

## LEGISLATIVE COUNCIL AND LEGISLATIVE ASSEMBLY

Thursday 10 June 2010

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### JOINT SITTING TO ELECT A MEMBER OF THE LEGISLATIVE COUNCIL

The two Houses met in the Legislative Council Chamber at 4.00 p.m. to elect a member of the Legislative Council in the place of the Hon. Ian Michael Macdonald, resigned.

**The Clerk of the Parliaments** read the message from the Governor convening the joint sitting.

**The PRESIDENT (The Hon. Amanda Fazio):** I am now prepared to receive proposals with regard to an eligible person to fill the vacant seat in the Legislative Council caused by the resignation of the Hon. Ian Michael Macdonald.

**Ms KRISTINA KENEALLY:** I propose Luke Aquinas Foley as an eligible person to fill the vacant seat of the Hon. Ian Michael Macdonald in the Legislative Council, for which purpose this joint sitting was convened. I propose that Luke Aquinas Foley be elected as a member of the Legislative Council to fill the vacancy in the Legislative Council caused by the resignation of the Hon. Ian Michael Macdonald. I indicate to the joint sitting that if Luke Aquinas Foley were a member of the Legislative Council, he would not be disqualified from sitting or voting as such a member, and that he is a member of the same party, the Australian Labor Party, as the Hon. Ian Michael Macdonald was publicly recognised by as an endorsed candidate of that party and who publicly represented himself to be such a candidate at the time of his election at the Ninth Periodic Council Election, which was held on 24 March 2007. I further indicate that the person being proposed would be willing to hold the vacant place, if chosen.

**The Hon. JOHN HATZISTERGOS:** I second the nomination.

**The PRESIDENT (The Hon. Amanda Fazio):** Does any other member desire to propose any other eligible person to fill the vacancy? As only one eligible person has been proposed and seconded, I hereby declare that Luke Aquinas Foley is elected as a member of the Legislative Council to fill the seat vacated by the Hon. Ian Michael Macdonald. I declare the joint sitting closed.

**The joint sitting closed at 4.10 p.m.**

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# LEGISLATIVE COUNCIL

Thursday 10 June 2010

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**The President (The Hon. Amanda Ruth Fazio)** took the chair at 11.00 a.m.

**The President** read the Prayers.

## LEGISLATIVE COUNCIL VACANCY

### Joint Sitting

**The PRESIDENT:** I report the receipt of the following message from His Excellency the Lieutenant Governor:

J. J. SPIGELMAN  
Lieutenant Governor

I the Honourable James Jacob Spigelman, AC, in pursuance of the power and authority vested in me as Lieutenant Governor of the State of New South Wales, do hereby convene a joint sitting of the members of the Legislative Council and the Legislative Assembly for the purpose of the election of a person to fill the seat in the Legislative Council vacated by the Hon. Ian Michael Macdonald, and I do hereby announce and declare that such Members shall assemble for such purpose on Thursday the tenth day of June 2010 at 4.00 p.m. in the building known as the Legislative Council Chamber situated in Macquarie street in the City of Sydney; and the Members of the Legislative Council and the Members of the Legislative Assembly are hereby required to give their attendance at the said time and place accordingly.

In order that the Members of both Houses of Parliament may be duly informed of the convening of the joint sitting, I have this day addressed a like message to the Speaker of the Legislative Assembly.

Office of the Governor  
Sydney 9 June 2010

## OMBUDSMAN

### Report

**The President**, tabled, pursuant to the Ombudsman Act 1974, a special report of the Ombudsman entitled "Removing Nine Words—Legal Professional Privilege and the New South Wales Ombudsman", dated June 2010, received and authorised to be made public this day.

**Ordered to be printed on motion by the Hon. John Hatzistergos.**

## INDEPENDENT COMMISSION AGAINST CORRUPTION

### Report

**The President**, tabled, pursuant to the Independent Commission Against Corruption Act 1988, a report entitled "Report on the Use of TAFE Funds to Pay for Work on a Dog Kennel Complex", dated June 2010, received and authorised to be made public this day.

