, and how the access will be provided pursuant to this bill, and regulations prescribing fees.

To assist in developing regulations, the Department of Justice and Attorney General is establishing an advisory group, consisting of representatives of the courts, the media and the legal profession. This advisory group will be able to provide guidance and advice on the regulations that will be required under this bill. At the same time, the courts will be able to use existing processes for the development of any court rules required pursuant to this bill. In particular, New South Wales courts have a Uniform Rules Committee established under the Civil Procedure Act 2005, in which uniform civil rules are developed to apply across all New South Wales courts.

The Attorney General has encouraged the courts to establish the members of that committee as a separate advisory committee to assist in the development of uniform rules for the purpose of this bill. The Government wants to get these reforms right the first time. Consequently, it has undertaken intensive consultation and engaged stakeholders at every stage of the process. The Court Information Bill is another example of the Government leading the way in simplifying court processes and making information more accessible.

I commend the bill to the House.

The Hon. DAVID CLARKE [3.33 p.m.]: The Court Information Bill 2010, which is not opposed by the Opposition, comes back to this Parliament as part of what the Government says is its policy of open justice and specifically to overhaul what Parliamentary Secretary Barry Collier says is the "present complex system of public access to court held information". He specifically highlighted, for example, that with increasingly more evidence being tendered to our courts in documentary form, rather than orally, there needs to be clarification of the issue of public and media accessibility to such documentary evidence which is consistent with an open and transparent justice system, but which is cognisant of privacy wishes as well.

The Government states that the genesis for the Court Information Bill 2010 goes back to the New South Wales Law Reform Commission's 2003 review of the law of contempt by publication, which resulted in a report with recommendations to clarify rights relating to the accessibility of court held information. Following the release of that report the New South Wales Supreme Court in 2004 conducted its own consultation process on the issue, and in July 2008 the Attorney General's Department released a report entitled "Report on Access to Court Information". Now some seven years after the issue was first raised by the New South Wales Law Reform Commission we have the Government's response in this Court Information Bill, which the Government informs us is the first of a two-part process of unifying statutory regulation of access to court information.

This bill has the object of simplifying access to court information into open access and restricted access categories. The second part of the process is still a work in progress with the Standing Committee of Attorneys-General and aims to consolidate into one statute the law relating to the power of the courts to make non-publication and suppression orders. In specific terms, the bill before the House establishes a new system for the provision of access to information held by courts in New South Wales. There will be open access to certain court information known as open access information, unless the court otherwise orders in a particular case, and access to information known as restricted access information, being information that is not open access information, if such access is permitted by leave of the court or by regulation.

Open access information, which is open to anyone unless the court otherwise orders, includes information relating to: criminal proceedings such as indictments, court attendance notices, police facts sheets and statements of fact; civil proceedings, originating processes and pleadings; written submissions made by a party in proceedings; transcripts of proceedings; statements and affidavits admitted into evidence, including expert reports; and records of judgements and directions given in proceedings. Restricted access information is defined as information that a person is entitled to access only if permitted by leave of the court or by the proposed Act's regulations. In addition, there is information that would be open access information but is to be classified as restricted access information and this includes: personal identification information; medical, psychiatric and psychological and pre-sentence reports; and criminal records and victim impact statements, subject to exceptions contained within the bill.

Having defined what is "open access information" and "restricted access information", the bill clarifies who is entitled to access those categories. It provides that a person can access open access information, unless the court otherwise orders in a particular case. In respect to restricted access information a person is entitled to access if it is permitted by leave of the court or by regulation. Matters to be taken into account in deciding

whether to grant leave include: the public interest; the extent to which the principles of open justice will be affected if access is not provided; the extent to which an individual's privacy or safety will be compromised by access; and the extent to which access will adversely affect the administration of justice.

The bill defines the circumstances in which a news media organisation may have additional access to restricted access information unless the court orders otherwise. This information includes: transcripts of proceedings in closed court or proceedings on a *voir dire*; transcripts of evidence in proceedings on an application to a court for an order to prohibit or restrict the publication of information; and the brief of evidence in criminal proceedings. A party to proceedings, and the party's legal representative, are entitled to access any court information relating to those proceedings although a court may impose certain conditions on access. The bill clarifies how access to court information is to be provided but also in what circumstances it may be refused, examples of such circumstances being where it would require an unreasonable diversion of the court's resources or could jeopardise the safe custody of court records.

The bill requires courts to publicise and promote awareness of the potential for information provided by a party to proceedings being accessible to other persons. It also requires the courts to ensure that open access information does not contain personal identification information and that court information is protected against misuse and unauthorised access. An action for defamation or breach of confidence in respect to a disclosure of court information pursuant to an entitlement under the bill cannot be brought against the Crown, a court or court officer. A fundamental feature of this bill is to change the current presumption where the onus is on a person who is not a party to proceedings convincing a court to grant access to court information to a presumption of entitlement of open access to court information. Overall, the bill should promote a greater public awareness of the functioning and intricacies of our State's justice system whilst at the same time ensuring that principles of confidentiality and privacy are still paramount. As I indicated earlier, the Opposition does not oppose this bill.

Ms SYLVIA HALE [3.39 p.m.]: I support the Court Information Bill 2010 on behalf of the Greens. I understand the legislation before us is the culmination of a long process of review. In June 2006 the Attorney General's Department released a discussion paper entitled "Review of the Policy on Access to Court Information" for public consultation. After submissions were considered the Attorney General released a report entitled "Report on Access to Court Information" in July 2008. In October 2009 the Attorney General released an exposure draft of the Court Information Bill, which was circulated to interested parties. The bill before us is, I understand, acceptable to the New South Wales Bar Association and the Law Society of New South Wales.

The bill creates two categories of court information, "open" and "restricted". This simplifies the current situation. It will create also an assumption that information is open rather than restricted, as is the case currently. Indeed, currently, access is restricted to those persons who are deemed to have an interest in the matter. The courts will retain their power to make suppression and non-publication orders in particular cases. Restriction on publication of information, such as identifying victims who are minors, victims of sexual assault and other categories will remain. The Greens believe it is reasonable in such cases, but in matters concerning suspected terrorist offences there is, we contend, an unwarranted suppression and denial of the right to know on the part of the accused and their counsel.

The details of the evidence backing charges should be available to the accused and counsel, and probably to the public at large as well, particularly as in this country we have a rather disappointing history when it comes to the accuracy of much of the information upon which such charges are based. In the bill in general, apart from the exemption aspects, there is an assumption that court information is open to access by the media and by the public, other than when suppression orders are in place. I understand personal identification information of participants in court proceedings will be protected by the non-disclosure of details such as date of birth, address, Medicare number and so forth. This clearly is reasonable given the likelihood of identity theft. The Greens broadly support the assumption of openness and access to information contained in the bill in all cases other than when the protection of a minor or a victim is necessary or when terrorist charges have been laid.

Reverend the Hon. FRED NILE [3.42 p.m.]: On behalf of the Christian Democratic Party I am pleased to support the Court Information Bill 2010. The bill will create a new statutory framework to govern access to documents and other court information held by all New South Wales courts in connection with criminal and civil proceedings. In the other place the Parliamentary Secretary, Mr Barry Collier, went through the background to the bill, which appears to have commenced in 2003, so it has been a seven-year process to bring us to the introduction of the bill.

The New South Wales Law Reform Commission conducted a review in 2003 of the law of contempt by publication and as a result of extensive and comprehensive consultation it produced a report, which recognised

that the law of contempt by publication was intrinsically linked to the right to access court information. The Law Reform Commission made several recommendations and in 2004 the New South Wales Supreme Court conducted a community consultation on the issue of access to court records. This raised issues about the existing framework for accessing court information, including, firstly, debate about the extent to which privacy principles are relevant when dealing with court records; secondly, differing approaches by individual New South Wales courts; thirdly, divergent views on the extent to which exhibits should be available to the public and media representatives; and, fourthly, processes to review decisions about access by third parties.

Those consultations were followed by the New South Wales Supreme Court referring the issue to the then Attorney General's Department for development of an appropriate policy on access to court information. In June 2006 the department released a discussion paper entitled "Review of the Policy on Access to Court Information" for public consultation. Following that there was a report by the Attorney General's Department entitled "Report on Access to Court Information", which was released in 2008. In 2009 the Attorney General released a consultative draft of the Court Information Bill based on recommendations contained in the report to targeted stakeholders, including the media, the courts and the legal profession.

This consultation has been valuable in establishing a uniform process for accessing court information in civil and criminal proceedings across all New South Wales courts. Each of the targeted stakeholders provided comments on the consultation draft of the proposed statutory framework. These comments have helped to form the basis of the bill before the House. It has had a long period of consideration and consultation. We trust now the bill will fulfil its purposes in providing all the information that is needed to make our courts operate efficiently, but also so that the legal profession and the public will have all the information they need as they participate in the court process.

The bill will require the court to start from the presumption that open access should be granted to court information rather than the current situation where the onus is on non-parties to convince the court to allow them access to the information sought. It is a question of whether only the parties should have that information or whether it should be provided to a wider constituency, such as non-parties. Some care needs to be taken to ensure that non-parties do not have other motives in seeking that information, perhaps to frustrate the legal process. There needs to be some examination of non-parties who seek information so that is used in a proper way and not improperly.

The bill also simplifies access to court information by creating just two categories of information, open access and restricted access, and provides a framework by which these two categories can be accessed by the public. It grants the media additional access to information that would otherwise be restricted, subject to certain conditions. As I said, there is a need to have some safeguards, and there will be safeguards to ensure access to court information does not compromise the fair conduct of the court proceedings, the administration of justice or the privacy and safety of participants in court proceedings. Sometimes the media in seeking access to information are looking more for a headline for some controversial angle they can use, which could be quite harmful to some of the individuals involved in the court proceedings.

Finally, the bill creates offences to ensure information is used for the purpose for which access was granted, and not for improper commercial or other unlawful purposes. Contrary to the comments by Ms Sylvia Hale, I accept the proposition that there needs to be some safeguard on information when the courts are dealing with terrorist activities. This is a most complicated area and great caution is needed in approaching it, certainly in recognising the need for security and protecting the security agencies that provide information so that their methods or even their personnel are not identified in some way and compromised by the information being made available, which will not assist the public but may assist future terrorist activity. I would not oppose any restriction on information arising from a court case involving terrorist activity.

The Hon. KAYEE GRIFFIN [3.50 p.m.]: I support the Court Information Bill 2010. Access to court information is a complex area of law requiring a balance between the competing considerations of open justice and individual privacy. Open access is critical to ensure the integrity of court processes, the proper administration of justice and the maintenance of public confidence in our justice system. But that must be balanced against the need to safeguard the right to a fair trial and non-interference with witnesses and evidence, as well as the safety and privacy of witnesses and victims. The bill will provide greater clarity in relation to the right to access court information, and is built around providing open access, where possible. Indeed, the list of information classified in the bill as open access information is extensive and covers most, if not all, types of information that the public and the media would need to understand what took place in a particular matter.

One of the critical restrictions imposed on access in the bill relates to personal identification information. The Government takes the protection of such information seriously and has, therefore, put additional safeguards in the bill to protect such information. The courts will be required to publish general information that promotes awareness of the dangers of placing personal information in public documents, and they will be required to publicise their practices and procedures for limiting access to personal information. Courts also will be required to take reasonable steps to ensure that records containing open access information do not contain personal identification information. The courts also will be enabled to develop rules about when and how parties to proceedings should remove personal identification information from court records. I quote from the comments of the Legislation Review Committee in relation to this bill. In Legislative Review Digest No. 4 of 2010, the committee said:

The Committee notes the intent of the bill to strike an appropriate balance between two important interests, facilitating open access to court information and maximising privacy protections.

The Committee recognises the value both these interests have on the rights and liberties of individuals, but at times appreciates that these interests may compete. In light of comments received by Privacy NSW that it does not take significant issue with the Bill, and given the safeguards implemented to protect personal identification information, the Committee appreciates the extent to which the balance has been achieved.

The bill has been the subject of extensive consultations with the courts, police, media organisations, victims groups, privacy advocates and the legal profession. For the reasons outlined, it has not been possible to accommodate the concerns and views of every stakeholder in every instance in this bill, in particular, where stakeholders have conflicting interests. However, the Government is confident that it has the balance right in this bill. The Legislation Review Committee now echoes that confidence. I commend the bill to the House.

The Hon. TONY CATANZARITI [3.53 p.m.]: I, too, support the Court Information Bill 2010. The bill will establish a new system for the provision of access to information held by all courts in New South Wales. This one piece of legislation will replace the complex web statutory provisions and rules of court that currently govern access to court information in New South Wales. The laws are built around providing open access to court information, wherever possible. Currently, different rules operate in the Supreme Court, the District Court and the Local Court, and the onus is on members of the public to convince a court that they should have access. Importantly, the bill simplifies access to court information by creating only two categories of information: open access or restricted access.

The bill recognises also the special role of the media in informing the public about court proceedings by granting media organisations the right to access court information that otherwise would be subject to restricted access. This special access extends to information contained in the transcript of proceedings in closed court; information relating to an application for a suppression or non-publication order; information contained in a court record if the only restricted access information the record contains is personal identification information; information contained in the brief of evidence in criminal proceedings; and information contained in a record admitted into evidence that is a document in written form or that can readily be reproduced as a document in written form such as sound or video recordings.

Members of the media will not have to convince the court that they should be given access to information falling within those categories; they will be able to approach the court registry and be given that material upon request. More liberal access can be provided in the media than to the general community because of the capacity of the court to safeguard against the publication of sensitive information that may be contained in restricted documents. The offence provisions contained in the bill that apply to news media organisations and to court officers are designed to deter the deliberate misuse of court information, or an inducement or attempted inducement to misuse court information. The offences aimed at media organisations are strict liability offences, meaning that the defence of honest and reasonable mistake is available. Any news media organisation accused of offending will be able to avoid a penalty if it can establish that it honestly and reasonably believed that the information was not information to which access was restricted.

It is worth emphasising also that the media can apply to the court for permission to access or publish restricted information or to obtain the consent of the person concerned. The new system for access to court information established under the bill promotes open justice and facilitates media access to information that they need to be able to understand a matter before the court and to inform the public. By doing this in a clear, coherent and systematic way, New South Wales courts will be blazing a trail for other Australian States and Territories to follow. I commend the bill to the House.

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [3.57 p.m.], in reply: I thank all members for their contributions to debate on the Court Information Bill 2010. The means by which court information is

available to the public has, up until now, been complex and unclear, with numerous statutory provisions and rules of court governing access to court information in New South Wales. The objective of this legislation is to promote consistency in the provision of access to court information across courts in New South Wales, and to promote transparency and a greater understanding of the justice system. However, the bill balances that against the need to ensure that access to court information does not compromise the fair conduct of court proceedings, the administration of justice, or the privacy and safety of participants in court proceedings by restricting access to certain court information.

The bill also aims to provide additional access to the media to certain court information to facilitate fair and accurate reporting of proceedings. The media has special access to information in criminal proceedings under existing legislation, for example, under section 314 of the Criminal Procedure Act. The media is entitled to police fact sheets and briefs of evidence. Access to this information is continued under the bill. Providing the media with access to information that is otherwise restricted access under the new regime continues this recognition of the media's special role in reporting court proceedings to the community. More liberal access can be provided to the media than to the general community because of the capacity of the court to safeguard against the publication of sensitive information that may be contained in restricted documents. However, the media's access to this information is not without appropriate safeguards.

As clause 13 of the bill provides, the additional access granted to the media remains subject to any order of a court that prohibits or restricts the publication or disclosure of that information, or any provision made by or under any other Act or law prohibiting or restricting the publication or disclosure of that information. For example, the non-publication and restrictions that are already in place in a raft of other pieces of legislation, such as the prohibition on the naming of children involved in criminal proceedings, will continue to apply. Under clause 10 (3), media access to certain restricted information is also subject to a prohibition on the publication of any personal identification and information except with the permission of the court or of the person to whom the personal identification information relates. A penalty applies for any breach of this section.

Finally, it should be remembered that although the bill gives the media open access to information that is restricted to the general public, any member of the public may apply to the court to obtain access to restricted access information or seek permission of the parties involved. The objects of the bill require the court to start from the presumption that open access should be granted to court information rather than the current situation where the onus is on non-parties to convince a court to allow them access to information sought. However, there always will be circumstances where this presumption should be rebutted. The courts are best placed to make this determination, as they will be apprised of all the facts and circumstances of the case before them. Therefore, it is important that our courts retain the discretion to order that in some circumstances open access to information should not be provided.

However, unlike the existing system, the bill sets out the specific issues that a court may consider in exercising that discretion. These include any adverse effect on the principle of open justice, the extent of any compromise to an individual's privacy or safety and any adverse impact on the administration of justice. The system of access to court information to be implemented under this bill will be not only more permissive than the existing system, but also it will be clearer, more consistent and easier to understand by court staff, court users, the media and those interested—

Pursuant to sessional orders business interrupted at 4.00 p.m. for questions.

REPRESENTATION OF MINISTER ABSENT DURING QUESTIONS

The Hon. TONY KELLY: I advise the House that in the absence of the Leader of the Government, and Attorney General, I will answer questions on his behalf today.

QUESTIONS WITHOUT NOTICE

UNEXPLAINED WEALTH LEGISLATION

The Hon. MICHAEL GALLACHER: My question without notice is directed to the Minister for Planning, representing the Minister for Police. Can the Minister further outline plans announced today by Premier Kristina Keneally regarding proposed legislation targeting the unexplained wealth of organised

criminals? Have such moves been initiated nationally? Given the interstate and, indeed, transnational nature of organised crime, what level of cooperation between other States and the Federal Government will be necessary to see this addition implemented in the New South Wales police anti-organised crime arsenal?

The Hon. TONY KELLY: This is certainly a very good announcement today by the Premier and is welcomed by the New South Wales Police Association.

The Hon. Michael Gallacher: Why did she not support it when I first announced it a couple of years ago? There is a lot of larceny going on in New South Wales. There is a rapid rise in theft.

The Hon. TONY KELLY: Are you complaining about it?

The PRESIDENT: Order! There are too many interjections.

The Hon. TONY KELLY: As late as this morning the retiring President of the New South Wales Police Association called on the Government to introduce laws to be able to confiscate the unexplained wealth of people suspected of being involved in crime, particularly organised crime. At the conference the Premier announced that the Government intends to introduce legislation to do just that. However, I will pass the question on to the Minister concerned and get an answer in due course.

JOINT REGIONAL PLANNING PANELS

The Hon. CHRISTINE ROBERTSON: My question is addressed to the Minister for Planning and Infrastructure. Can the Minister update the House on the progress of joint regional planning panels?