**Ordered to be printed on motion by the Hon. John Hatzistergos.**

## SESSIONAL ORDERS

### Budget Estimates 2010-2011—Take-note Debate

**Motion by the Hon. Don Harwin agreed to:**

That, during the present session and unless otherwise ordered:

1. Each speaker on the motion to take note of the Budget Estimates is to be limited to 10 minutes.

2. Debate on the motion to take note of the Budget Estimates for 2010-2011 is to take precedence after debate on Committee Reports on Wednesdays.
3. The debate on the budget estimates is to be interrupted at such time so that debate on Committee Reports and debate on the Budget Estimates does not exceed two hours thirty minutes. The interrupted debate is to stand adjourned and be set down on the business paper for the next day on which it has precedence.

### **COMMERCIAL ARBITRATION BILL 2010**

#### **Third Reading**

#### **Motion by the Hon. John Hatzistergos agreed to:**

That this bill be now read a third time.

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

### **COMMUNITY RELATIONS COMMISSION AND PRINCIPLES OF MULTICULTURALISM AMENDMENT BILL 2010**

#### **Third Reading**

#### **Motion by the Hon. John Hatzistergos agreed to:**

That this bill be now read a third time.

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

### **SCHIZOPHRENIA AWARENESS WEEK**

#### **Motion by the Hon. Helen Westwood agreed to:**

That this House notes that:

- (a) 17 to 23 May 2010 is Schizophrenia Awareness Week,
- (b) schizophrenia is the third leading cause of disability in young people,
- (c) one in every 100 young people will develop schizophrenia,
- (d) there is no cure and new improved treatments are urgently needed,
- (e) the Schizophrenia Institute is Australia's leading medical research institute solely dedicated to discovering the ways to prevent and cure schizophrenia, and
- (f) the Schizophrenia Research Institute is running a SwearStop campaign to raise funds for research into the prevention and cure of schizophrenia.

### **SYDNEY WRITERS FESTIVAL**

#### **Motion by the Hon. Penny Sharpe agreed to:**

1. That this House notes that:

- (a) the Sydney Writers Festival commences on 15 May 2010 and continues until 23 May 2010,
- (b) the 2010 Sydney Writers Festival is a celebration of literature and includes local and international writers, and
- (c) the Sydney Writers Festival is Australia's premier literary event and the third largest annual literary festival in the world and will be featured in a host of venues including the Sydney Opera House, the Sydney Theatre, Parramatta Riverside Theatre and the Carrington Hotel in Katoomba.

2. That this House congratulates the Government for continuing to support the Sydney Writers Festival.

## MOTHERS DAY

### Motion by the Hon. Penny Sharpe agreed to:

That this House notes:

- (a) that Sunday 9 May 2010 was Mothers Day,
- (b) the contribution that mothers and parents make to our community, and
- (c) that Sandra Hunt of Bolwarra Heights was presented with the Barnardos New South Wales Mother of the Year Award at a special ceremony at Parliament House in Sydney on Monday 29 March 2010.

## BIENNALE OF SYDNEY

### Motion by the Hon. Penny Sharpe agreed to:

That this House:

- (a) notes that the seventeenth Biennale of Sydney commences on 12 May 2010 and continues until 1 August 2010,
- (b) welcomes its Artistic Director, David Elliot,
- (c) notes that the Biennale of Sydney is Australia's largest and most respected contemporary visual arts event, which will be presented free to the public in venues across Sydney, including Cockatoo Island, Pier 2/3, the Museum of Contemporary Art, Sydney Opera House, Royal Botanic Gardens, Artspace and the Art Gallery of New South Wales, and
- (d) congratulates the Government on continuing to support the Biennale of Sydney.

## BUSINESS OF THE HOUSE

### Formal Business Notices of Motions

**Private Members' Business item No. 254 outside the Order of Precedence objected to as being taken as formal business.**

## STATE FORESTS

### Motion by the Hon. Shaoquett Moselmane agreed to:

That this House notes:

- (a) the excellent recreational opportunities provided by our State forests,
- (b) the outstanding facilities at Cumberland State Forest,
- (c) the exceptional services provided by volunteers in State forests, and
- (d) the quality of events held in our State forests.

## WORLD NO TOBACCO DAY

### Motion by the Hon. Helen Westwood agreed to:

That this House notes that:

- (a) the theme for this year's World No Tobacco Day is "Gender and tobacco with an emphasis on marketing to women",
- (b) World No Tobacco Day will take place on 31 May 2010,
- (c) World No Tobacco Day 2010 will be designed to draw particular attention to the harmful effects of tobacco marketing towards women and girls,
- (d) women comprise approximately 20 per cent of the more than one billion smokers throughout the world, and
- (e) World No Tobacco Day 2010 will give recognition to the importance of controlling the epidemic of tobacco among women.

**BUSINESS OF THE HOUSE****Formal Business Notices of Motions**

**Private Members' Business item No. 267 outside the Order of Precedence objected to as being taken as formal business.**

**INTERNATIONAL MISSING CHILDREN'S DAY****Motion by the Hon. Shaoquett Moselmane agreed to:**

1. That this House notes that:
  - (a) Tuesday 25 May 2010 is International Missing Children's Day, where people around the world commemorate the missing children who have found their way home, remember those who have been victims of crime, and continue efforts to find those who are still missing,
  - (b) the main purpose of International Missing Children's Day is to encourage everyone to think about children who remain missing and to spread a message of hope, and
  - (c) this year the theme is parental child abduction, an issue that is becoming more common.
2. That this House calls on all members of Parliament to work together to spread the message to the New South Wales community of the importance of protecting our children.

**PARLIAMENT PLEIN AIR PAINTING EXHIBITION****Motion by the Hon. Helen Westwood agreed to:**

That this House:

- (a) notes that an exhibition of selected works from the New South Wales Parliament Plein Air Painting Prize is on display at Parliament House from 3 May 2010 until 3 June 2010,
- (b) congratulates the Government on the third successful New South Wales Parliament Plein Air Painting Prize, and
- (c) acknowledges the ongoing work of the New South Wales Parliament Plein Air Painting Prize Committee and their contribution to the success of the prize.

**MACULAR DEGENERATION****Motion by the Hon. Penny Sharpe agreed to:**

That this House notes that:

- (a) Macular Degeneration Awareness Week 2010 takes place from Monday 24 to Sunday 30 May,
- (b) macular degeneration, affecting central vision, is the leading cause of blindness in Australia, is primarily age-related and most frequently affects people over the age of 50, and one in seven people over the age of 50 are affected by the disease and the incidence increases with age, and
- (c) people are encouraged to have their eyes tested and to make sure the macula is checked.

**YOUTH ACTION AND POLICY ASSOCIATION**

**The Hon. SHAOQUETT MOSELMANE** [11.12 a.m.]: I seek leave to amend Private Members' Business item No. 280 outside the Order of Precedence for today of which I have given notice by deleting the word "Government" in paragraph (c) and inserting instead the word "House".

**Leave granted.**

**Motion by the Hon. Shaoquett Moselmane agreed to:**

1. That this House notes that:
  - (a) May 2010 marks the twentieth anniversary of the Youth Action and Policy Association, more commonly known as YAPA, and

- (b) the Youth Action and Policy Association is the peak organisation representing young people and youth services in New South Wales, and works conscientiously towards a society where all young people are supported, engaged and valued.
2. That this House congratulates YAPA on this important milestone and looks forward to the continuation of its close relationship with YAPA into the future.

### **SAMOAN INDEPENDENCE DAY**

#### **Motion by the Hon. Shaoquett Moselmane agreed to:**

That this House:

- (a) notes that Tuesday 1 June 2010 is Samoan Independence Day, marking Samoa's Independence from New Zealand in 1962,
- (b) recognises that over 15,000 people living in Australia were born in Samoa and that 40,000 Australians claim Samoan ancestry, and
- (c) acknowledges the significant contribution of the Samoan community to our cultural diversity.

### **UNFLUED GAS HEATERS**

#### **Production of Documents: Report of Independent Legal Arbiter**

#### **Motion by Dr John Kaye agreed to:**

- 1. That the report of the Independent Legal Arbiter, Sir Laurence Street, dated 4 June 2010, on the disputed claim of privilege on papers relating to unflued gas heaters, be laid on the table by the Clerk.
- 2. That, on tabling, the report is authorised to be published.

### **BUDGET PAPERS 2010-2011**

#### **Production of Documents: Order**

#### **Motion by the Hon. Greg Pearce agreed to:**

That, under Standing Order 52, there be laid upon the table of the House within 14 days of the date of the passing of this resolution the following documents in the possession, custody or control of the Treasurer, New South Wales Treasury or the Department of Premier and Cabinet:

- (a) all advice, correspondence, briefing papers and documents provided by New South Wales government departments, agencies and public trading enterprise sectors to the Treasurer, New South Wales Treasury or the Department of Premier and Cabinet relating to the 2010-2011 Budget, including but not limited to:
  - (i) any documents that assess the impact of any of the measures outlined in the budget,
  - (ii) any models or documents that estimate the revenues to be raised as a result of the measures outlined in the budget,
- (b) all advice, correspondence, briefing papers and budget kits provided to any members of Parliament relating to the 2010-2011 budget handed down on 8 June 2010, and
- (c) any document which records or refers to the production of documents as a result of this order of the House.