The Hon. TONY KELLY: Joint regional planning panels were established throughout New South Wales on 1 July 2009. The six panels function as a successful part of the planning system in New South Wales, the result of a nine-month review that I released today. The regional panels were implemented to provide New South Wales with a strong, efficient and transparent decision-making process. The joint regional panels combine State expertise and local knowledge, and are a good example of both State and Local Government working together to achieve the same goal. Developments valued between \$10 million and \$100 million that deliver important commercial, industrial and residential projects, support investment in the New South Wales economy and deliver jobs across regional areas are the subject of joint regional planning panel deliberations.

Regional panels also determine development applications valued at more than \$5 million where the council is the applicant or the owner of the land, or where the council has a vested interest in the outcome of the development application. Regional panels are taking the politics out of decision-making on planning applications that are so important to regional communities. They also deliver some consistency across council boundaries. In the nine-month period to 31 March 2010, 196 development applications were lodged at 64 councils across the State for determination by the regional panels. These applications represent a total capital investment value of \$2.4 billion.

Some developments approved by regional panels include new student accommodation at the University of Wollongong, Leura Mall in the Blue Mountains, Newtown RSL at Marrickville, an indoor sports centre in Tamworth and aged care units in Bellingen. The average development application determination time by regional panels for the first nine months of operation was 114 days, compared to 249 days for the previous nine-month period in 2008-09 when councils dealt with those projects. Regional panels have cut the time in half. Whichever way they are looked at, they are impressive numbers and are hardly a failure, as those opposite have been trying to call them today.

I am concerned about the mathematical ability of those opposite if ever they were ever in charge of a multibillion-dollar budget. I remind the House also, particularly Ms Sylvia Hale, that any comparison of regional panel determination times with average development application processing times across the State is invalid. Regional planning panels deal only with large, regionally significant projects that involve more complex issues and detailed assessment requirements. As I said in this House last week, which, clearly, the member did not hear, they are not the common development applications for a house.

Regional panels are providing more timely outcomes, more certainty and confidence for applicants and local communities. The Department of Planning will continue to monitor and review the operation of regional panels and is actively working to deal with any issues that might improve regional panels. Today I also have

endorsed some minor changes with some planning powers being returned to councils for a number of types of development applications currently determined by regional panels. They include allowing council staff to determine proposals that do not have any objections, along with those in agreed areas and precincts where detailed planning already has occurred. These returned powers, on which local councils will be consulted, will allow the regional panels to better focus on proposals where they are able to use their expertise and knowledge to continue to deliver good planning and outcomes. [*Time expired.*]

FORESTS NSW REDUNDANCIES

The Hon. DUNCAN GAY: My question is directed to the Minister for Mineral and Forest Resources. In relation to front-line job cuts within Forests NSW and the Department of Industry and Investment, does the Minister recall his response to my question last week about voluntary redundancies that "No final decision has been made in relation to this"? What is the Minister's response to the fact that the Public Service Association does not agree with the department's assurance that front-line workers would not be included in the current voluntary redundancies? Given that the Public Service Association says that applications for voluntary redundancies have come from people in front-line positions, can the Minister now explain what decision has been made about front-line staff and the voluntary redundancy process?

The Hon. IAN MACDONALD: I will repeat my statement from last week: No final decision has been made. In fact, a consultation process is underway and I will be meeting with the unions again later in June. The plain fact of the matter is that no decision has been made to accept any voluntary redundancies. I remind the Deputy Leader of the Opposition that in the past, when similar processes have been put in place that, in fact, many applications were made.

The Hon. Rick Colless: You have done a lot of them.

The Hon. IAN MACDONALD: No, I have not made that many. A number of applications were made. Many were not accepted. I repeat: no final decision has been made in relation to this matter.

DROUGHT-AFFECTED LIVESTOCK

Reverend the Hon. Dr GORDON MOYES: I address my question to the Minister for Planning, Minister for Infrastructure, and Minister for Lands, representing the Minister for Primary Industries, Minister for Emergency Services, and Minister for Rural Affairs. Is he aware that the Walgett Country Women's Association in far western New South Wales is calling for a review of the power wielded by officers of the RSPCA? Is he aware that RSPCA officers have been destroying farmers' drought-affected livestock without any warning or advance notification? Is he aware that many rural New South Wales farmers feel that allowing RSPCA officers to continue to come onto their land, unannounced and without any consultation with them or the veterinary surgeons who have been caring for the animals, is conferring power that they sometimes misuse? Will the Minister indicate the action that will be taken examine the claims?

The Hon. TONY KELLY: Certainly. I undertake to pass on the member's question to the Minister and obtain a speedy reply.

SECURITY TECHNOLOGY

The Hon. HELEN WESTWOOD: I address my question to the Minister for State and Regional Development. Will he inform the House of the innovative ways in which New South Wales companies are using technology to succeed on the world stage?

The Hon. IAN MACDONALD: I thank the member for her timely question. Yesterday the New South Wales Government hosted a function to promote innovative new security technology that was developed by a local company that is taking great strides in the United States of America security technology market. More than 30 guests attended the Technology Advancing Public Security event at the Royal Randwick Racecourse. The guest list included the Mayor of East Orange, New Jersey in the United States, Robert Bowser, and the Director of the East Orange Police Department, Jose Cordero.

[*Interruption*]

The member opposite is hopeless. This is an important issue, where outstanding technology from New South Wales is being presented to the world, and all she can do is make stupid interjections. The United States

visitors were in Sydney to lend support to one of this State's best security technology companies, DigiSensory Technologies. Part of the reason for their visit was so that East Orange representatives could investigate other local innovations and technologies. New South Wales is regarded as an excellent source of new products and services to assist the security industry.

DigiSensory makes smarter security cameras that are embedded with a computer chip that intelligently analyses images. It can be operated through the Internet without software. East Orange police have implemented the Avista smart cameras in New Jersey where the security cameras work in tandem with a network of integrated technologies to assist in policing efforts. The smart cameras are mounted on light poles or power poles and allow police to monitor multiple locations simultaneously. Patrolling police can carry out physical checks as well as virtual camera checks from laptops in their vehicles.

Local residents can report suspicious activity through a website by typing in details and pinpointing crime locations by using their computer's mouse. Police are immediately alerted. The smart cameras automatically turn to the exact location of crime incidents to capture video evidence. Images can be sent to patrol cars to help to identify and apprehend suspects. Residents who report crime receive police feedback through the website. DigiSensory's cameras can detect loitering and can warn of possible crime activity. They can facilitate identification of known suspects and vehicles through recognition technology.

The East Orange contract was first reported by the Government in 2008. It followed export assistance that was provided to DigiSensory Technologies and the company's participation in a Government-supported trade mission to the United States in September 2007. DigiSensory also represented New South Wales at the Australian Innovation Shoot Out event at G'day USA in Silicon Valley in January. The company is an alumni member of the Government's Australian Technology Showcase. Yesterday's function was a chance for the Mayor of East Orange and the police chief to provide feedback on how DigiSensory's cameras have assisted in controlling crime in their part of the United States. It was also an opportunity to demonstrate and showcase the technology to potential local clients, including the New South Wales security industry and State and local government agencies.

To date, DigiSensory has deployed more than 1,000 cameras and has transacted business with organisations such as Unisys, the New Jersey Police-East Orange, Hoboken in Washington DC, the Department of Transportation in Washington DC, the Australian Jockey Club, Telstra, and the New York Police Department. DigiSensory's cameras also have been installed at the Royal Randwick Racecourse. The company won the National In-House Security Team of the Year Award at the 2010 Australian Security Industry Awards for Excellence.

DigiSensory, which operates out of St Peters, aims to maintain manufacturing of its smart imaging devices in New South Wales and plans to invest in the State's centre of excellence for smart imaging devices. The company is showing, through its innovative technologies, what New South Wales companies can do on the world stage. DigiSensory Technologies is to be congratulated. The department will continue to assist the company to grow internationally.

LIVERPOOL PLAINS MINING AND GROUNDWATER

Reverend the Hon. FRED NILE: I address my question without notice to the Minister for Mineral and Forest Resources. Will the Government finally establish and fund an independent inquiry into the effect of mining on underground aquifers in the Liverpool Plains region? If so, when? Has he allocated funding in the 2010 budget? Will the Government place a moratorium on all new mining licences in the Liverpool Plains region until the findings of such an inquiry have been published?

The Hon. IAN MACDONALD: I thank Reverend the Hon. Fred Nile for his question and refer him to advertisements appearing three weeks ago in the *Sydney Morning Herald* and other papers calling for applications or proposals under the tender documents for the groundwater study. In response to a similar question asked last week by the Hon. Trevor Khan, I point out that the Government, through the Department of Industry and Investment, has spent considerable sums on the process. In the past approximately 15 months the Government has funded and resourced an earlier inquiry conducted by the Hon. Pam Allen, who did a very good job, and the ministerial oversight committee that was chaired by Mal Peters.

Both processes involved expenditure of many hundreds of thousands of dollars. The Commonwealth Government has made an offer in the order of \$1.3 million to assist with funding. The companies already have

indicated that they will contribute substantially to meeting the cost. I do not think that being able to meet the cost of the inquiry is in question, but by the time the process is complete, the Government's expenditure on resourcing and supporting the inquiries will be well in excess of what the Commonwealth Government is proposing to contribute.

GROWTH CENTRES COMMISSION

The Hon. GREG PEARCE: I direct my question to the Minister for Planning and refer to his department's calculations that indicate that support derivation of the State Government infrastructure levy for the North West and South West Growth Centres includes \$345 million for Growth Centres Commission running costs. Given that his predecessor, the current Premier, abolished the Growth Centres Commission, what justification exists for the continued inclusion of these costs, amounting to more than \$345 million, in the infrastructure levy calculation?

The Hon. TONY KELLY: I thank the Hon. Greg Pearce for his question. However, he may have missed in the last budget introduced by the Treasurer that contributions of the State Government to the growth centres were significantly reduced. I think the reduction was a total of \$27,000. For example, contributions to bus and rail infrastructure were abolished. The Government is now making a much bigger contribution—in fact it has doubled its contribution—towards infrastructure for other areas.

The Hon. GREG PEARCE: I ask a supplementary question. Will the Minister elucidate his answer by pointing to the provisions in the budget that support his claim, or will he examine the infrastructure calculations that are the basis for the reduction to which he has referred—

The Hon. Eric Roozendaal: Do the research yourself.

The Hon. GREG PEARCE: —and which still include \$345 million for the growth centres?

The Hon. TONY KELLY: As suggested, the Hon. Greg Pearce could do the research himself.

SMALL BUSINESS CLUSTER PROGRAM

The Hon. KAYEE GRIFFIN: I address my question to the Minister for Small Business. Will he update the House on the Government's small business cluster program?

The Hon. PETER PRIMROSE: On 25 February I informed the House that the Government will invest \$500,000 this year for the creation and support of more small business clusters. Business clusters are like-minded groups of cooperative businesses and supporting organisations with common business objectives that work collaboratively for economic growth. The Strategic Business Clusters Program supports business networks and clusters to combine their varied skills and knowledge to create new business opportunities. Networks and clusters can be based in certain geographic areas or specific industry sectors. Typically, funding would go to clusters or networks for projects that may include feasibility studies or industry skills enhancement.

Cluster funding may also be allocated to projects aimed at overcoming structural economic issues or for market research or marketing and promotional activities. Clusters and networks also aim to encourage businesses to strengthen their partnerships with education and research institutions to accelerate the uptake of new ideas. Expressions of interest for the first round of funding for the Strategic Business Clusters Program closed recently, and I am pleased to inform the House that 23 applicants were successful in securing funding ranging from \$5,000 to \$30,000. More than 1,800 small businesses across New South Wales will benefit from a share of \$278,140 to set up small business groups that come together to pursue a common business goal.

This means that clusters and networks as diverse as tourism, fashion, boating, floriculture and fine foods will now be able to kick-start projects that grow their industry sector and create jobs. This brings the total number of small business clusters and networks supported by this program to 49, helping 4,122 small businesses in New South Wales. Of the 23 new successful applicants, 10 are based in Sydney and 13 are in regional New South Wales, ranging from Broken Hill in the far west, Tweed Heads in the northern rivers and the Murray region, Albury-Wodonga, in the south. The successful applicants include groups like the Blue Mountains, Lithgow and Oberon tourism cluster, which I had the pleasure of visiting last Friday. This group will get \$30,000, matched dollar for dollar, to develop an indigenous tourism program for the Greater Blue Mountains World Heritage Area. Sustainable tourism is an important industry for the Blue Mountains and makes a

significant contribution to the local economy. In 2009 the Blue Mountains received more than 2.7 million international and domestic visitors who contributed \$387 million to the regional economy. Funding for this cluster is a great opportunity to develop the indigenous tourism sector in a world-class destination.

The Hon. Michael Gallacher: The Minister for clusters.

The Hon. PETER PRIMROSE: As the Leader of the Opposition said, the Minister for clusters. I am pleased to support small business. I urge members opposite, who do not seem to believe that this is an important opportunity, to talk to small business people, as I have done. It is of concern to me that members are interjecting. The assistance will pay for research, as well as eventually delivering a growth strategy for indigenous tourism, to build awareness of and demand for indigenous tourism through the creation of a consistent brand and a range of indigenous tourism products. This project is typical of the 22 other cluster groups that will also receive support to help small businesses to move from informal alliances to strong commercial groups and allow them to develop new markets. I thank honourable members on both sides of the House for listening.

CAR BOMBING OF THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION HEADQUARTERS

Ms LEE RHIANNON: I direct my question to the Minister for Planning, representing the Premier. Is the Minister aware that at a press conference with representatives of the Construction, Forestry, Mining and Energy Union [CFMEU] and the peak employer body, the Master Builders Association, the Jewish Board of Deputies, the Arab Council of Australia and a broad cross-section of church and migrant community organisations, the Secretary of Unions New South Wales, Mark Lennon, called for a special police task force to be established to investigate the car bombing of the New South Wales construction union headquarters that occurred on Thursday night? Will the New South Wales Government establish a police task force with the necessary resources to catch the criminals who carried out the attack on the CFMEU headquarters? Has the Premier or a representative of the New South Wales Government condemned this attack? Has the Premier or a representative of the New South Wales Government been in touch with the CFMEU in the aftermath of this attack?

The Hon. TONY KELLY: I can answer the question. This morning, as acting Minister for Police, I attended the New South Wales Police Association annual conference at Terrigal. In doing so I met Mark Lennon, who raised this issue with me. He said he would send me a letter to ask about the issue raised by Ms Lee Rhiannon. I did better than wait for his letter. I discussed the issue with the Commissioner of Police, who was also present. He then called Frank Minelli across, and the four of us discussed the issue. The commissioner is concerned about the incident and the potential for worse devastation than occurred. He has taken the issue on board.

PENRITH UNEMPLOYMENT

The Hon. DAVID CLARKE: My question without notice is addressed to the Treasurer. Given that unemployment in Penrith is currently 6.34 per cent—significantly higher than the State average—why is the Government introducing a new tax on boat licences, a new property tax on home buyers and a new \$500 million tax on car registration payments, rather than doing something positive to help the unemployed in Penrith?

The Hon. ERIC ROOZENDAAL: I am buoyed by the rallying support the Hon. David Clarke seems to have from members on his side of the House. I am glad that the divisions that have rifled through the Opposition for so long seem to be—

The Hon. Don Harwin: There are no divisions.

The Hon. ERIC ROOZENDAAL: The Hon. Don Harwin is correcting me and other members opposite want to correct me on the divisions in the Liberal Party. Next thing we will see the Hon. David Clarke and Alex Hall embracing. I want to talk about the issue raised by the Hon. David Clarke, that is, what this Government is doing to support the economy in this State to make it stronger. We know a strong economy leads to a reduction in unemployment, businesses employing people and people having jobs. It is a good question, and I am happy to inform the House about it. As I may have mentioned to the House at some stage, the Government is investing more—\$65.5 billion—in infrastructure over four years than has ever been invested previously in State infrastructure over a four-year period. This is underpinning about 165,000 jobs each year in New South Wales.

No doubt we are coming out of the global financial crisis. As we come out of that crisis New South Wales is leading the States in terms of economic recovery. We have seen that with State final demand numbers—3.9 per cent for six months. What does this all mean? It means that a lot more people in New South Wales have jobs, thanks to the actions of the New South Wales Government and the Commonwealth Government. I remind members opposite that they opposed the stimulus package, which has been well and truly acknowledged around the world as ensuring that Australia has the best performing economy out of all the developed nations coming out of the global financial crisis.

Members opposite have phoney Tony leading them, and we do not know when he is telling the truth and when he is not telling the truth. I appreciate that members opposite are modelling themselves on phoney Tony. The numbers are there to prove that the Government has done a lot to steer New South Wales through the global financial crisis and into recovery, and we continue to lead the nation in the recovery period. Members will see strong evidence of this in the budget that I will bring down next month. Let me say this: in addition to our investment of more than \$65.5 billion in infrastructure, we have a \$50.2 billion transport blueprint plan over 10 years.

[Interruption]

The Hon. David Clarke has asked a question and he should sit and listen to the answer. There are so many initiatives in Penrith right now: commuter car parks, upgrades, the western express CityRail service and additional buses supporting that service, more police, the Emu Plains stabling of trains, and crimes rates are stable in 16 of 17 major categories. We continue to deliver to the people of western Sydney and Penrith.

GROWTH CENTRES

The Hon. IAN WEST: My question is addressed to the Minister for Planning. Will the Minister update the House on progress in Sydney's growth centres?

The Hon. TONY KELLY: The north-west and south-west growth centres were established in 2005 to provide sustainable communities for 500,000 people during the next 25 to 30 years. Totalling some 27,000 hectares of land, the growth centres represent the biggest and best coordinated land release in the State's history. The two regions have been divided into 34 precincts, which are being planned and rezoned progressively. When fully developed during the next 25-30 years the growth centres will have 180,000 homes, 2,500 hectares of employment land and all the services one would expect in well-designed communities, such as shops, parks, schools and conservation areas. The Rouse Hill development is confirmation of that. Since 2006 six precincts have been rezoned to allow development of more than 24,000 new homes for more than 70,000 people.

Yesterday I visited the North West Growth Centre and I inform the House that I announced there the rezoning of a further two precincts in the North West Growth Centre—Riverstone precinct and adjoining Alex Avenue precinct. I was joined by my colleague from the Legislative Assembly the member for Riverstone, John Aquilina, and the Mayor of Blacktown City Council, Charlie Lowles. I also spoke to landowners who attended and I report that they were very happy with the rezonings. I saw many empty flattened lots displaying "For Sale" signs in the adjoining precinct, and a large earth mover was working away busily in the background preparing the ground for building construction.

One person said to me, "Have a look where all the trees are". The trees are near the houses, because when houses are built the owners of the houses plant trees on land that was cleared hundreds of years ago for farming. One journalist present told me that she had purchased one of the lots and that she would be building a home on the land soon that she hoped would be finished within nine months. Many others will build homes there soon also. Together, those precincts—totalling some 1,300 hectares—have capacity for approximately 15,000 new homes for 45,000 future residents. Land is also provided for six new schools, parks and playing fields, two very large conservation reserves to protect native vegetation and 14 hectares of employment land.

They will be attractive, well-planned residential communities, located near future employment precincts at Riverstone West, Marsden Park and Box Hill. With these latest rezonings we have provided enough land in the growth centres for almost 40,000 new homes and 120,000 people in eight precincts. And we are not stopping there. Planning is underway to rezone a further seven precincts—meaning that almost half of the 34 growth centre precincts have been rezoned or are on their way to being rezoned in the first five years of the establishment of the growth centres. By focussing most of Sydney's greenfield expansion in the growth centres—which totals 270 square kilometres—we are reducing urban sprawl by up to 500 square kilometres, based on past development practice.

And we are not just rezoning land in isolation. We are also coordinating infrastructure delivery in these areas. In Riverstone and Alex Avenue, for example, the following infrastructure is being developed. Stage 1 of the Quakers Hill to Vineyard rail duplication is being constructed with a new railway station planned for the Alex Avenue town centre. Sydney Water is constructing trunk water and sewer infrastructure to enable development to occur.

The Hon. IAN WEST: I wish to ask a supplementary question. Will the Minister elucidate his answer?

The Hon. TONY KELLY: It is important that I complete this answer to respond to some of interjections about the railway station. I believe work commenced on that project today. The Roads and Traffic Authority is planning major road upgrades for Schofields Road and Garfield Road to ensure that the road network can cope with the increased population. Integral Energy is planning major electricity supply upgrades to service these precincts. This coordinated approach at the outset ensures faster and more efficient delivery of essential infrastructure for water, sewerage, power, roads, transport, schools and other services to each precinct. I thank Blacktown council for its cooperation and for its support for the rezoning, which will ensure vibrant growth in the region for a long time to come.

FERAL ANIMALS HUNTING

Mr IAN COHEN: My question is directed to the Minister for Mineral and Forest Resources. Does the Minister support the core objective of hunting authorised by the Game Council in State Forests to totally eradicate identified feral animals such as feral deer? If so, is the Minister disappointed that rather than totally eradicate deer from State Forests in areas around Tumbarumba the Game Council is setting bag limits, limiting the number of feral deer killed by hunters? What positive environmental outcome is achieved for flora and fauna in State Forests if the Game Council is setting limits on the killing of feral species in order to maintain a viable pest population for recreational hunting? This material is available on the relevant website.

The Hon. IAN MACDONALD: I remind the member that in about December 2009 I ceased being the Minister responsible for the Game Council. The Minister for Primary Industries, Mr Steve Whan, has carriage of that body and I will refer those parts of the question that relate to the Game Council to him. The overall operation of the activities of the Game Council in our forests has been magnificent for a long period. A number of persons are prepared to voluntarily shoot terrible pests in our environment—

Mr Ian Cohen: Do you support bag limits?

The Hon. IAN MACDONALD: I said I will refer such matters to the Minister responsible for the Game Council for an answer in due course. A few years back studies were conducted into the impact of foxes on birds. It is estimated that each year 64 million birds are killed by foxes.

The Hon. John Robertson: How many?

The Hon. IAN MACDONALD: Sixty-four million. I should have thought that we all would support those who are willing to go into our forests to practise conservation hunting in order to eliminate foxes and other feral animals. I would have thought that at some stage the Greens would support conservation hunting. I look forward to reading that among their policies during campaigning for the electorates of Balmain and Marrickville at the next election. I hope to see references to conservation hunting and seeking arrangements with great conservation hunters like Robert Brown, who is determined to control and manage the impact of feral animals.

The Hon. Rick Colless: What about Roy?

The Hon. IAN MACDONALD: It will be Roy in 2015. I hope the Greens acknowledge the merit of conservation hunting across the great forests of New South Wales.

FLYING FOX DAMAGE TO CROPS

The Hon. JENNIFER GARDINER: My question is directed to the Treasurer and it relates to flying foxes, which are different foxes from those mentioned in an earlier question. Is the Treasurer aware that the Minister for the Environment has ruled out providing any funding assistance to orchardists in the Orange area to erect specialised netting to protect their crops from flying foxes? Did the Minister for the Environment approach the Treasurer at any time to discuss the provision of funding to assist these orchardists in protecting their crops?

Considering the devastating damage that flying foxes have caused to the Orange region's crops and the threat of them returning, will the Treasurer consider making additional funding available to the Department of the Environment so that the Minister can reconsider his decision?

The Hon. ERIC ROOZENDAAL: In my position as Treasurer I meet regularly with numerous Ministers and backbenchers, and I certainly cannot recall the details of every meeting I have had with every Minister—

The Hon. Melinda Pavey: Especially not with Eddie.

The Hon. ERIC ROOZENDAAL: I have certainly never had a meeting with the Hon. Melinda Pavey, because never once has she come to lobby me on any issue to do with the State in the time I have been Treasurer. Not once.

[Interruption]

Nor has the Hon. Marie Ficarra, so she should not talk. My door is always open to members who want to lobby me.

The PRESIDENT: Order! Members of the Opposition will cease interjecting. I cannot hear the Treasurer's answer.

The Hon. ERIC ROOZENDAAL: I am happy to refer the remainder of the question to the Minister for the Environment.

ENERGY EFFICIENCY TECHNOLOGIES

The Hon. LYNDA VOLTZ: My question is directed to the Minister for Energy. What action is the Government taking to trial new and innovative energy efficiency technologies on behalf of New South Wales families?

The Hon. JOHN ROBERTSON: I thank the honourable member for her question. The New South Wales Government is working hard to help New South Wales families increase the energy efficiency of their homes, save power and reduce energy costs. A particularly exciting project is underway in Newington, where Australia's first ever smart home is being fitted out as we speak. The smart home, an initiative between the New South Wales Government, EnergyAustralia and Sydney Water, is breaking new ground. Technologies never before trialled outside the laboratory will be put to the test by a real live family.

[Interruption]

A real family, not like that lot opposite.

The Hon. Duncan Gay: What about a working family?

The Hon. JOHN ROBERTSON: The response to the call for tenants has been overwhelming. I am happy to call them a working family if it will make members opposite happy. More than 160 working families have applied to live in the smart home and interviews with short-listed working families have commenced. Applicants range in age from 14 to 65 years and come from all walks of life and all parts of Sydney, Australia and the world. Working families from as far away as New York, Sweden and Brussels have heard about the smart home and applied. Actors, lawyers, stay-at-home mums, prison officers, electricians and academics have all thrown their hats in the ring.

Meanwhile, builders, energy efficiency experts and technicians have been hard at work on site at the smart home installing the appliances and technologies that will make this home unique. The house will generate its own power on site and in time we hope it will prove to be completely self-sufficient. Two types of solar panels are being installed at the house—rooftop solar PV panels and a solar pergola are due to go in this week. The smart home will also feature a ceramic fuel cell that converts natural gas into electricity, one of only two such units installed in Australia. An essential linchpin in the home's electricity supply system will be the Australian battery storage unit installed last month. Battery storage will mean that energy generated from the solar panels during the day, for instance, can be stored on site to be used later at night when a family's energy

usage is usually at its peak. Recycled material is being installed wherever possible throughout the house, including light fittings, kitchen tiles and cupboards. All in all, more than 20 energy and water efficient appliances will be installed in the smart home, including a heat pump clothes dryer and new LED lighting.

One of the most exciting elements of the smart home will be an interactive website, which will enable the family to view their energy usage and carbon emissions minute by minute, and even switch appliances on and off automatically. This next-generation smart technology has the potential to revolutionise how families use energy in the home. The smart home is part of a two-year smart village trial in Newington and Silverwater by EnergyAustralia and Sydney Water and is supported by the New South Wales Government. Innovative projects like this one are the first step towards empowering households to make smarter choices about how they use energy.

Australia's first smart home tenants will be announced in June this year and will be invited to live in the house rent-free for 12 months. Throughout their time in the house the family will report on their experiences, good and bad, via blogs, Twitter and other media. We expect there will be many bumps along the way, but the information gathered from this trial will help shape the households of the future. I look forward to updating the House further over the coming months as the trial continues.

SYDNEY PORTS HARBOUR CONTROL TOWER

Ms SYLVIA HALE: I address my question to the Minister for Planning. Today's media has reported that the Minister has approved demolition or partial burial of the heritage listed Sydney Ports Harbour Control Tower to make way for the planned Barangaroo Headland Park. Has the Heritage Council recommended demolition or part burial of the tower? If not, what has the council recommended? Given that the headland was for many years the site of a gasworks and is known to be contaminated by highly toxic chemicals, what process will be undertaken to remove the toxic substances? Where will the contaminated soil be deposited? Will Lend Lease pay for the remediation of the site? If not, who will pay?

The Hon. TONY KELLY: I thank the honourable member for her question but I point out at the outset that no decision has been made in relation to the Sydney Ports operational tower. The Government has called for the community to provide ideas on what it would like public space at Barangaroo to be like. That is why the Barangaroo Delivery Authority has initiated a series of public consultation sessions. Over 230 participants had their say on the matter at Sydney Town Hall two weeks ago and at Parramatta last night. Consultation continues at Caringbah and Circular Quay. These sessions will provide the community with the opportunity to have their say on what they would like the more than 50 per cent of public space at Barangaroo to be. I emphasise that point. For the past 100 years the public were not able to go to Barangaroo.

The Hon. John Robertson: They were locked out.

The Hon. TONY KELLY: They were locked out and there was no public area whatsoever. After Barangaroo is completed more than 50 per cent of the area will be open to the public for the first time in over 100 years. The harbour control tower will continue to function as a port facility for the next two years. During this time the design of the Headland Park will be refined from feedback provided from the community, and a decision will be made regarding the harbour control tower. I should also point out that I am advised that the tower is not on the State Heritage List.

MINING SUPER PROFITS TAX

The Hon. ROBYN PARKER: My question is directed to the Treasurer. Is the Treasurer aware that almost half the 34,000 mining jobs in the New South Wales mining industry are based in the Hunter Valley, and is he aware of comments in the *Maitland Mercury* from the member for Maitland and the Minister for the Hunter that New South Wales Treasury will be examining the details of the resources super profits tax and its impact on the New South Wales mining sector? Will the Treasurer publicly release advice given to him by New South Wales Treasury about the impact of this tax, particularly on jobs in the Hunter region, and how much of this tax, if any, will be put back into the Hunter community?

The Hon. ERIC ROOZENDAAL: I welcome this question because there has certainly been quite a robust debate in the community in relation to the resources super profit tax. Quite rightly I have asked Treasury to carefully examine the issues around the resources super profit tax, and of course Treasury is doing that. In addition, I have had meetings with the New South Wales Minerals Council, and a number of miners that are

involved in the industry in New South Wales, both in the Illawarra and the Hunter. I have had consultations with them and I will be having further consultations with both the mining sector and the Commonwealth Government in relation to the matter.

CENTRAL COAST TRANSPORT INFRASTRUCTURE

The Hon. MICHAEL VEITCH: I direct my question to the Minister for the Central Coast. Can the Minister update the House on what action the Government is taking to improve transport infrastructure on the Central Coast?

The Hon. IAN MACDONALD: I point out that the Central Coast is one of the fastest growing regions in New South Wales, and that is why this Government has heavily invested in road and transport projects right across the region. The Government is aware that a high proportion of Central Coast residents work in Sydney and that strong, reliable transport services between Sydney and the Central Coast are critical. The Government has already delivered 122 state-of-the-art outer suburban carriages, or OSCARs, valued at \$439 million, many of which service the Central Coast, and a further 74 OSCARs are on the way. This investment in new rolling stock is part of the Government's plan to make public transport more attractive and accessible to all commuters.

Commuter car parking is also an important piece of the puzzle if we are to be successful in promoting alternative modes of transport. The Tuggerah bus interchange and commuter car park, which was completed last year, provides an additional 100 parking spaces. New commuter car parks, which are currently under construction at Woy Woy, Ourimbah and Morisset, will provide more than 400 new car parking spaces. The Government has also committed more than \$300 million over four years—between 2007 and 2011—to upgrade the road network throughout the Central Coast. This huge funding package has delivered significant improvements. The extent and speed of the current works, including the upgrade of the Central Coast Highway between Erina and Wamberal, and the upgrade of Avoca Drive at Green Point, are impressive. In the first three years of this—

The Hon. Michael Gallacher: When were you last at Wyong?

The Hon. IAN MACDONALD: I was there a little over a week ago when I met the Mayor—

The Hon. Michael Gallacher: Bob?

The Hon. IAN MACDONALD: Yes, Bob. I met him in his office. We have the \$42 million upgrade of the Pacific Highway to a four-lane dual carriageway between Tuggerah and Wyong.

The Hon. Rick Colless: Don't you like Bob?

The Hon. IAN MACDONALD: I like Bob; he is a good bloke. Then there is the \$52 million upgrade of the Pacific Highway through Ourimbah to a four-lane dual carriageway. I should also mention the \$104 million widening of the F3 Motorway to six lanes between Sydney and the Central Coast, and the \$15 million upgrade of the Central Coast Highway between Terrigal Drive and Carlton Road. There is also the \$40 million upgrade of the Central Coast Highway between Ocean View Drive and Tumby Road. Recently I was on the Central Coast, as I said earlier, with the member for Wyong, David Harris, to announce \$2 million in funding towards a new \$5.6 million access road into Warnervale's proposed new town centre. The Wyong Shire Council project, a vital project for the region, is expected to support up to 1,200 jobs. It will create easy access to up to 25,000 square metres of retail space, and a further 16,000 square metres of commercial and bulk goods space.

As the project advances, council expects it also to encourage the development of housing for up to 5,000 new residents and other facilities for the growing community. The initial construction of the road will create 14 full-time jobs for the region. A supermarket planned for the area as a result of the road construction will create a further 125 jobs. As the Minister for the Central Coast I am acutely aware of the continued growth pressures on the Central Coast, and I assure the House that the Government is committed to providing high-quality transport infrastructure for the region.

ELECTRICITY INDUSTRY PRIVATISATION

Dr JOHN KAYE: My question without notice is addressed to the Treasurer. Is he aware of comments today by Origin Energy chief executive Grant King to reporters at an energy industry conference that it is

increasingly unlikely that the New South Wales Government will be able to privatise its electricity assets by the end of the year? Are the New South Wales Government's plans for electricity privatisation off the rails, or is Mr King incorrect? If the New South Wales Government is unable to complete the sale before the conclusion of this session of Parliament, will the Government rule out privatisation of the State's electricity assets once it enters caretaker mode?

The Hon. ERIC ROOZENDAAL: I enjoy the consistency of the member who at every opportunity attempts to talk down the energy reforms that this Government is proceeding with. When a member of this House chooses to repeat comments that have been made by a potential bidder in the process, one has to wonder—

Dr John Kaye: Point of order: The Minister, yet again, is clearly debating the question; he is not attempting to answer the question.

The PRESIDENT: Order! The Minister should refrain from discussing the question. He may answer the question as he sees fit.

The Hon. ERIC ROOZENDAAL: I remind all members that this Government is on schedule with its energy reform.

Dr John Kaye: You are misleading the House.

The Hon. ERIC ROOZENDAAL: This Government is on schedule. Dr John Kaye, who is heckling the Government, continually talks down this State. He has done it from day one and he will continue to do so. He wants to sabotage the process because he does not care about the people of this State. The Government is continuing with its energy reforms, which remain on schedule. Members will see some evidence of that in the near future. I caution all members who react to comments from people who might be trying to participate in the process not to try to talk down this State as part of their commercial manoeuvring. I caution all members to think about that.

JOBS CREATION

The Hon. MATTHEW MASON-COX: My question without notice is also addressed to the Treasurer. Can he explain why, according to the Australian Bureau of Statistics, Victoria has been able to create close to 100,000 new full-time jobs in the year to March 2010, while New South Wales has been able to create fewer than 10,000 new full-time jobs in the same period—that is, to March 2010?

The Hon. ERIC ROOZENDAAL: I listened carefully to the member's question but I am not sure about the period to which the member is referring.

The Hon. Melinda Pavey: He said to March 2010.

The Hon. ERIC ROOZENDAAL: But from when?

The Hon. Matthew Mason-Cox: In the year to March 2010.

The Hon. ERIC ROOZENDAAL: That does not gel with my understanding of how things are going. There is a very consistent—

The Hon. Matthew Mason-Cox: I have provided the Treasurer with a copy of my question, and I hand him the answer also.

The Hon. ERIC ROOZENDAAL: Michael Baird probably wrote that for the Hon. Matthew Mason-Cox also, as he does all the member's questions. Incidentally, since I exposed Michael Baird for his twittering episodes, he no longer twitters anything about the Parliament. He talks now only about rugby. I have scared him off. That is assuming he gets up at a reasonable hour in the day.

The Hon. John Robertson: Yes, at 1 o'clock.

The Hon. ERIC ROOZENDAAL: At 1 o'clock! There is a consistent attempt by the Opposition to talk down this State on a daily basis. Luckily, the Federal Leader of the Opposition has exposed what

Opposition politics are all about: that is, saying one thing and meaning another. Phoney Tony has now made it clear how the Opposition will conduct itself from here on in. Tony Abbott has made it clear that whatever he says—

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

The PRESIDENT: Order! All members will cease interjecting.

The Hon. Matthew Mason-Cox: Obviously my point of order relates to relevance. I ask you to draw the Minister back to the question, which clearly relates to why we have only 10,000 new full-time jobs compared to Victoria's 100,000 new full-time jobs.

The PRESIDENT: Order! The Minister may continue his answer and will continue to be generally relevant.

The Hon. ERIC ROOZENDAAL: Opposition members in this Chamber consistently talk down this State because they now follow the Phoney Tony strategy. They say anything that comes into their heads in order to talk down this State. They oppose the Federal stimulus package, which is now recognised internationally as the best management of the global financial crisis by any developed economy in the world. At the moment the Australian economy is the best performing developed economy in the world because of the Federal Government and State Government stimulus strategy, which, of course, Opposition members oppose. Opposition members want to talk about jobs. It is a well-known fact—acknowledged by the Federal Treasury—that but for the stimulus package the gross domestic product in this country would have been 2.1 per cent down on where it is today. Those figures are from the Federal Treasury.