### **AUSTRALIAN WOMEN'S FOOTBALL TEAM**

#### **Motion by Dr John Kaye agreed to:**

That this House:

- (a) congratulates the Australian Women's Football team, the Matildas, on their outstanding win in the final of the 2010 Asian Football Confederation Women's Asian Cup to bring home Australia's first major football title win,
- (b) acknowledges the outstanding efforts of the Captain Melissa Barbieri, and the squad, comprising Clare Polkinghorne, Lauren Colthorpe, Servet Uzunlar, Heather Garriock, Kate Gill, Collette McCallum, Aivi Luik, Sally Shipard, Elise Kellond-Knight, Kylie Ledbrook, Sam Kerr, Kyah Simon, Kim Carroll, Lydia Williams, Karla Reuter, Thea Slatyer, Leena Khamis, Casey Dumont and Teigen Allen,

- (c) wishes the injured players Tameka Butt, Sarah Walsh and Lisa De Vanna, who made major contributions during the tournament, a speedy recovery, and
- (d) requests the President of the Legislative Council to forward a copy of this resolution to:
  - (i) the Captain, Melissa Barbieri,
  - (ii) the sports editors of the Sydney Morning Herald, the Daily Telegraph and the Australian,
  - (iii) New South Wales Network Ten, the Nine Network, the ABC, the Seven Network, SBS Television, Prime Television and NBN Television, and
  - (iv) New South Wales radio stations 2GB, 2UE, 2SM, 2HD, 2DAY FM, WSFM, KOFM, Nova and the ABC.

### **BUDGET FINANCES 2010-2011**

#### **Production of Documents: Order**

#### **Motion by the Hon. Greg Pearce agreed to:**

That, under Standing Order 52, there be laid upon the table of the House within 21 days of the date of the passing of this resolution, the following documents in the possession, custody or control of the Treasurer, NSW Treasury or the Department of Premier and Cabinet relating to the Government's 2010-2011 budget finances:

- (a) any document detailing recurrent and capital estimates at agency level for the financial years 2009-2010 (revised) to 2013-2014 inclusive; printouts provided from Treasury's Financial Information System should only be the version consistent with 2010-2011 State Budget,
- (b) any document identifying uncommitted, unallocated funds or contingencies within those forward estimates; printouts provided from Treasury's Financial Information System should only be the version consistent with the 2010-2011 State Budget,
- (c) all estimates relating to projects included in the State Infrastructure Strategy, Metropolitan Strategy, State Plan and the Metropolitan Transport Plan 2010,
- (d) any document showing economic and other assumptions underpinning the estimates for the financial years 2010-2011 to 2013-2014 inclusive,
- (e) any document identifying or qualifying risks and contingent liabilities that might impact the financial years 2009-2010 (revised) to 2013-2014 inclusive,
- (f) any document that relates to the State's future financial position as revealed in the estimates,
- (g) any documents pertaining to 2009-2010 actual budget performance not requested elsewhere in this motion,
- (h) all documents pertaining to revenue estimates 2010-2011 to 2013-2014 inclusive,
- (i) all correspondence between the Treasurer and Secretary of the Treasury on the above matters since the presentation of the 2009-2010 State Budget, and
- (j) any document which records or refers to the production of documents as a result of this order of the House.

### **EQUAL PAY CASE**

**Ms LEE RHIANNON** [11.14 a.m.]: I seek leave to amend Private Members' Business item No. 299 outside the Order of Precedence for today of which I have given notice by deleting paragraph 2 (b) and inserting instead the words "calls on the Government to closely examine the outcomes of the decision to determine how any wage increase awarded in this case will be funded".