Opposition members want to talk about jobs. The strategy of the State and Commonwealth governments, which have worked to support that stimulus package, has protected jobs in New South Wales and throughout Australia. That is underpinned by our \$65.5 billion investment in infrastructure over four years. The Opposition always wants to talk down the economy. Investment in New South Wales grew by 12.6 per cent for the March 2010 quarter compared with the previous quarter. That is almost three times the national average, which was up 4.7 per cent. According to Access Economics, during that period Victoria declined by 6.2 per cent. The Access Economics numbers suggest that for every hour of the March 2010 quarter the New South Wales economy had more than \$34 million worth of investment. Our economic recovery has been based on resurging confidence—both consumer and business confidence. As the national economy performs better, it is being led by the New South Wales economy.

The Hon. TONY KELLY: If members have further questions, I suggest that they place them on notice.

Questions without notice concluded.

COURT INFORMATION BILL 2010

Second Reading

Debate resumed from an earlier hour.

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [5.00 p.m.], further in reply: In conclusion, the system of access to court information to be implemented under this bill will be not only more permissive than the existing system, but clearer, more consistent and easier to understand for court staff, court users, the media and those interested in the administration of justice. In response to Reverend the Hon. Fred Nile's comment that this bill has taken seven years to be introduced, the Government's desire to undertake extensive consultation with organisations affected by the bill delayed its introduction to this point. However, as a result of that consultation process we are confident that we have got the balance right in this bill. 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. Michael Veitch agreed to:

That this bill be now read a third time.

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

TREES (DISPUTES BETWEEN NEIGHBOURS) AMENDMENT BILL 2010

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [5.02 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.

This is a bill to amend the Trees (Disputes Between Neighbours) Act 2006.

The Trees (Disputes Between Neighbours) Act 2006 was introduced by this Government in 2006.

The Act aims to provide a simple, inexpensive and accessible process for resolving neighbour disputes about trees.

Specifically, the Act established a new procedure in the Land and Environment Court for resolving disputes about urban trees which are causing damage to property or risk of injury.

Previously, disputes of these kinds could only be resolved by suing in the tort of nuisance in either the Local, District or Supreme Court.

In accordance with section 23 of the Act, the Act was reviewed two years after its assent. The aim of this review was to determine:

- Whether the policy objectives of the Act remain valid; and
- Whether the terms of the Act remain appropriate for securing those objectives.

The review received over 230 submissions from residents, community groups, professional associations, councils and Government agencies.

The review found that the policy objectives of the Act remained valid. However, recommendations were made to improve the operation of the Act.

The Government accepted all of the recommendations of the review. The aim of this bill is to implement recommendations arising out of the review.

I will now outline the key provisions of the bill.

New high hedges jurisdiction

The bill gives the Land and Environment Court a new jurisdiction to hear disputes about high hedges that severely block sunlight to a window of a dwelling on adjoining land, or views from such a dwelling.

Currently, the Trees Act only permits the Land and Environment Court to make orders in relation to trees which have caused, are causing, or are likely to cause, damage to the applicant's property or which are likely to cause injury to a person.

More than half the submissions to the review requested that the Trees Act be expanded to cover trees that block sunlight and views. The most frequent and most serious concerns raised in submissions related to high, dense hedges on immediately adjoining private properties, which severely obstruct sunlight to windows, and views from dwellings.

In accordance with the recommendation made by the review, this bill will give the Land and Environment Court a new, strictly limited jurisdiction in relation to these hedges.

To this end, it inserts a new Part 2A into the Trees Act.

The object of this Part is to create a mechanism by which neighbour disputes about high hedges can be heard and disposed of in a proportionate way, which

- balances the competing rights of neighbours to enjoy their property; and
- ensures that the existence and health of urban trees can be maintained.

Limited jurisdiction

Given the environmental and other benefits of urban vegetation, and the fact that this is a new procedure, the circumstances in which a person can apply for orders in relation to trees that block sunlight and views will be limited to the most serious cases.

People will not be able to make an application in relation to any single tree.

Rather, the new Part applies to groups of two or more trees that are planted to form a hedge, and rise to a height of at least 2.5 metres.

The new Part will enable people to apply to the Land and Environment Court for relief where these high hedges, on private adjoining land, severely obstruct sunlight to a window of their dwelling, or a view from such a dwelling.

Court orders

The Court will be able to make any orders it sees fit to remedy, restrain or prevent such an obstruction of sunlight or views caused by the hedge (excluding financial compensation).

Before making an order, the Court must be satisfied that the applicant has made a reasonable effort to resolve the matter with the owner of the land on which the hedge is situated.

As with Part 2 of the Act, the intention is to ensure that wherever possible, people attempt to resolve these kinds of disputes without resorting to court action—for example, through discussions with their neighbours, or mediation.

The Court must also be satisfied that the severity and nature of the obstruction is such that the applicant's interest in having the obstruction addressed outweighs any other matters that suggest the undesirability of disturbing or interfering with the trees.

Proposed section 14F sets out a range of specific factors the Court will be required to consider before determining an application, including:

- any contribution of the trees to the natural landscape and scenic value of the land or locality;
- any impact of the trees on soil stability, the water table or other natural features of the land or locality; and
- any contribution of the trees to privacy, landscaping, garden design, heritage values, and protection from the sun, wind, noise, smells or smoke, or the amenity of the land on which they are situated.

These provisions recognise the numerous environmental and community benefits that trees provide.

They also recognise that there are many legitimate reasons why a person may wish to plant or preserve trees in the form of hedges.

The Court will therefore have to undertake a balancing exercise before it makes an order to remedy, restrain or prevent any obstruction of sunlight or views caused by a high hedge.

Proposed section 14F also requires the Court to consider:

- whether the trees existed prior to the applicant's dwelling; and
- whether the trees grew to a height of 2.5 metres or more while the applicant owned or occupied the land.

As with Part 2 of the Act, a relevant authority, such as a Council or the Heritage Council, will have a right of appearance in any proceedings where the consent or authorisation of the authority to interfere with the trees would, in the absence of the Trees Act, otherwise be required.

Review

The bill provides for a review of this new Part of the Act after its first two years of operation.

This review will consider whether the policy objectives of the Part remain valid, and whether the terms of the Part remain appropriate for securing those objectives.

The Government considers this an important mechanism to ensure that the new provisions operate as intended, and if not, to address any concerns that might arise in practice.

Extension of the Trees Act to rural-residential land

The bill also extends the operation of Part 2 of the Trees Act to trees on land that is zoned rural-residential.

At present, the Trees Act only applies to urban land, such as land zoned residential, township or industrial.

When the Act was before Parliament in 2006, it was noted that the restricted application of the new scheme to these zonings would be reconsidered as part of the statutory review.

In the statutory review, submissions did raise concerns that the types of zoning to which the Trees Act applies are not sufficiently broad.

In particular, examples were given of cases involving unsafe trees that had been dismissed in the Land and Environment Court because the tree was on land zoned rural-residential.

To respond to these concerns, the bill extends the application of the Act to trees on land that is zoned rural-residential, or an equivalent land use zone.

This will only apply in relation to disputes about trees that have caused, are causing, or are likely to cause, damage to property or are likely to cause injury.

It will not apply to the new high hedges jurisdiction.

Changes to support the enforcement of orders under the Act

The bill also makes changes to support the enforcement of court orders made under the Trees Act.

Currently, if a person does not comply with a court order under the Trees Act, the other party can ask their local council to step in and do the work instead.

If the Council chooses to intervene, it can recover the cost of the work from the person who was subject to the order.

The review of the Act found that Councils have been reluctant to intervene in some matters.

Councils currently only have a power to recover the 'reasonable costs of undertaking the work'.

This may not compensate Councils for the full costs to them of arranging for the work to be carried out, including insurances, and of the time spent trying to recover the debt from the owner of the trees.

The bill therefore amends the Trees Act to:

- firstly, allow Councils, if they elect to enforce a court order, to recover a prescribed administration fee, in addition to the costs of carrying out the work to satisfy the order; and
- secondly, provide that any enforcement costs and fees payable to a council may be registered as a charge on the tree owners land.

The intention is for the additional fee to act as an incentive for Councils to intervene, and an additional incentive for tree owners to comply with court orders.

Allowing the applicant's immediate successor in title to enforce certain orders made under the Act

The bill also allows an applicant's immediate successor in title to enforce certain orders made under the Trees Act.

At present, a person who successfully applies for an order under the Trees Act can ensure that any new owner of the land on which the tree is situated is also bound by the order, by giving the new owner a copy of the order.

However, the Act makes no provision for the applicant's successor to enforce an order if the applicant sells their land before the work is carried out.

This bill provides a solution to this scenario.

If the Court makes an order under Part 2 of the Act in relation to trees that have caused, are causing or are likely to cause damage or which pose a risk of injury to a person, the applicant's immediate successor will be entitled to the same rights and benefits as the applicant in respect of the order.

It is appropriate that the person who buys the applicant's land should have the ability to ensure that the current tree owner or any future tree owner is bound by that order, until the work is carried out.

Giving the land and Environment Court jurisdiction in certain fencing disputes

Schedule 2.1 of the bill gives the Land and Environment Court jurisdiction to hear and determine matters arising under the Dividing Fences Act 1991 in certain circumstances.

The Court will have this jurisdiction where an application has been made under the Trees Act in relation to:

- a tree which has caused, is causing or is likely to cause damage to a dividing fence, or
- a tree is itself part of a dividing fence, and has caused, is causing, or is likely to cause damage to the applicant's property, or is likely to cause injury to a person.

These new provisions will mean that where dividing fences issues arise in tree proceedings before the Land and Environment Court, parties will not have to make and pay for a separate application and attend a separate hearing before a Local Court or a Local Land Board.

It will be a simpler, more efficient and cost-effective way of resolving disputes that raise issues under both Acts.

Giving the land and Environment Court jurisdiction where tree has been wholly removed

The bill also makes it clear an application to the Land and Environment Court can still be made after the removal of a tree that has caused the damage or injury giving rise to the application under Part 2 of the Act.

In the case *Robson and Leischke* [2008] NSWLEC 152 (1 May 2008), the Land and Environment Court found that it has no jurisdiction to make orders to remedy damage to property, or require payment for compensation for damage caused by a tree, if that tree has been wholly removed.

This is because section 7 of the Trees Act uses the present tense when describing the location of the tree on adjoining land. It refers to "a tree ... that is situated on adjoining land".

A number of submissions to the review suggested that the Act should be amended to allow the Court jurisdiction where the tree has been wholly removed.

The review found that it is preferable for all cases of damage caused by trees in eligible zonings to be dealt with by the Land and Environment Court under the Trees Act, rather than have those cases heard under the common law in other Courts simply because the tree in question has been wholly removed.

The bill therefore amends the Trees Act to apply to situations where the tree has been wholly removed following the damage or injury giving rise to the application.

Prescribing vines as a 'tree' for the purposes of the Act

Finally, the bill amends the Trees (Disputes Between Neighbours) Regulation to prescribe vines as a 'tree' for the purposes of the Act.

Damage caused by vines was actionable in nuisance but is currently excluded from the Trees Act by the statutory definition of 'tree'.

There is no reason why neighbours who are in dispute regarding a vine which is causing damage or risk of injury should have to sue in nuisance, when there is a simple process available under the Trees Act to hear and determine the dispute.

Conclusion

The bill makes amendments to improve the operation of the Trees (Disputes Between Neighbours) Act.

It will respond to issues raised in the statutory review, to ensure that the Act continues to meet its policy objectives.

I commend the bill to the House.

The Hon. DAVID CLARKE [5.02 p.m.]: The Opposition does not oppose the Trees (Disputes Between Neighbours) Amendment Bill 2010. The bill seeks to amend, principally, the Trees (Disputes Between Neighbours) Act 2006, but also the Dividing Fences Act 1991, the Land and Environment Court Act 1979 and the Native Vegetation Act 2003. The bill results from recommendations of a statutory review of the Trees (Disputes Between Neighbours) Act 2006, which established and regulates, through the Land and Environment Court, the process for the resolution of disputes relating to trees in urban areas causing damage or posing a risk of injury to adjoining properties and occupants.

The Act currently authorises the Land and Environment Court to make an order in relation to a tree that is causing, or is likely to cause, damage to the adjoining property of the applicant or is likely to cause injury to a person. The bill will expand the Act to give the court power to make orders relating to hedges that obstruct sunlight to a window of a dwelling situated on adjoining land or any view from a dwelling situated on adjoining land. A hedge is defined as two or more trees planted to form a hedge of at least 2.5 metres in height. An application for an order under this new power must give 21 days notice to the owner of the land on which the trees are situated, or any relevant authority or other person who could be affected by the order, the terms of which must be specified.

Under part 2A of the bill the court is given jurisdiction to make such orders as it thinks fit to remedy, restrain or prevent a relevant obstruction, including action to maintain a tree at a certain height or shape or even its removal altogether and its replacement with a different species. The court's jurisdiction includes the making of an order for payment of costs, but does not extend to the making of an order for payment of compensation. In making orders under part 2 of the bill, the court must be satisfied that reasonable efforts have been made by the applicant to reach agreement with the owner of the land upon which the trees are situated. An order cannot be made unless the court is satisfied that the trees severely obstruct sunlight to a window of a dwelling on the applicant's land or severely obstruct a view from a dwelling on the applicant's land.

The severity and nature of the obstruction must be such that the applicant's interest in having the obstruction removed or remedied outweighs any other matters suggesting the undesirability of disturbing or

interfering with the trees by making an order. The bill enumerates a number of matters that the court must consider before determining whether an order should be made. These include the location of the trees; whether they existed prior to the dwelling concerned; whether they grew to a height of 2.5 metres during the applicant's period of ownership; whether the trees have any historical, cultural, social or scientific value or contribute to the local ecosystem and biodiversity; the intrinsic value of the trees to public amenity; and the period throughout the year that sunlight is lost or the nature and extent of any views obstructed.

A local council or the Heritage Council may appear before the court in certain circumstances and must be provided with a copy of any order, other than the dismissal of proceedings. After a two-year period from the commencement of this bill, the Minister is to undertake a review of the effectiveness of part 2A and to report to Parliament within a further 12-month period. The bill provides that successors in title will be bound by an order under part 2A and that an immediate successor in title to an applicant is to benefit from certain prescribed tree orders. The bill authorises a local court to enter land and to carry out work in accordance with an order where the owner has failed to carry out such work, and authorises the local council to recover reasonable costs incurred as a result, such costs to be secured, if required, by registering a judgement debt as a charge on the land.

The bill provides for amendments to the Dividing Fences Act 1991 relating to the jurisdiction of the Land and Environment Court to enable that court to hear and determine matters under the Dividing Fences Act in circumstances involving a tree that has caused, is causing or is likely to cause in the near future damage to a dividing fence, or a tree that is part of a dividing fence that has caused, is causing or is likely to cause in the near future damage to the applicant's property or injury to any person. The bill amends the Native Vegetation Act 2003, which prohibits the clearing of native vegetation except in accordance with the Act, to provide that it does not apply to any clearing of native vegetation pursuant to an order under the Trees (Disputes Between Neighbours) Act.

Finally, the bill clarifies that any plant that is a vine is considered to be a tree for the purposes of the Trees (Disputes Between Neighbours) Act. In summary, this bill provides a cost-efficient method of resolving tree disputes as well as much-needed clarification in an area of increasing litigation. Amendments permitting the streamlining of determinations of corollary and related matters under the Dividing Fences Act will be cost efficient and less complex. This bill is welcome and, as I indicated earlier, the Opposition does not oppose it.

The Hon. CHRISTINE ROBERTSON [5.08 p.m.]: I am pleased to support the Trees (Disputes Between Neighbours) Amendment Bill 2010, which, among other important amendments, gives the Land and Environment Court a new jurisdiction to hear disputes about high hedges that severely block sunlight to a window of a dwelling on adjoining land, or views from such a dwelling. The obstruction of sunlight and views by high, dense hedges was the subject of considerable concern in more than half the submissions to the review. The bill responds to those concerns.

Given the environmental and other benefits of urban vegetation, and the fact that this is a new procedure, the circumstances in which a person can apply for orders in relation to trees that block sunlight and views will be limited to the most serious cases. People will not be able to make an application in relation to any single tree. Rather, the new part applies only to groups of two or more trees that are planted to form a hedge and that rise to a height of at least 2.5 metres. The new part will enable people to apply to the Land and Environment Court for relief where high hedges on private adjoining land severely obstruct sunlight to a window of a dwelling, or a view from such a dwelling.

The court will be able to make any orders it sees fit to remedy, restrain or prevent such an obstruction of sunlight or views caused by the hedge, excluding financial compensation, such as orders to maintain the hedge at a particular height, width, or shape, or to remove the hedge. Before making an order, the court must be satisfied of two things: that the applicant has made a reasonable effort to resolve the matter with the owner of the land on which the hedge is situated—for example, through discussions with their neighbours or mediation—and that the severity and nature of the obstruction is such that the applicant's interest in having the obstruction addressed outweighs any other matters that suggest the undesirability of disturbing or interfering with the trees.

New section 14F sets out a range of specific factors that the court will be required to consider before determining an application, including any contribution of the trees to the natural landscape and scenic value of the land or locality, and any contribution of the trees to privacy, landscaping, garden design, heritage values and protection from the sun, wind, noise, smells or smoke, or the amenity of the land on which they are situated. These provisions recognise the numerous environmental and community benefits that trees provide. They also

recognise that there are many legitimate reasons that a person may wish to plant or preserve trees in the form of hedges. The court will have to weigh those issues before it makes an order to remedy, restrain or prevent any obstruction of sunlight or views caused by a high hedge.

The bill provides for a review of this new part of the Act after its first two years of operation, as the Hon. David Clarke mentioned earlier. The review will consider whether the policy objectives of the part remain valid and whether the terms of the part remain appropriate for securing the objectives. The Government considers this is an important mechanism for ensuring that the new provisions operate as intended or, if they do not, for addressing any concerns that might arise in practice. The bill also includes provisions to support the enforcement of court orders made under the Act. Currently, if a person does not comply with a court order under the trees Act, the other party can ask their local council to intervene and to carry out the work that is necessary to satisfy the court order. If the council chooses to step in, it will be able to recover the reasonable cost of that work from the person who is the subject of the order.

However, the review of the Act revealed that councils have been reluctant to intervene in some tree matters. Councils currently have power to recover only the reasonable costs of undertaking the work. That may not compensate councils for the full cost to them of arranging for the work to be carried out. Therefore, the bill amends the trees Act, first, to allow councils, if they elect to enforce the court order, to recover a prescribed administration fee in addition to the costs of carrying out the work to satisfy the order; and, secondly, to provide that any enforcement costs and fees payable to a council may be registered as a charge on the tree owner's land. I commend the bill to the House.

Ms SYLVIA HALE [5.13 p.m.]: On behalf of the Greens, I express support for the Trees (Disputes Between Neighbours) Amendment Bill 2010, which amends the Trees (Disputes Between Neighbours) Act 2006. The object of the bill is to implement the recommendations arising from a statutory review of the principal Act. In particular, the bill will extend the principal Act to trees situated on land zoned rural-residential; give the Land and Environment Court jurisdiction to hear disputes about high hedges that severely obstruct sunlight to a window of a dwelling on adjoining land, or views from such a dwelling; give the Land and Environment Court jurisdiction to hear and determine matters under the Dividing Fences Act 1991 in certain circumstances, such as when a related application has been made under the principal Act; make it clear that an application for an order still may be made following the removal of the tree that caused the damage or injury on which the application is based; allow a local council to recover the amount prescribed by the regulations as an administrative fee when it enforces an order under the principal Act; enable a local council to register an order for costs as a charge on the land concerned; enable the immediate successor in title to an applicant to benefit from certain orders made; and provide that vines are to be treated as trees for the purposes of the principal Act.

I am told that, following a review of the Act two years after assent, approximately 230 submissions were received. The bill is a culmination of the review and embodies the recommendations of that review. New part 2A will allow the Land and Environment Court to hear matters in which there is a dispute about hedges that severely obstruct sunlight to a window or obstruct a view from a dwelling. The court must examine the history of the hedge—for example, whether the hedge was there when the neighbours or complainants moved in. Consideration of such issues is fair because, if a hedge existed when the neighbours bought the property, it may be unreasonable for the new neighbour to demand that it be removed. The Greens agree with the inclusion of sensible provisions relating to hedges that are at least 2.5 metres in height and that block out sunlight. During debate on the Dividing Fences Bill 2008, I commented on hedges. At that time I stated:

The Greens are ... concerned about hedge disputes: for example, when Leighton's Green hedges—a variety of cypress pine—overshadow a neighbour's property and remove that neighbour's access to sunlight, lowering both the temperature and levels of light. That is an issue in Sydney and in other parts of New South Wales such as the Southern Highlands. Uncontrolled hedges can result in extreme animosity between neighbours. The website *problemhedgesaustralia.com* reports that:

An estimated 100,000 Britons were locked in hedge wars with neighbours before legislation was brought in there. In the UK, "hedge rage" caused two neighbours to shoot each other dead in 2003 after a bitter dispute over a hedge.

Hedges of Leighton's Green pines are high maintenance, requiring pruning four or five times a year for the 100 years of the life of the hedge.

I am pleased that hedges have now been brought into the purview of the Act through this amending bill. However, I take on board the comments made by the member for Goulburn in the other place about hedges that block gardens from receiving sunlight, especially gardens in which fruit and vegetables are grown. In rural-residential areas, access to sunlight for plant growth is important. I note the member's comments about the problems that cypress leylandii can cause between neighbours in rural areas.

The Greens also welcome the inclusion of vines in the legislation. To my knowledge, most Moreton Bay figs and other species of figs are vines rather than trees. The suckers of the tree unite and appear to be a tree, but strictly speaking they are vines. Vines will be defined as trees for the purposes of the bill, when appropriate. Of course, there can be disputes between neighbours about the effect of vines, as well as trees, so the change will mean that complaints about potential damage caused by an out-of-control vine will be able to be heard by the court. The bill also extends the operation of part 2 of the trees Act to trees on land that is zoned rural-residential as well as applying to trees on urban land. I am informed that this is also a result of submissions that requested that the application of the legislation be broadened. However, the provisions will apply only when a tree or trees are posing a threat to persons or property.

When there is no compliance and no rectification and an order is made—for example, when a tree is found to be dangerous and must be lopped or removed and the landowner fails to comply—the bill will allow councils to recover a prescribed administration fee in addition to the cost of carrying out the work to satisfy the order and will allow enforcement costs and fees that are payable to a council to be registered as a charge on the tree owner's land. I understand that another provision of the bill has been included partly as a result of the *Robson v Leischke* case in the Land and Environment Court. On 1 May 2008 the court found that it had no jurisdiction to make orders to remedy damage to property, or to require payment for compensation for damage caused by a tree, if that tree had been wholly removed. The bill makes it clear that the court can now do that. This is because of the way the current section is drafted—that is, in the present tense. As I said, the Greens support the bill. I am sure that many residents, particularly those in the Southern Highlands, will be pleased to see the provisions enacted.

Reverend the Hon. FRED NILE [5.19 p.m.]: On behalf of the Christian Democratic Party, I am pleased to support the Trees (Disputes Between Neighbours) Amendment Bill 2010, which amends the original bill introduced in 2006. The original Act provided a simple, inexpensive and accessible process for resolving neighbourhood disputes about trees. The legislation, which was long overdue, helped to resolve some of the disputes that occurred not only in the Sydney metropolitan area but also in country regions. The original Act established a new procedure in the Land and Environment Court for resolving disputes about urban trees that were causing damage to property or posed a risk of injury. Previously, these disputes could be resolved only by suing in tort of nuisance in the Local Court, the District Court or the Supreme Court.

In accordance with section 23 of the Act, the Act must be reviewed two years after its assent. The review, which has led to this amending bill, was to establish, first, whether the policy objectives of the Act remained valid; and, secondly, whether the terms of the Act remained appropriate for securing those objects. The review, which received more than 230 submissions from residents, community groups, professional associations, councils and government agencies, found that the policy objectives of the Act remain valid. However, the review made a number of recommendations, and those recommendations are embodied in this bill. This new bill will give the Land and Environment Court a new jurisdiction to hear disputes between neighbours about high hedges that severely obstruct sunlight to a window of a dwelling on adjoining land or views from such a dwelling. That is a positive aspect of the bill.

The bill also gives the Land and Environment Court jurisdiction to hear and determine matters arising from the Dividing Fences Act 1991 where an application has been made under the trees Act in relation to, first, a tree that has caused, is causing or is likely to cause damage to a dividing fence; or, secondly, a tree that is itself part of a dividing fence and has caused, is causing or is likely to cause damage to a property or injury to a person. This is important because in some cases when residents have been unable to remove a tree it has finally fallen onto the neighbouring house, crushing the roof and sometimes causing injury. So it is important to deal with that aspect in this bill. The bill also extends the operation of part 2 of the trees Act, which relates to trees that have caused, are causing or are likely to cause damage to property or risk of injury to land zoned rural-residential.

The bill has another positive aspect. A number of submissions to the review suggested that the Act should be amended to allow the court jurisdiction where trees have been wholly removed. The review found that it is preferable for all cases of damage caused by trees in eligible zonings to be dealt with by the Land and Environment Court under the trees Act, rather than those cases being heard under common law in other courts simply because the tree in question has been removed. This bill rectifies the situation. Finally, as sometimes happens with legislation, we can now say that a vine is a tree or a tree is a vine. This bill amends the Trees (Disputes Between Neighbours) Regulation to prescribe vines as a tree for the purposes of the Act. This is simply so that vines can be dealt with by the Land and Environment Court. We support the bill.

The Hon. PENNY SHARPE (Parliamentary Secretary) [5.24 p.m.], in reply: I thank honourable members for their contributions to debate on the Trees (Disputes Between Neighbours) Amendment Bill 2010, and I note that there is no controversy in the room about its passing. However, I want to add some comments mainly to do with the debate that happened in the other place. That debate focused on the proposed new jurisdiction of the Land and Environment Court to hear applications relating to high hedges. This new jurisdiction will enable people to seek relief from the court when a hedge on immediately adjacent property is severely obstructing sunlight to a window of a dwelling situated on the applicant's land or a view from a dwelling on the applicant's land. Given the environmental and other benefits of urban vegetation and the fact that this is a new procedure, the circumstances in which a person can apply for orders in relation to trees that block sunlight and views will be limited to the most serious cases.

Accordingly, the court will not be authorised to consider an application for relief unless the applicant can satisfy two threshold questions: first, that the hedge the subject of the application is a group of at least two or more trees planted to form a hedge; and, secondly, that the hedge rises to a height of at least 2.5 metres. The court cannot make an order to remedy the severe obstruction unless the severity and nature of the obstruction is such that the applicant's interest in having it remedied outweighs any other matters that militate against disturbing or interfering with the trees by making an order. New section 14F sets out a range of matters that the court must consider in determining an application, including the contribution of the trees to the local ecosystem, biodiversity and public amenity, and the impact of the trees on soil stability, the water table or other natural features of the land.

Ultimately, the new jurisdiction is intended to provide a framework for the resolution of disputes between neighbours and to achieve balanced, proportionate outcomes. The bill makes amendments that were recommended by the statutory review of the Trees (Disputes Between Neighbours) Act. It will respond to community and government concerns raised in the review to ensure that the Act continues to provide a simple, inexpensive and accessible process for resolving neighbourhood disputes about trees. 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. 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.

CHARTER OF BUDGET HONESTY (ELECTION PROMISES COSTING) AMENDMENT BILL 2010

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

Motion by the Hon. Penny Sharpe 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.

ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (DEVELOPMENT CONSENTS) BILL 2010

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [5.30 p.m.], on behalf of the Hon. Tony Kelly:
I move:

That this bill be now read a second time.

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

Leave granted.

I am pleased to introduce the Environmental Planning and Assessment Amendment (Development Consents) Bill 2010. The primary purpose of the bill is to extend the lapsing period of existing development consents. Development consents tend to be granted with a lapsing period of two years, rather than the maximum five years allowed by the Act. This means that if a development consent is not physically commenced within two years it will lapse. In normal market conditions the two-year time frame is sufficient to allow developers to physically commence a development. However, in recent times, and particularly during the global financial crisis, this two-year period has not been long enough to obtain finance and commence works. This has been evident in a 14 per cent reduction in the number of construction certificates issued in 2008-09, compared with the number of certificates issued in 2007-08.

The New South Wales planning system is a significant contributor to the prosperity of this State. In 2008-09 the total value of development approved by consent authorities under part 4 of the Act was \$18.5 billion. The New South Wales economy continues to show strong signs of growth. This State leads the nation in new private investment: building approvals are up, new home sales are up and, importantly, investor housing finance approvals are up. This positive news about the State's economy only highlights the importance of ensuring that existing consents can be taken up as finance flows back into our building and construction industries. This bill will do this by ensuring that when consents have been granted with a lapsing period of less than five years the bill will operate to extend the lapsing period to the maximum of five years. The bill will also ensure that from the commencement of the bill until 1 July 2011 any consents granted by a consent authority will be subject to the maximum five-year lapsing period.

The Government believes that giving consent holders this additional time to carry out their development is appropriate, given the continuing signs of economic recovery. Importantly, to ensure the integrity of the planning system, the bill does not apply retrospectively to development consents that were subject to reduction in the time period but lapsed before the bill was introduced. The bill is a prudent measure. It also provides for the possibility of future economic downturns. It contains provisions that will allow the Minister for Planning, by regulation, to prevent consent authorities from reducing the lapsing period to less than five years if economic times turn tough again. The other purpose of the bill is to make the rules around the lapsing of consents easier for the community, industry and councils to administer. This will reduce administrative costs and provide more certainty to everyone who comes in contact with the New South Wales planning system.

The existing test for lapsing is whether a development has been physically commenced. This is a relatively straightforward test to establish. Unproclaimed provisions in the Environmental Planning and Assessment Amendment Act 2008 would have introduced a two-stage test that required physical commencement of the development the subject of the consent within five years to demonstrate that the developer was sufficiently committed to undertaking the development to prevent the consent from lapsing but then further work to an additional standard to demonstrate substantial commencement within seven years to ensure that the consent did not lapse. Further consultation has indicated that the two-stage test proposed by the amending Act is overly complex and will prove difficult for all parties to administer in practice.

It would require consent holders to meet different commencement thresholds at different times over the life of a consent. Because of these difficulties, the provisions remain uncommenced after 22 months. The bill proposes to remove the second part of the two-stage test while retaining the ability to establish in regulations what does or does not constitute physical commencement. What constitutes physical commencement has been the subject of consideration by the court. As members may know, the court has held that peg out surveys may constitute physical commencement in certain circumstances. Clearly, this is not a satisfactory result in all cases. It is therefore proposed that a regulation be made following the commencement of the changes made by this bill to make clear that a peg out survey does not constitute physical commencement.

It is proposed to consult with key stakeholders, including the Local Government and Shires Associations, industry groups, relevant professional bodies and green groups, before the making of this regulation. These changes will simplify the lapsing provisions and provide additional certainty for the development industry. These changes and the regulations that will be made after the amendments to the Act commence are consistent with the broad thrust of the primary purpose of this bill. For those reasons I commend this bill to the House.

The Hon. DON HARWIN [5.30 p.m.]: I lead for the Opposition on the Environmental Planning and Assessment Amendment (Development Consents) Bill 2010 and state at the outset that we will not be opposing the bill. Currently, the Environmental Planning and Assessment Act permits a consent authority to give approval for development to physically commence up to five years after approval. The Act also allows, however, for the consent authority to stipulate a lesser commencement period of a minimum of two years. The Act provides consent authorities with this discretion so that when it is deemed desirable or necessary for a project to commence as early as possible, consent authorities are able to set a narrow time frame for the commencement of work.

The bill ensures that development consents granted prior to the introduction of the bill in the Parliament on 22 April 2010 will automatically be subject to the maximum five-year commencement window permissible under the principal Act. Further, the bill ensures that all other development approvals after that date and prior to 1 July 2011 cannot be subject to a commencement time frame of less than the maximum five years permissible under the principal Act. Finally, the bill provides that after 1 July 2011 the maximum lapsing time will be determined by regulation at appropriate intervals. The bill also provides a regulatory capacity to define what is meant by work having being "physically commenced".

These amendments have been drafted because industry stakeholders have strongly argued the negative impact of the recent global credit crisis on their capacity to commence approved developments as soon as originally scheduled. They have persuasively argued the necessity of having approved projects subject to the full five-year commencement period in order to prevent their validity lapsing before the necessary refinancing can be put in place.

Last month Urban Taskforce New South Wales reported that over the past two years the number of new private homes under construction in our State fell by 19 per cent to a new record low of just 24,000 homes. In the same period the real value of non-residential private building activity in New South Wales fell by 16 per cent. The Property Council of Australia, meanwhile, reported significant increases in office vacancy rates in major business centres across the country, and that added to the pressure for new developments to be delayed until conditions improved. Key stakeholders who expressed their support for this bill when consulted by the Opposition include the New South Wales Urban Taskforce, the Planning Institute of Australia, the Property Council of Australia—New South Wales, the Local Government and Shires Associations, and the Urban Development Institute of Australia.

The need for a regulatory capacity to define what is meant by work having been physically commenced as proposed by the bill was questioned by stakeholders during the consultation period, since the concept of physical commencement has been addressed and defined through various court cases. This is not, however, a substantial ground for objecting to the legislation and we will simply have to wait and see how closely the Government works with the sector to develop an appropriate definition.

The Opposition does not object to the changes proposed by the bill with regard to the commencement window. In instances where a reduced commencement window has been set by a consent authority it is difficult to imagine such a limitation succeeding in driving a project forward in the presence of constraining factors such as a lack of available credit. If anything, using a deadline to force a project commencement in such circumstances would likely result in the postponing of other projects. The scope of the legislation is also likely to be much narrower than the Government is suggesting. I am informed that Waverley Council in Sydney's east grants the maximum five-year commencement time frame in full for all approved developments, and I am sure this is the case in many other councils and shires across New South Wales. The Opposition does not oppose the bill.

Ms SYLVIA HALE [5.34 p.m.]: I speak on behalf of the Greens and state that we will oppose this bill. The aim of this bill is to amend the Act to allow a universal extension of development consents to five years before those consents lapse. There is no doubt that the global financial crisis has affected the ability of some developers to commence projects that had been approved. Perhaps the impact is best illustrated by the 13 per cent decline in development determinations between the financial years 2007-08 and 2008-09. The effects of the financial crisis and, indeed, the big question whether its impacts are still to be played out are very important for all of us. There may be many questions that yet arise about how we should deal with the consequences of the global financial crisis.

It is proper to note, though, that it is not the role of government to protect the speculative capitalism, and that it is reasonable to assume that developers should have their finances in order so that they are able to address various contingencies if and when those contingencies arise when they first apply for development approval. In the second reading speech it was noted that the bill has a sunset clause, but it is a clause that may be overridden by regulation in the case of what is called "future economic downturns". That capitalism has its ups and downs has been observed since the mid-nineteenth century, and the idea that the Minister should have special powers because of the fluctuations of the market, with the suggestion that they are a rare occurrence, is I believe absolutely preposterous.

So the question really comes down to this: Should the global financial crisis mean that blanket legislation that potentially overrides the broader interests of the community be introduced? This bill epitomises a short-term view of the economy, and reinforces the removal of the oversight of planning from Parliament and the concentration of yet more power into the hands of the Minister for Planning. The Legislation Review Committee noted that "it is commonplace for councils as consent authorities to reduce the consent periods for development applications" so that if a consent lapses it allows them to "re-evaluate a development consent previously provided and subsequently approve, vary or reject a resubmitted development application". I suggest that that is an appropriate procedure. I note that councils do it for very good reason because they are aware that times change and, as the Legislation Review Committee noted, "The bill narrows the de facto review rights consent authorities currently have to determine the suitability of a development application being renewed."

The committee further noted that development applications that are approved today may also not be suitable in five years. The committee also noted that, for example, consent authority interests might change, as well as the interests of the community in which the development is to take place. The committee stated that it is also aware that individuals have a right to certainty that the development will either commence or not commence when it is nearby their property, that there is a clear concern that this legislation is inappropriate and that the Government is stepping in to try to patch up the impact on our communities of the current global financial system. I wish that the private financiers who underwrite many of these developments expressed the same concern for the community.

I have read with considerable interest the story in yesterday's business section of the *Sydney Morning Herald* outlining what was done by Macquarie Bank in the face of prospects of a run on its funds and a collapse in its share price. Macquarie Bank pressured the Government to guarantee borrowings by banks and to allow those banks to benefit from the Government's capacity to borrow more cheaply than private concerns can do because of their status. Macquarie Bank then borrowed funds at this cheaper rate and proceeded to on-lend those funds to other borrowers at a higher rate.

In the process they made a completely unearned, undeserved, and I believe improper, profit from the process. Clearly banks such as Macquarie have no regard whatsoever, or very scant regard, for the public interest in their activities, so I find it inappropriate that this Government should kowtow to pressure from the development industry. Rather it should stand up to the industry and say, "No, it is capitalism after all. You take your chances and if you apply for development consent you should live with the consequences."

I turn now to the issue of substantial commencement. Again I believe it is a case of the developers benefiting from the provisions of this bill but not the community in which the development may take place. Surely the Government should be concerned that we do not again see a situation such as existed with the old Anthony Hordern building or the former Regent Theatre in George Street in the city, where buildings were demolished and remained vacant lots for years, and subsequently became a blight on the community.

Ultimately there is no compelling case for this legislation. There is no argument that significant additional costs have been imposed by the current operation of the development consents. Indeed, many councils at the moment grant five-year consents. Further concern is raised by proposed section 95 (7), which states that:

The regulations may set out circumstances in which work is or is not taken to be physically commenced for the purpose of this section.

A number of years ago the Government passed but did not proclaim legislation to clarify issues around commencement. While members who may have experience in local government will know this is a vexed issue and one that is worthy of clarification, it is simply not appropriate that these matters are now transferred to the Minister for decision. In the absence of any compelling reasons to change the status quo, the only long-term effect of this legislation is that it further centralises planning power in the hands of the Minister For Planning, and no matter what one may think of the incumbent of the day it is simply bad practice to centralise power in this way. Accordingly, the Greens do not support the bill.

I find it ironic that we should be seeking to remove a provision of the principal Act that has never been gazetted and therefore never been put into practice. We have absolutely no evidence one way or the other about whether removing the substantial commencement provision is a good thing or a bad thing. It has not been put into practice, it has not been tested, and therefore I believe it is absurd for us to be removing that provision now.

Reverend the Hon. FRED NILE [5.42 p.m.]: On behalf of the Christian Democratic Party I am pleased to support the bill. I believe it is a very practical, important and necessary bill. The primary purpose of the bill is to extend the lapsing period of existing development consents. Development consents tend to be granted with a lapsing period of two years rather than the maximum five years allowed by the Act. This means that if a development consent is not physically commenced within two years it will lapse. In normal market conditions the two-year time frame is sufficient to allow developers to physically commence a development. However, as we all know, with the changes in the global financial situation and the uncertainty about some major projects, the two-year period has not been long enough to obtain finance and commence works. Sometimes it is not even possible to get the finance at all. This has delayed a number of very important projects which provide jobs for workers in New South Wales. Evidence of that problem is the 40 per cent reduction in the number of construction certificates issued in 2008-09 compared with the number issued in 2007-08.

We all know that the building industry is a very important sector of the New South Wales economy. The total value of development approved by consent authorities under part 4 of the Act in 2008-09 was \$18.5 billion. This bill will help to encourage developers to proceed with the purchase of properties and to plan development. Hopefully they will always get the finance within a very short time, but if there are delays that they do not cause, in the provision of finance by the banks, developers will have a further leeway that will allow them to carry out planning for the project. Unproclaimed provisions of the Act would have introduced a two-stage test that requires physical commencement within five years or a minimum of two years, and then substantial commencement within seven years to ensure that the consent does not lapse. The bill proposes to remove the second part of the two-stage test to simplify the lapsing provisions and provide additional certainty for the development industry.

Where certain consents have been granted with a lapsing period of less than five years the bill will extend this period to a maximum of five years. The bill will also ensure that from the commencement of the bill until 1 July 2011 any consents granted will be subject to a maximum five-year period. This will allow consent holders additional time to carry out their development. It is appropriate given the continuing signs that there have been problems in getting finance. Hopefully the economic recovery is now underway and they will not have as much trouble getting finance, although the situation in Europe and Greece has led to some economists forecasting that we may be going into another recession. What appears to be economic recovery may not be as certain as we thought. Consequently it is more important than before that this bill should pass.

The Hon. IAN WEST [5.47 p.m.]: I speak in support of the Environmental Planning and Assessment Amendment (Development Consents) Bill 2010. The primary purpose of the bill is to prevent existing development consents issued under part 4 of the Environmental Planning and Assessment Act from lapsing where they have been subject to a reduction in the lapsing period. Allowing more time for those having the benefit of a development consent to physically commence works is important given the recent economic slowdown in the housing and construction industry.

The measures in the bill will ensure that those that have consents and those that seek consents between now and 1 July 2011 will have up to five years to physically commence works. The bill will also give those looking to invest in New South Wales greater certainty about how long they have before a consent will lapse and the added security of knowing that they have some more time to obtain the appropriate financing.

It has been suggested that there is the potential for building sites to remain idle as a result of the bill. The feedback from industry suggests quite the opposite. Holding costs are considerable and I assume most developers would prefer to be building than holding on to vacant land. The worst possible thing would be for any consent to lapse. That would mean any money spent on the development application would be lost and that the developer would have to apply for a new consent before works could commence. By extending the lapsing period of existing consents the bill will prevent the need to apply again. It will also mean that as finance becomes available works can commence without delay. It is important to remember that the maximum five-year lapsing period will apply only until 1 July 2011.

After that date consent authorities will again be able to reduce the lapsing period for consents to less than the five-year period. What should also be highlighted is the fact that the bill allows for the Minister for Planning, by regulation, to reintroduce a similar measure that would prevent consent authorities from reducing the lapsing period of existing development consents to less than five years. This measure is important to ensure that, in the event of any future economic downturn, the Government will be able to move to extend the lapsing period of existing development consents to five years without having to bring the matter back to this Chamber. The experience from this downturn was that despite requests for additional time a number of councils were unprepared to move away from their existing policy of granting consents subject to a two-year lapsing period. The bill will ensure that the Government can move quickly if the issue arises again. For that reason I commend the bill to the House.

The Hon. GREG DONNELLY [5.51 p.m.]: I make a brief contribution to debate on the Environmental Planning and Assessment Amendment (Development Consents) Bill 2010, which I support. The primary purpose of this bill is to prevent existing development consents issued under part 4 of the Environmental Planning and Assessment Act from lapsing when they have previously been subject to a reduction in the lapsing period. The bill has one other important purpose, because further consultation with stakeholders has highlighted the potential difficulties with adopting certain unproclaimed provisions in the 2008 planning reforms relating to lapsing. Initially it was proposed, as part of the Environmental Planning and Assessment Amendment Act 2008, that there would be a two-stage approach to determine when development consent had been commenced.

Current provisions in the Environmental Planning and Assessment Act ensure that development must be "physically commenced" before the consent holder can have the lasting benefit of the consent. The unproclaimed provisions in the amending Act would have introduced a second test of "substantial commencement" that would also have to be met within a further two years from the date of physical commencement to prevent the consent from lapsing. Through consultation with stakeholders it has been determined that this two-stage approach would be too onerous and complex to administer, and the result would not reflect the community's desire to be able to establish clearly when a consent had lapsed. In response, the bill repeals the unproclaimed provisions in the amending Act that would have introduced the additional requirement for substantial commencement.

The main aim of the changes to the requirements for physical commencement in 2008 were to allow a regulation to be made that would set out what did or did not constitute physical commencement. The proposed regulation-making power was in response to a series of court cases that had determined that the placement of survey pegs could constitute physical commencement. The Government and the wider community firmly believe that consent holders must do more than just place survey pegs to have the lasting benefit of consent. In the eyes of many, the placement of survey pegs does not constitute a sufficient commitment to undertake the development.

If passed, the Act can commence without the need for such a regulation to be made immediately. The Government has already committed to further consultation with stakeholders before any such regulation is made. The Government is determined to ensure that New South Wales has a planning system that is at the forefront of community standards by moving to extend the lapsing periods of existing consents in response to difficult financial circumstances as well as establishing, in line with community expectations, what works need to be carried out to evidence a real intention to get on with and build the development. I commend the bill to the House.

The Hon. PENNY SHARPE (Parliamentary Secretary) [5.54 p.m.], in reply: I thank members for their contributions to debate on the Environmental Planning and Assessment Amendment (Development Consents) Bill 2010. In summary, this bill does three things. It will give those who have the benefit of an existing consent the maximum five years to physically commence works; it will ensure that those seeking to apply for a development consent can do so in the knowledge that they will have five years to physically commence works; and it will remove the unproclaimed provision in the Environmental Planning and Assessment Amendment Act 2008 that would have introduced a further requirement that development be substantially commenced within two years of physical commencement. If passed, the provisions in this bill will commence on the date of assent.

The Department of Planning has prepared additional explanatory material for councils, accredited certifiers and the broader community outlining the effects of this bill. Even though the Act can commence without the need for a regulation setting out what does or does not constitute physical commencement, it has previously been indicated during the debates that the department will carry out further consultation with the development industry, the Local Government and Shires Associations of New South Wales, and the wider community before any regulation is made. Finally, on behalf of the Government, I take this opportunity to thank Mike Flemming, Yolande Stone, David Birds, Joel Ginges and Peter Holt for their assistance in the preparation of this bill. 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. 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.

TILLEGRA DAM

Production of Documents: Report of Independent Legal Arbiter

The Clerk announced the receipt, pursuant to standing orders, of the report of the independent legal arbiter Sir Laurence Street on the disputed claim of privilege on papers relating to Tillegra Dam. The Clerk announced further that the report is available for inspection by members of the Legislative Council only.

COAL MINE HEALTH AND SAFETY AMENDMENT BILL 2010

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [5.57 p.m.], on behalf of the Hon. Ian Macdonald: I move:

That this bill be now read a second time.

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

Leave granted.

The Coal Mine Health and Safety Amendment bill 2010 makes necessary amendments to the Coal Mine Health and Safety Act 2002.

The amendments will clarify the intent of the Act and provide certainty for investigators and for industry.

The first major amendment clarifies the jurisdiction of the Act. In doing so, it makes sure that the Act covers all coal mining related activities.

The second major amendment also relates to the jurisdiction and coverage of the Act.

This amendment will enable the Minister to make, in particular circumstances, a binding determination on whether the Act applies.

Such a determination will be conclusive for the purposes of deciding a jurisdictional question.

Before considering these amendments in detail, it will be helpful to briefly explain the legislative framework within which they will operate.

The Coal Mine Health and Safety Act 2002 aims to secure the health, safety and welfare of those working in the New South Wales coal mining industry.

The Act supports the Occupational Health and Safety Act 2000 by addressing risks specific to coal mining.

One of the intents of the Coal Mine Health and Safety Act is to define the jurisdictional boundaries of the Occupational Health and Safety Act 2000.

This definition should make clear the division of responsibilities between WorkCover and the Department of Industry and Investment.

Industry and Investment has jurisdiction for administering the Occupational Health and Safety Act at work places covered by the Coal Mine Health and Safety Act and the Mine Health and Safety Act 2004.

WorkCover has jurisdiction for all other workplaces.

A statutory review of the Coal Mine Health and Safety Act was undertaken in 2009.

The review identified the need to clarify the places of work to which the Coal Mine Health and Safety Act applies.

In particular, the review identified difficulties with using colliery holding boundaries to identify the jurisdiction boundary for most mining activities.

Using colliery holding boundaries for this purpose resulted in some coal mining activities at some mines not being covered by the Coal Mine Health and Safety Act.

It was also unclear whether some mining related activities outside colliery holdings were covered by the Coal Mine Health and Safety Act.

This has created jurisdictional uncertainty related to the administration of the Occupational Health and Safety Act at these sites.

In turn, the potential was created for uncertainty in the lawfulness of regulatory action under the Occupational Health and Safety Act.

This could mean that those responsible for workplace incidents and accidents might avoid prosecution or other regulatory action under the Occupational Health and Safety Act.

It is not in the interests of justice or safety to allow breaches of the Occupational Health and Safety Act to go unpunished because of technicalities over jurisdictional boundaries.

New South Wales has achieved outstanding improvements in coal mining safety over the past decade.

The successful prosecution of significant breaches of the safety legislation has helped to achieve these improvements.

It is of critical importance that these efforts are not undermined in the future by technicalities unrelated to the legislated duties of employers and employees.

The amendments before the House today will ensure that whenever a breach of duty of care has occurred, whoever is responsible can be held accountable.

The amendments will achieve this in the following ways.

First, the bill removes the geographical concept of a colliery holding as the basis for the application of the Act.

At present, there is no requirement for all coal mining related activities to be within a colliery holding.

Because of this, there are activities subject to the Coal Mine Health and Safety Act at some coal mining operations, but not at others.

Different regulatory requirements and different regulators for the same activities at different mines have therefore resulted.

To overcome this problem, the proposed amendments will base the application of the Coal Mine Health and Safety Act on the activities intended to be covered by it.

This will ensure that similar activities are regulated consistently across the State.

The amendment will clarify the application of the Act.

It will therefore clarify the jurisdictional boundary between WorkCover New South Wales and Industry and Investment New South Wales.

It will overcome the situation of having separate regulators and different rules applying to the same activities at different locations.

The second amendment seeks to overcome a related potential difficulty.

Although it would be uncommon, it is possible that even the activity-based test might result in uncertainty about whether the Act applies to a particular workplace.

The coal mining industry needs to understand where the Coal Mine Health and Safety Act applies.

The proposed amendment therefore gives the Minister the power to make a binding determination on the application of the Act where it would not otherwise be clear.

The determination will provide a simple mechanism for removing any doubts regarding jurisdiction.

This will provide certainty for the regulators, and a clear way to resolve uncertainties.

It will ensure that any enforcement action is not subject to legal uncertainty because of jurisdiction questions.

WorkCover and Industry and Investment New South Wales will consult to ensure that decisions on jurisdictional boundary are applied consistently.

There is a further matter to be considered in relation to these amendments.

We know that the amendments already outlined will make sure that jurisdiction under the Coal Mine Health and Safety Act is clear for the future.

However, we must also make sure that the amendments apply to current investigations and prosecutions.

It is in the interests of justice that any potential breaches of the Occupational Health and Safety Act which occurred prior to these amendments can be investigated and, if necessary, prosecuted.

The bill addresses this issue by including a number of important savings and transitional provisions.

These provisions will apply to investigation and enforcement actions under both the Occupational Health and Safety Act and the Coal Mine Health and Safety Act.

Certain actions undertaken before these amendments will be deemed valid.

They will be deemed valid if they could have been undertaken lawfully had the amendments been in force at the time the action was taken.

These important provisions apply to matters such as the collection of evidence, the issuing of safety notices and initiating prosecutions.

The bill validates the actions of inspectors exercising important safety regulatory functions in relation to coal mining workplaces in New South Wales.

Importantly, these amendments will put beyond doubt the validity of any previous investigations, or pending prosecutions for offences or suspected offences, under the Occupational Health and Safety Act.

They will remove the basis for a technical challenge by a defendant that an investigation or prosecution is invalid because of jurisdictional uncertainty.

This ensures that a defendant does not escape liability for a breach of duty on a jurisdictional technicality.

These amendments will not create any new obligations for anyone under the Occupational Health and Safety Act.

This is because the amendments are only concerned with clarifying whether Industry and Investment NSW or WorkCover investigate and prosecute alleged breaches in coal mining workplaces.

The amendments will have no effect on cases that have already been decided.

It also needs to be said that the amendments will not alter the investigation powers of Industry and Investment NSW or WorkCover NSW.

However, the amendments may result in some coal mining activities being the subject of the Coal Mine Health and Safety Act where previously they were not.

Transitional arrangements will provide for a person responsible for such activities under the Occupational Health and Safety Regulation.

The arrangements will allow six months for that person to transition to responsibilities under the Coal Mine Health and Safety Act.

This will ensure that all similar activities are subject to the same safety obligations within six months of the commencement of these amendments.

The bill proposes other amendments to the Coal Mine Health and Safety Act and to the Mining Act 1992.

The first of these is based on a finding of the Coal Mine Health and Safety Act review.

The review identified that some of the requirements to notify incidents and occurrences did not apply to all places of work under the Act.

It is proposed to amend the Act to ensure that its regulatory functions can be exercised at all the places of work it covers.

The amendments will also ensure that the Chief Inspector and industry check inspectors are informed of all notifiable incidents.

The review of the Coal Mine Health and Safety Act also recognised that grouping leases for non-coal mining related activities would have administrative advantages for Government, industry and the community.

The bill therefore seeks to amend the Mining Act. It proposes replacing the existing colliery holding register with a single register of coal and other mines.

The register will be publicly available and will provide a ready means of quickly identifying what mining titles make up a particular mining operation. Members of this House will be aware that this Government has already done much to improve the safety performance of the State's mining industry.

Since 1999 the incidence of fatalities and serious injuries in mining has fallen significantly.

Education and advice are playing an increasing role in improving mine safety.

However, investigation and enforcement still remain an important function of the regulation of coal workplace occupational health and safety.

Investigation and enforcement ensure that standards are established and maintained.

During the past 10 years, investigation work has led to more than 50 convictions for serious breaches of mine safety across the New South Wales mining industry.

These convictions have let the mining industry know that New South Wales is determined to have a safe industry.

The coal mining industry has achieved a dramatic improvement in safety outcomes, but there is still much work to be done.

Sadly, three workplace fatalities were recorded in the coal mining industry during the last 12 months.

The proposed amendments will make sure that those responsible for deaths or injuries in coal workplaces face the consequences of not complying with the legislation.

Without these amendments, a potential injustice to the families of those who are injured or killed could occur.

Today the Government is ensuring that there are no potential injustices. The amendments will provide for the clear and effective jurisdiction of the Coal Mine Health and Safety Act 2002, now and into the future.

I commend the bill to the House.

The Hon DUNCAN GAY (Deputy Leader of the Opposition) [5.57 p.m.]: I speak in debate on the Coalmine Health and Safety Amendment Bill 2010, the purpose of which is to amend the Coal Mine Health and Safety Act 2002 with the aim of securing the health and safety of those working in coalmining workplaces in New South Wales. The bill provides for the management of particular occupational health and safety risks associated with coalmining. It will also give Industry and Investment NSW jurisdiction to investigate and prosecute occupational health and safety breaches under the Occupational Health and Safety Act 2000. The Opposition does not oppose this bill, but I wish to raise concerns about certain aspects of it.

The Coal Mine Health and Safety Act 2002 received assent in December 2002. Included in that Act is a requirement to review the Act as soon as possible five years after the date of assent, which would have been 2007. Why was a statutory review of the Act not conducted by Industry and Investment NSW in 2009? Why has this State Labor Government left it so late, despite the requirement to review that Act after five years? Currently, the Act applies to activities within the geographical area of a coalmining lease, that is, within a colliery holding. There can be uncertainty over the application of the Act when coalmining-related work is outside the area of the so-called colliery holding. This can lead to uncertainty about whether Industry and Investment NSW or WorkCover NSW has jurisdiction for investigation and enforcement. Clear jurisdiction is critical for successful investigation and prosecution of breaches under the Occupational Health and Safety Act. Industry needs to be clear so that it knows what compliance is required.

A major amendment of the bill will provide a new expanded definition of a mine beyond the previous definition of colliery holding. This definition is tied more closely to activities rather than the geographic basis used previously. For the industry, this will help remove ambiguities that existed between the New South Wales Occupational Health and Safety Act and the Coal Mine Health and Safety Act with regard to, for example, rail, construction et cetera. The bill provides powers to the relevant Minister to make determinations where ambiguities in the new activities-based test remain. The Opposition welcomes this provision, which will ensure that no cases will arise in relation to which the industry must comply with two separate occupational health and safety Acts. The bill has separated the colliery holder from an operator, and has repeated the responsibilities placed on both parties. In the majority of cases these are the same entity, but there may be cases where non-mining people—for example, banks, receivers, et cetera—now have more clearly defined responsibilities or duties imposed on them. These are not new duties; they simply have been made more explicit in this bill.

In addition, the Coal Mine Health and Safety Amendment Bill 2010 makes minor amendments to the Mining Act 1992. The register of mines that the director-general must keep and provide publicly will be amended and the definition of "colliery holdings" will be removed. The New South Wales Minerals Council has some concerns with the bill. The Australian Government has embarked on an occupational health and safety harmonisation project. Some Minerals Council members operate in different States.

The Minerals Council argues that there still is an opportunity to ensure, even under a bill such as this, that New South Wales is in line with the national occupational health and safety project. The duplication of rules costs money and does not necessarily improve safety. In fact, it could be argued that the opposite is the case. The process should be about improving safety, not increasing the bureaucracy. Further, despite the New South Wales Minerals Council advocating for the removal of the 21-day objection period, it has been retained. The objection period holds up industry and provides an unnecessary obstacle, preventing sites from immediately addressing the health and safety risk with which the proposed changes sought to deal.

The Minerals Council maintains also that there remains an opportunity for the New South Wales Government to continue removing unnecessary duplication in the New South Wales occupational health and safety legislation. The Coal Mine Health and Safety Act, which is due for review, provides yet another

opportunity to remove existing impediments and inefficiencies as well as assist industry to maintain its focus on health and safety, as it should. As I said earlier, the New South Wales Liberals-Nationals will not oppose this bill, but will closely monitor it to make sure the Government addresses the concerns we have raised.

The Hon. IAN WEST [6.03 p.m.]: I am pleased to support the Coal Mine Health and Safety Amendment Bill 2010. Improving the health and safety of the New South Wales mining industry is a priority for this Government. The Government has shown ongoing commitment to reaching its goal of zero fatalities and serious injuries in this important and vital industry. Thirteen years ago the Government called for an independent review into mine safety against the backdrop of continuing industry deaths and serious injuries. The resultant 1997 mine safety review made 44 recommendations, all of which this Government has acted upon. In 1996 four coal miners were killed in the Gretley coalmining tragedy. An independent inquiry into this event resulted in 43 recommendations for improving mining safety. All recommendations were accepted by the Government and acted upon. In 2004 the Government appointed former Premier Neville Wran to conduct a further review of mining safety. The 31 recommendations of the Wran review are being implemented.

The outcomes of the 1997 mine safety review—the Gretley inquiry—and the 2004 Wran mine safety review are concrete examples of the Government's efforts to identify safety issues and address them. The aim always has been to create a safer mining workplace in New South Wales mines. The reforms that have been successfully implemented so far to achieve the Government's overarching aims are extensive and include a systematic approach to managing risk. Some risks associated with underground coalmining are fires, explosions and roof collapses. Of the many important recommendations made in the mine safety review, I shall first consider the reform of the mine safety legislation.

Following the review's recommendations Government immediately set about developing a modern and relevant legislative framework in consultation with the industry, including industry employee organisations. Both these Acts supplement the Occupational Health and Safety Act 2000. The Coal Mine Health and Safety Act laid the foundation for an integrated approach to coalmining safety. It established the legislative basis for a new, world-class approach to safety in coalmining. It did this through requiring the development of health and safety management systems, major hazard management plans and emergency management systems.

The Act adopted a systematic approach to managing risk. It has provided a powerful tool for how the coalmining industry approaches safety management, and the means to develop safety in the workplace. The Act commenced in 2006, following an extensive consultation process to develop supporting regulations. As well as legislative reform, other mine safety reforms arising from the reviews were implemented. Among these, the mine safety inspectorate was strengthened. As well, incident and accident reporting and tracking systems were established. The data from the systems provides incident and accident trends and shows where targeted safety programs are needed. The inspectorate has acted on this data with real effect.

Further, an investigation unit was established. Its demanding role has been to examine and report on mining incidents. It is strongly focused on ensuring that the lessons learnt from safety incidents are applied across the industry. Its goal is to ensure the improved safety of workers at other mines. The investigation unit has produced comprehensive reports on incidents and accidents, which, where appropriate, have been used to pursue prosecutions. Another significant development was providing for the development of a strategic safety overview and direction for the industry. This was achieved through the establishment of the Mine Safety Council, now called the Mine Safety Advisory Council. This council provides a forum where industry, unions, government and independent experts can work together. The council advises the Minister on strategic direction, policy and legislation to improve mine safety.

Developing strategies and plans for action, which very different viewpoints of these sectors bring to the table, has been both challenging and very productive. In many ways the only way of finding out what people and stakeholders in the industry really want is by conducting a properly consultative process. Perhaps advisory councils could be used more extensively in a number of other areas.

A key finding from the 2004 Wran review was that strengthening the method by which the three stakeholder groups worked together was very important for improving mine safety. The finding is being implemented through a strengthened Mine Safety Advisory Council. Through the council, the industry has identified that further improvement in mine safety performance will require a number of cultural changes. In November 2008 the Minister convened a summit of senior representatives of mining and that is when the industry agreed on a way forward to achieve cultural change. The Mine Safety Advisory Council currently is working to achieve that change, and no doubt is doing so in a very effective, consultative and agreeable manner.

All of the changes I have outlined are important in achieving a safe mining industry. The Coal Mine Health and Safety Act is particularly important in assisting to ensure the safety of coal workers. It is also clear that amendments to clarify the jurisdiction of the Act will strengthen the application of one of its underlying principles, which is that industry is responsible for safety in coalmining workplaces and that those who create a risk are responsible for managing that risk. Therefore it is important for the correct jurisdiction to be established so that people with responsibilities for health and safety in coal workplaces are held accountable. The bill ensures that the jurisdiction of the Coal Mine Health and Safety Act is clear. It will allow appropriate enforcement action to be taken when necessary. I commend the bill to the House.

Ms LEE RHIANNON [6.11 p.m.]: The Greens support the Coal Mine Health and Safety Amendment Bill 2010. The significance of the bill is that it tightens safety measures, provides for changes with regard to registration of mines in the context of geography, and provides important clarification of jurisdiction in that inspectors from the Department of Industry and Investment, not the WorkCover Authority, will have jurisdiction in coalmining workplaces. I was surprised to learn, when I consulted a representative of the Construction, Forestry and Mining Energy Union [CFMEU] about the legislation, that the union had not been consulted. The union suggested that it might be because the Government was tidying up the issue of jurisdiction relating to the WorkCover Authority. However, irrespective of the reason, I was surprised that the union had not been consulted. I understand that that is not the usual practice. In recent times there has been close consultation between the union and the Government when legislation prescribing good measures has been introduced. Later during my speech I will properly acknowledge the Government's approach.

The bill validates investigations and prosecutions that have already commenced under the Act. It is important for amending legislation to provide certainty to guard against confusion. The bill also will ensure that a defendant to an occupational health and safety prosecution will not escape liability on the basis of a technicality. It is most important for that matter to be clarified. It has been terrible when people suffered injury and then had to face uncertainty about how the matter would be dealt with. I acknowledge that the legislation addresses that issue and makes the matter clear. During any discussion on legislation dealing with an industry that is so dangerous, it is important to acknowledge the steps that have led to the establishment of a much safer working regime in coalmines. Quite literally that has come about as a result of centuries of struggle by coalminers. A unique feature of the coalmining safety regimes in Queensland and New South Wales is the role of democratically elected check inspectors, which has been incredibly important to ensuring and promoting safe work practices on the job.

The Greens congratulate the Government on that provision. For years the union and the workforce campaigned for greater safety on the job and for check inspector positions to be created. It was the New South Wales Government that incorporated the role, rights and responsibilities of check inspectors in health and safety laws that have jurisdiction in coalmines. Indeed, the check inspector position has been enshrined in legislation, and that is very important. Although I doubt that we will end up with a Coalition government, no Coalition government would be so unwise as to remove that provision. However, one never knows: it is worth noting that the former workplace Minister, Tony Abbott, who is the current Leader of the Opposition, went on the attack in 2003 about those positions. The positions are regarded as being very important to the way in which coalmines operate. Periodically the operations of a mine have to be delayed when key safety issues need to be addressed. As we all know, industry would prefer that not to happen.

We know how absolute that preference can become by reference to the industry moving to avoid dealing with safety breaches and safety concerns. In many non-union coalmines there exists a safety incentive scheme. These schemes play out to become inducements offered to mine workers so that they will not report accidents and incidents but, rather, continue to work, even when they are injured. That is certainly the regime that would have resulted if the former workplace Minister, Tony Abbott, had had his way and had been successful in watering down or disposing altogether of the important role of democratically elected check inspectors. I emphasise that Australia has had 200 years of coalmining. I have said before, and it is worthwhile saying again because the Greens position on this issue so often is distorted, the Greens are not about closing down the coal industry. We are talking about a transition from a heavy coal dependency that currently exists. But what goes hand in hand with the Greens policy is that workers employed in the coalmining industry need to have the best legislation because they work in atrocious situations.

The Hon. Trevor Khan: A transitional arrangement means closing down the industry.

Ms LEE RHIANNON: Yes, but it is not about closing down the industry tomorrow.

The Hon. Trevor Khan: I see. It will be over a period of time?

Ms LEE RHIANNON: It is about having a responsible government that comes forward with a policy that does not involve opening new coalmines. Instead it will bring forward jobs growth that will last well into the future, for regional areas that the Hon. Trevor Khan is supposed to represent, and about the member having a commitment to jobs growth.

The Hon. Trevor Khan: That I do represent.

Ms LEE RHIANNON: If he did represent them properly—

The Hon. Trevor Khan: Your feigned concern is very touching.

The PRESIDENT: Order! The Hon. Trevor Khan will cease interjecting. Ms Lee Rhiannon will cease responding to interjections.

Ms LEE RHIANNON: Thank you Madam President. It is interesting to hear some comments made by Opposition members and notice how sensitive they are on this matter. That is not surprising because when it comes to recognising on-the-job safety, their record is not healthy.

The Hon. Duncan Gay: Provide some details with which to back that allegation. That is a disgraceful assertion.

Ms LEE RHIANNON: The evidence can be found in *Hansard* over many decades. People can see that when measures came before this House for improvements in occupational health and safety, many decades ago the Opposition opposed it. Certainly the Opposition was not supportive of democratically elected check inspectors. I have provided an example, and if the Deputy Leader of the Opposition did not hear it, I will happily provide it again. In 2003 Mr Abbott, when he was the workplace Minister under the Howard Government—

[Interruption]

The PRESIDENT: Order! Members will cease interjecting.

Ms LEE RHIANNON: I acknowledge that often when terrible breaches of occupational health and safety regulations occurred in mines, there have been delays in following through on prosecutions. It was almost 200 years before the first prosecution was brought against representatives of a coalmining company.

[Interruption]

The Hon. Duncan Gay: Someone is giving you a message with that clap of thunder.

Ms LEE RHIANNON: I acknowledge the interjection. When members opposite go on the attack they should remember how many people in the mining industry have died. They should visit Cessnock, where they would see the names of 1,500 men and boys who died in the coalmines. Equally, they can visit Keira on the South Coast where they would see the names of hundreds of men and boys who have died in terrible coalmining accidents. Although we no longer have black lung disease, there has been much suffering and many deaths in the coal industry. That is why coalminers have fought so hard to clean up the industry.

I acknowledge that the New South Wales Government did the right thing when it incorporated the rights of check inspectors in the health and safety laws in this State. But we also need to acknowledge that at times the Labor Government has not done the right thing when it comes to coalminers trying to clean up the industry. In 1949 we had the Australian coal strike—I do not think much was done to acknowledge the fiftieth anniversary. Coalminers went on strike on the issues of safety conditions on the job and increased pay and long service leave. That strike was a black mark against the Labor Government. Sadly, the Chifley Government brought in the military forces—

The Hon. Trevor Khan: To stand up against the communists.

Ms LEE RHIANNON: I acknowledge the interjection. Mr Trevor Khan is still living in the cold war. I guess what happened in 1998—

The Hon. Don Harwin: You are talking about the Chifley Government.

Ms LEE RHIANNON: Yes, and I have acknowledged that.

The PRESIDENT: Order! Members will cease interjecting.

Ms LEE RHIANNON: The activity of the interjections is informative. This was a strike of 23,000 coalminers, and the military was brought in. The Labor Government handled it appallingly. It made it illegal to give strikers and their families financial assistance. Many union officials were jailed and heavy fines were imposed. The miners' demands were more than reasonable. They had worked and negotiated long service leave, an increase in pay, for a 35-hour week and greater safety on the job. And that was the response they got from a Labor Government! But that was 61 years ago. I acknowledge that in more recent times, coming through to the legislation we have today, there is more cooperation.

The Hon. Greg Donnelly: What about the way the communist government treats the Chinese coal workers?

Ms LEE RHIANNON: Mr Donnelly should get up and move some legislation.

Reverend the Hon. FRED NILE [6.22 p.m.]: On behalf of the Christian Democratic Party, I am pleased to support the Coal Mine Health and Safety Amendment Bill 2010. I will not digress into a political discussion about other events, although it is tempting. I am pleased that the Government has introduced this bill to clarify jurisdiction in the coalmining industry, as to whether accidents come under the Coal Mine Health and Safety Act 2002 or the Occupation Health and Safety Act. I understand that this bill will clarify the situation in terms of which Act applies to a specific situation. To make it absolutely clear, the bill has an amendment that gives the Minister the power to make a binding determination on the application of the Act in a situation in which it would not otherwise be clear. So if there is still a grey area, the Minister will be able to make a determination that would then apply.

The bill is important as it deals with the health, safety and welfare of those working in coalmining workplaces in New South Wales. I congratulate the coalmining industry on dramatically improving its safety outcomes, but there is still much work to be done. Sadly, there were three workplace fatalities recorded in the coalmining industry during the past 12 months. Accidents still occur, but these amendments will ensure that those who are responsible for deaths or injuries in coal workplaces face the consequences of not complying with the legislation. Without these amendments, a potential injustice to the families of those who are injured or killed could occur. These amendments will provide for the clear and effective jurisdiction of the Coal Mine Health and Safety Act 2002 now and in the future. For that reason I am pleased to support the bill.

The Hon. PENNY SHARPE (Parliamentary Secretary) [6.24 p.m.], in reply: I thank honourable members for their contributions to the debate. I do not thank those who interjected and caused the debate to go longer than it should. The Coal Mine Health and Safety Amendment Bill makes necessary amendments to the Coal Mine Health and Safety Act. The first main amendment ensures that the Act covers all coalmining activities in New South Wales. It clarifies the application of the Act and the jurisdictional boundary between WorkCover and Industry and Investment New South Wales. The area of a colliery holding as the basis for the application of the Act will change. Instead, the Act will apply to coalmining activities. This will ensure that similar activities are regulated consistently across the State. Even with this amendment, it may not be clear, on occasion, that an activity comes under the jurisdiction of the Act.

The second main amendment, therefore, enables the Minister to make a binding determination, in particular circumstances, on whether the Act applies. The amendments may result in some coalmining activities coming under the Coal Mine Health and Safety Act where previously they were not. This means that all similar coalmining activities will have the same safety obligations. Transitional arrangements will give industry six months to transition to responsibilities under the Act. However, the amendments will not change the investigation powers of Industry and Investment New South Wales or WorkCover. The amendments only clarify whether Industry and Investment New South Wales or WorkCover investigates and prosecutes alleged breaches in coalmining workplaces. The other proposed amendments in the bill support these main amendments. Taken together, the amendments in this bill will ensure that the jurisdiction and coverage of the Coal Mine Health and Safety Act are clear for industry and government. 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. 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.

ADJOURNMENT

The Hon. PENNY SHARPE (Parliamentary Secretary) [6.27 p.m.]: I move:

That this House do now adjourn.

MURRAY-DARLING BASIN

The Hon. TONY CATANZARITI [6.27 p.m.]: I raise an issue of grave concern to a huge number of citizens across State boundaries who live and work in the Murray-Darling Basin. These people directly rely on the basin for their livelihoods; they number two million and make up 10 per cent of the population of this country. As an irrigator, a farmer, a member of Parliament and the deputy member of the Legislative Council for Murray-Darling, Murrumbidgee, Albury and Wagga Wagga, I have been approached by a large number of citizens, businesses, councils and industry and agricultural sector representatives who are all concerned about the future of the Murray-Darling under the Murray-Darling Basin Authority. They are concerned because the authority is presently engaged in the most significant water reform the nation has seen, and all indications to date suggest that the authority is minded to conduct its business in the best interests of the environment and foreign instruments, rather than the best interests of the two million people directly dependant upon the Murray-Darling.

People in the cities, who are not among the 10 per cent who rely on the Murray-Darling, should also be concerned, for that 10 per cent of the population represents a great percentage of the primary producers in this country who not only fill the stomachs of city people but also, by underpinning the service economy in this country, directly fill their wallets as well. It is all very well for people away from the Murray-Darling who do not feel themselves connected to it to applaud the release of more water for the environment, but if that remit for the basin authority is not handled wisely, city people will find themselves not only out of pocket but, worse, eating foodstuffs grown in countries that have nowhere near the same standards on which our growers pride themselves.

If the authority is not wise in its handling of the reforms, large numbers of factories and other businesses reliant upon water will also close, and in these times of free trade and globalisation they will invariably move offshore, exporting Australian jobs. The Murray-Darling Basin covers 14 per cent of Australia's landmass and accounts for 35 per cent of our agricultural production, which is a very significant contribution to the national economy. At a time of intense international financial turmoil, we in Australia should be doing everything we can to keep ourselves out of trouble. That includes taking a cautionary, if not precautionary, approach on a number of policy fronts concerning primary production in Australia.

Coming out of a drought and suffering years of policies that forced farmers to work on a level playing field, competing against numerous countries whose agricultural sectors are propped up by a raft of subsidies, has pushed our farmers to the very brink of survival. The idea that water entitlements and licences could see reductions of between 30 per cent and 50 per cent will be devastating to this important sector and the large number of industries, citizens and communities who rely on the Murray-Darling. I urge all members, State and Federal, to think very carefully about what will happen with the Murray-Darling in the near future. We need to protect the environment and the river, but we must remember the huge numbers of families, industries and cities that also need the river for their very livelihoods. We will not do the nation any favours by destroying our agricultural capacity.

CHAFFEY DAM

The Hon. TREVOR KHAN [6.32 p.m.]: I refer to a matter of great importance to the Tamworth electorate. Last week the Minister for Water, Phillip Costa, finally announced the gazettal of the Peel Valley Water Sharing Plan. It only took this State Labor Government 2½ years to reach the point of gazettal, and regrettably the consultation process with community stakeholders ended up compressed into the last few months. It can be said that the gazettal of the water sharing plan is a significant event—significant because, amongst other reasons, it now provides the opportunity to progress the augmentation of Chaffey Dam. It is worthwhile, however, to examine a little of the history before dealing with the topic directly.

In a letter dated 7 October 2008, the Minister for Climate Change, Energy Efficiency and Water, Senator Penny Wong, wrote to then Premier Nathan Rees confirming the Federal Government's funding contribution to the Chaffey Dam augmentation, subject to conditions. Those conditions included the gazettal of the water sharing plan. Senator Wong noted in a letter to me that, despite her letter being dated 7 October 2008, it took the New South Wales Minister for Water, Phillip Costa, until 24 December 2008 to respond. The senator further noted that she did not receive the Minister's letter until 13 January 2009, which means it took more than three months for a response to be received from the State Government. That delay and ineptitude are the hallmarks of the State Labor Government's handling of the augmentation of Chaffey Dam.

Nevertheless, the water sharing plan has now been gazetted and plans for the augmentation of Chaffey Dam should be well in motion. But they are not. There appear to be further problems. It appears that the State Labor Government has not communicated with anyone about the proposal to split the funding of the dam augmentation since commitments were made in 2007, when agreement was reached between the Federal and State governments, Tamworth Regional Council and the irrigators. At that time, there was an agreement that the costs would be shared as follows: Federal Government, 45 per cent; State Government, 32 per cent; Tamworth Regional Council, 17 per cent; and irrigators, 6 per cent. In a recent Independent Pricing and Regulatory Tribunal submission, Tamworth Regional Council now states that the Chaffey Dam augmentation will cost approximately \$36 million—quite a substantial difference from the \$14.6 million that was quoted when the promises were made in 2007.

Based on the new figures, if the same percentage split is applied it will equate to: \$16.2 million from the Federal Government, \$11.52 million from the State Government, \$6.12 million from Tamworth Regional Council, and \$2.16 million from the irrigators. For all involved, those figures are a substantial increase. But the problem is not just that there is a substantial jump but it seems that the Minister for Water has not discussed with any of the parties what the funding formula will now be. This is demonstrated by the fact that in recent media reports Senator Penny Wong was quoted as saying that the Federal Government is still set to contribute \$6.545 million, as originally promised.

If the Federal Government is prepared to contribute only \$6.545 million it means that the State Government, Tamworth Regional Council and the irrigators will have to fund an amount close to \$29.5 million—almost double the amount originally quoted for the augmentation of the dam. Clearly those figures are unsustainable. However, just as importantly, all the stakeholders need to know where they stand if the augmentation of the dam is to proceed. There has been no communication between any of the parties about this significant increase in costs. At least we know that money is allocated federally, but who knows what the State Government is set to put up now. A new funding agreement needs to be put in place, but the State Labor Government seems incapable of doing that. The augmentation of Chaffey Dam is fundamental to the progress and economic vitality of the Tamworth region. I urge the Minister to start talking to the Federal Government, Tamworth Regional Council and the irrigators. I say to the Minister: Commit to a funding regime and commit to the augmentation of Chaffey Dam at the same time as the anticipated safety upgrade.

BANGLADESH VIOLENCE

Mr IAN COHEN [6.37 p.m.]: I draw attention to recent events in Bangladesh that are of concern. On 19 and 20 February in Baghaihat and on 23 and 24 February in Khagrachari—two villages in the Chittagong Hill Tracts—recent settlers from outside the region attacked the indigenous Jumma villagers. Many onlookers report that the attacks occurred with the collusion of Bangladeshi military forces. The indigenous Jumma people's homeland of the Chittagong Hill Tracts, in south-eastern Bangladesh, borders India and Burma and is rich in forests, biodiversity and mineral resources. The Jumma people make up less than 1 per cent of the total population of Bangladesh.

According to a 2004 paper, Government policies regarding state-sponsored migration have changed the demographic make-up of the Chittagong Hill Tracts, from 91 per cent indigenous in 1951 to 52 per cent indigenous in 1991. A 24-year struggle for self-determination ended in 1997 with the signing of the Chittagong Hill Tracts Peace Accord, which is yet to be implemented properly. The Bangladesh Government today maintains a heavy military presence in the region, and the alleged theft of indigenous land by settlers that enjoy state protection continues, with tragically violent consequences such as those that occurred recently at Baghaihat.

After the initial attacks, more violence ensued when Jumma people gathered peacefully to protest the Baghaihat incident. In the presence of police and the military, who did not act to stop the violence, settlers, who subsequently burnt Jumma homes and shops, attacked the villagers. At least three people, including an indigenous mother and a young man, were shot dead, more than 25 were injured and 500 buildings—including two Buddhist temples, a church, six village development centres, two schools, two UNICEF village centres, one Médecins Sans Frontières clinic, and nine shops—were burnt, leaving thousands homeless and internally displaced. The Bangladesh Government has so far failed to carry out an independent and impartial investigation of the February 2010 violence and the army's involvement in it, despite calls from various international organisations, including the European Union, Amnesty International, and the Chittagong Hill Tracts Commission. The United Nations office in Dhaka has also expressed its concerns about the attacks.

I will share the story of one individual, Subrata Talukder, a Jumma local who studied in Australia at Monash University and was an AusAID scholar before returning to Bangladesh to run a transport business in the Chittagong Hill Tracts region. During the violence, Subrata had two new microbuses burned to ashes by Bengali settlers. He has no insurance for his business and has received no compensation from the Government of Bangladesh despite the alleged collusion, or at the very least deliberate inaction, of Bangladeshi military forces during the incident. Other families who were displaced during the incident have received the equivalent of around \$A100, one bundle of tin roofing and 65 kilograms of rice. Right now there are about 150 school-age students from Baghaihat who have been moved away from their families and placed in temporary shelters after the distress of witnessing February's violent attacks. As I understand the current situation, these children's basic needs have not been provided for, even to the point of not receiving adequate food. It is reported that the Bangladesh Government is claiming it has helped the victims adequately and on that pretext is not allowing any agencies such as the United Nations Development Programme, the World Food Programme or other non-government organisations in to help the victims.

This is a conflict with a protracted history. In 1997 the Bangladesh Hasina Government signed the Chittagong Hill Tracts Peace Accord and President Sheikh Hasina renewed her commitment to the accord at the 2008 election. Yet it appears that little has been done to uphold peace in the region. I have been told that the most recent conflict arose because in January this year the Bengalis resumed building illegal houses on indigenous Jumma land, a problem that has been occurring for decades. The root of this pattern of violence is Dhaka's Bengali settlement program, which began in the 1970s and continues today.

I have recently written to the Federal Minister for Foreign Affairs, the Hon. Stephen Smith, requesting that he consider the role that Australia, as a provider of aid to Bangladesh, can play in bringing human rights and justice to the Jummas of the Chittagong Hill Tracts; and, further, that he urge the Bangladesh Government to act to stop the recurring pattern of brutality against the indigenous Jummas in the Chittagong Hill Tracts, stop further escalation of violence, enforce the rule of law, and restore human rights in the area. I have attended a number of functions with local Chittagong Hill Tracts people in Sydney, which were also attended by a Federal Minister, Mr Martin Ferguson, and many others. There is a lot of support for these peaceful people who just want to assert their right to live in peace on their traditional lands.

BANK SUPER PROFITS TAX

The Hon. SHAOQUETT MOSELMANE [6.42 p.m.]: The *Sydney Morning Herald* recently headlined an article "Now miners have been given the big-tax treatment, banks may need same medicine" during its recent coverage of the issue of excessive fees and charges imposed on mums and dads and the working families who are buried under significant financial debt. With every set of fees and charges loaded on them, such working families struggle even more to make ends meet. Is it any wonder that attention has now turned to the huge profits that banks are making while families struggle to make a living and deal with the impact of the global financial crisis? Is it any wonder that our constituency is angry at the banks and would happily support a tax on the super profits of our commercial institutions, in particular the four major banks? They are riding high at great cost to us all, with an apparent lack of care.

Thousands of bank customers have expressed their displeasure with the banks and the banks now acknowledge their customers' complaints relating to fees and charges. Banks continue to increase their fees and charges, targeting late payments, accounts that are over the limit, and honour and dishonour fees. Australian banks even had the audacity to lobby against the introduction of rules banning unfair terms in contracts, arguing that this would reduce their ability to enforce fees. It is these fees and charges that have made banks millions, if not billions, of dollars. It is reported that in the past six years banks have charged at least \$5 billion in fees. Indeed, some banks had no hesitation in increasing rates above and beyond the recent Reserve Bank of Australia increases. It was a slap in the face to the Federal Government, a slap in the face to the Reserve Bank and a slap in the face to all bank customers. The big four banks now have the biggest slice of home loans, small business loans, credit cards and deposits and they are looking for other areas to enter and control. Recent figures show that the big four banks now hold 73.8 per cent of outstanding mortgages in Australia, up from 56.8 per cent two years ago.

The Federal Government's decision to guarantee bank deposits was in the view of many people necessary to maintain stability for our banks. This was particularly so as banks around the world began to tumble. This guarantee, however, carried with it risks if the banks faltered. Thankfully, they did not. Had any of the banks faltered, the taxpayers—you and I—would have to ultimately pay the price. Banks, however, took full advantage of the global financial crisis and the goodwill of the Government and the Australian people and continued to slug already struggling customers with higher fees and charges. The banks' cover has now been blown, with bank customers lining up to register their desire to join the thousands of others in Australia's largest class action against 12 Australian financial institutions to recover what are seen to be, but are yet to be proven, unjust penalty fees.

It was only a matter of time before action was taken, and the banks knew it. Action against the banks has indeed picked up momentum, with claims that banks levied punitive charges, not merely recovered charges, and that if the fees did not reflect the cost to the banks of the breach they were illegal. The banks have now realised the game is up and that they cannot continue to slug customers with exorbitant fees and charges. In its fourth Investor Survey, Investor Pulse asked a panel of 2,000 investors about their thoughts on a variety of matters, including the honesty of banks. The resounding response, even from investors who benefit from the profits of the banks, was a negative perception of the banks. Indeed, they saw many as greedy, with 70 per cent agreeing that the big four banks are too dominant and 79 per cent believing the banks do not tell the truth.

The banks have been a protected species, to the detriment of mums and dads. It is time they were scrutinised and were held accountable for their actions. I believe the competition watchdog, the Australian Competition and Consumer Commission, and the Banking Industry Ombudsman should be given greater powers to investigate the activities of the banks. We should keep a close watch on the banks. They must now pay higher taxes on their super profits and they must be accountable. They must not be allowed to pass any taxes imposed on their super profits on to their customers.

PENRITH SEWAGE TREATMENT PLANT

The Hon. CATHERINE CUSACK [6.46 p.m.]: It is an understatement to say that the Keneally Government's method of managing sewage in Penrith is on the nose. Labor's strategy appears to be to allow Sydney Water to use the lower Hawkesbury-Nepean River as an open sewer, with toxic, hazardous waste being discharged directly into the river. At issue is the Penrith sewage treatment system at Castlereagh Road in Penrith, which is licensed by the Environment Protection Authority to dump zinc, suspended solids, selenium, phosphorus, oils and grease, nitrogen, lead, copper, chromium, cadmium and other micro-organisms and bacteria into the river.

Each year Sydney Water is required to publish its reports on the extent to which it is polluting the Nepean River. However, this requirement has not been met since 2007-08, which demonstrates that Sydney Water has almost as much contempt for the law as it does for the river. According to the latest figures there has been a 138 per cent increase in suspended solids dumped by Sydney Water into the Nepean River, up from 3.33 tonnes in 2007 to 7.944 tonnes in 2008. This type of waste has more than doubled. How disgusting! Zinc was up 12 per cent and phosphorus up 60 per cent, from 842 kilograms to 1.347 tonnes. The number of organisms and bacteria, which suck oxygen from the water, tripled from six tonnes to nearly 19 tonnes. The data, from the Department of Environment, Climate Change and Water, shows that Sydney Water is unwilling or unable to stop dumping waste into the lower Hawkesbury-Nepean River. Conversely, the Environment Protection Authority appears toothless and compliant in providing dumb reports to the public, who cannot by themselves bring improvements in environmental performance. In seven of the past eight years Sydney Water

has breached various clauses of the euphemistically named "environment protection licences" for the Penrith sewage treatment plant. In five of the seven years of licence breaches, Sydney Water breached clause O5.1 of its licence, which states:

The reticulation system must be managed, operated and maintained such that the operational and maintenance works and activities result in an ongoing improvement in the system environmental performance, when compared with existing system environmental performance. The system environmental performance must not at any time fall below existing system environmental performance.

The sad fact is that in each of the years recorded, Sydney Water could not demonstrate an ongoing improvement and/or no deterioration of the performance of the Penrith sewage treatment plant. The types of breaches in 2000-01 included environmental performance being below the previous year; an increase in odour complaints; wet weather overflow models not being run and overflows due to blockages caused by tree roots, debris and broken structures; overflows due to blockages caused by power failures; comparison of wet weather overflows, with 1994 as the benchmark year, not being done; the hydraulic sewer system model for reporting not being done, and so on through the years. More recently, overflow of the reticulation system reached waterways in dry weather due to blockages caused by tree roots; samples were not collected properly; and the licensee reported non-compliance because the internal performance targets for response times to sewer overflows were not met consistently due to priority given to water leaks during the drought period. Not all flows received full tertiary treatment filtration, and ongoing improvement and no deterioration from existing system performance could not be demonstrated.

In 2006-07 the breaches were: uncontrolled overflow during dry weather due to blocked sewer; requirement to monitor not met; sample not analysed for oil and grease on one occasion; and unable to demonstrate improvement to environmental performance. Members might recall that in 2007 the Liberal-Nationals Coalition produced the most comprehensive strategy ever to recycle and re-use Sydney's sewage and stormwater. Labor copied that policy, produced an anaemic version of it, and promised to improve performance and to clean up our rivers. One of its policies—the Western Sydney Recycled Water Initiative—included a proposal to recycle sewage from the Penrith plant and to divert all pollutants from the river.

We are happy to see those sorts of policies copied. However, since Labor announced that project it has been cut back in scope and is running at least one year behind schedule, with the completion date now being touted as some time in 2011. If the project had been completed on time, as promised, some 70 tonnes of pollutants would not be pouring annually into Nepean River. I ask the Government: What is the point of operating a plant that removes pollutants from sewage in order to protect our waterways, only to dump those pollutants directly into Nepean River? Our rivers, which are living and breathing ecosystems, are relied upon by wildlife and are much loved by our community.

CHRISTIAN PERSECUTION IN IRAQ

Reverend the Hon. FRED NILE [6.51 p.m.]: Tonight I refer to the persecution of Assyrian Christians in Iraq. It is a tragedy that many members of religious minority groups continue to be persecuted and murdered. Many refugees have fled to the neighbouring countries of Syria and Jordan. Thankfully, many thousands have been able to come to Australia and to settle in Sydney's western suburbs. Recently I met with many refugees, in particular at the recent Assyrian New Year festival held at Fairfield showground. In July 2009 the Assyrian International News Agency released its updated report entitled, "Incipient Genocide: The Ethnic Cleansing of the Assyrians of Iraq." It is an understatement to assert that that report makes for dire and disturbing reading. It details the systematic and consistent persecution of Assyrian Christians in Iraq, including gruesome murders, extortion and violence.

Most disturbing is the fact that religious institutions such as churches and church buildings, and symbols are being targeted, in particular, through bombings, inflicting terror and insecurity on the remaining Assyrian community. In December 2008 the United States Commission on International Religious Freedom recommended that Iraq be designated as a "country of particular concern" under the International Religious Freedom Act in light of the ongoing severe abuses of religious freedom and the Iraqi Government's apparent toleration of these abuses, particularly abuses against Iraq's smallest and most vulnerable religious minorities. Commission chair Felice D. Daer described Iraq as "among the most dangerous places on earth for religious minorities". The commission's report states:

The situation is especially dire for Iraq's smallest religious minorities, including the Chaldo Assyrian and other Christians, Sabean Mandaeans, and Yazidis. These groups do not have militia or tribal structures to protect them and do not receive adequate official protection. Their members continue to experience targeted violence and to flee to other areas within Iraq or other

countries, where the minorities represent a disproportionately high percentage among Iraqi refugees. Marginalised legally, politically, and economically, they are caught in the middle of a struggle between the Kurdistan Regional Government and the central Iraqi government for control of northern areas where their communities are concentrated.

There is no indication in that report of any improvement or change to the situation. The Governor of Mosul, who was unable to protect Christians in that city, said:

... the city's Christians are victims of a political conspiracy designed to get them out of Mosul and put them in the "Nineveh Plain", referring to the beneficiaries of this issue, points related to Kurdistan region, describing them as "responsible" for the suffering of the Christians of Mosul campaigns targeting persistent.

He said that the attacks "reveal the involvement of army officers of the Iraqi Kurds in the process", in an attempt to ethnically cleanse the city of Mosul. On 2 May buses carrying Christian Assyrian university students from Qaraqosh, Baghdida, 40 kilometres east of Mosul, were attacked with bombs. That resulted in 140 students being injured and a Christian shop owner being killed—another indication of the ongoing terrorist attacks and persecutions in Iraq aimed at Christians. An article from the Assyrian Universal Alliance states:

Attacks on monasteries and churches, looting and seizing of property by force, kidnappings, and forced conversions into Islam are happening under the watchful eyes of the coalition and Iraqi security forces ...

Even though Australia has been assisting, things have not improved for Christian Assyrians who should be remembered and supported in their plea for peace and freedom.

TRIBUTE TO LYSTER HOLLAND

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [6.56 p.m.] Tonight I advise members of the death last weekend of one of nature's true gentlemen—Lyster Holland, aged 103. Not only was he an elder statesman in my home town of Young; he was also an artist, an historian and an active individual almost until his death last weekend. In April this year Lyster Holland, at his own insistence, gave up his drivers licence. He wanted to hand it in rather than have it taken away from him. Lyster Holland drove blemish free for 85 years. Unfortunately, on Friday Lyster attended the funeral of his younger son, Garth, and he passed away early on Saturday morning. Many things could be said about Lyster Holland, but the most common remark that one might hear from anyone after his death would simply be, "Oh, what a nice man." Lyster Holland, a true gentleman, provided guidance to anyone in local government in Young. Everyone in that town respected Lyster, who will be sadly missed. I extend condolences to Lyster's wonderful family. Vale, Lyster Holland.

Question—That this House do now adjourn—put and resolved in the affirmative.

Motion agreed to.

The House adjourned at 6.57 p.m. until Wednesday 19 May 2010 at 2.00 p.m.