**Leave granted.**

#### **Motion by Ms Lee Rhiannon agreed to:**

1. That this House notes that:
  - (a) in 2009, the gap in average weekly earnings between men and women rose,
  - (b) women in Australia earn, on average, 18 per cent less than men,
  - (c) on average, women have to work 66 days more a year just to earn the same income as men,

- (d) feminised work has historically been undervalued and underpaid,
  - (e) equal pay is a social issue that affects us all,
  - (f) an equal pay case, brought by unions led by the Australian Services Union (ASU), is waiting to be heard by Fair Work Australia,
  - (g) the equal pay case has been lodged on behalf of Australia's 200,000 community and disability workers and seeks to establish that the essential work of the community and disability sector carework has been traditionally seen as women's work,
  - (h) should the equal pay case be successful, community workers will be awarded pay increases in the realm of 30 per cent, and
  - (i) nationwide rallies will be held on Thursday 10 June 2010 in support of the ASU's equal pay case.
2. That this House:
- (a) supports the equal pay case brought by the ASU to Fair Work Australia on behalf of community and disability sector careworkers, and recognises that this case is needed to address pay discrepancies, and
  - (b) calls on the Government to closely examine the outcomes of the decision to determine how any wage increase awarded in this case will be funded.

## **BUSINESS OF THE HOUSE**

### **Formal Business Notices of Motions**

**Private Members' Business item No. 300 outside the Order of Precedence objected to as being taken as formal business.**

## **TABLING OF PAPERS**

**The Hon. John Hatzistergos**, tabled the following paper:

New South Wales State Plan Annual Performance Report 2010.

**Ordered to be printed on motion by the Hon. John Hatzistergos.**

## **PETITIONS**

### **Multicultural Community Liaison Officer**

Petition requesting that the House call on the Government to appoint a multicultural community liaison officer for the Hurstville and Kogarah local government areas, received from the **Hon. Marie Ficarra**.

### **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 the **Hon. John Della Bosca**.

## **IRREGULAR PETITION**

**Leave granted for the suspension of standing orders to allow the Hon. Greg Pearce to present an irregular petition.**

### **City of Ryde Boarding Houses**

Petition requesting that the Government do everything within its power to achieve the immediate repeal of the indefinite suspension of the boarding house provisions of the State environmental planning policy and the immediate removal of all illegal boarding houses from the City of Ryde, received from the **Hon. Greg Pearce**.



**BUSINESS OF THE HOUSE****Suspension of Standing and Sessional Orders: Precedence of Business****Motion by the Hon. John Hatzistergos 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 this day.

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

That Government Business take precedence of General Business this day.

**COURTS LEGISLATION AMENDMENT BILL 2010**

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

**Second Reading**

**The Hon. JOHN HATZISTERGOS** (Attorney General, Minister for Citizenship, Minister for Regulatory Reform, and Vice-President of the Executive Council) [11.27 a.m.]: I move:

That this bill be now read a second time.

The purpose of the Courts Legislation Amendment Bill 2010 is to make miscellaneous amendments to legislation affecting the operation of the courts and tribunals of New South Wales. The bill is part of the Government's regular legislative review and monitoring program and will amend a number of Acts to improve the efficiency of the operation of our courts and tribunals. I will now outline each of the amendments in turn.

In relation to the Administrative Decisions Tribunal Act 1997, item [1.1] in schedule 1 to the bill makes three amendments to the Administrative Decisions Tribunal Act 1997. First, it amends section 24A to enable matters relating to cost and jurisdiction to be dealt with by a single judicial member of the tribunal at first instance, or by a single presidential member on appeal. Costs and jurisdictions are matters that frequently arise in proceedings that in the tribunal are currently dealt with by three-member panels. These matters are typically narrow questions and can be readily dealt with by a single judicial or presidential member. The tribunal can deal with these matters more efficiently and at less cost by allowing the matters to be dealt with by a single member.

Secondly, the bill amends section 73 of the Act, which relates to the tribunal's power to dismiss an application if the applicant fails to appear. The amendment clarifies that there is a time limit of 28 days for applications for reinstatement of proceedings dismissed under section 73. This time limit can be extended with the tribunal's permission. Thirdly, the bill amends schedule 2, part 1, clause 3, which relates to the constitution of the panel of the tribunal's community services division to hear applications under the Community Services (Complaints, Review and Monitoring) Act 1993.

The bill will remove the requirement that one of the members be a "practising legal practitioner" and replace it with "a judicial member". Currently the provision disqualifies some of the tribunal's most senior members, including some judges and magistrates, as it requires that one of the panel members is a "practising legal practitioner". It also disqualifies experienced judicial members who do not hold a current practising certificate. By replacing "practising legal practitioner" with "judicial member" the provision will become consistent with the rest of the Administrative Decisions Tribunal Act. It will also remove the current restrictions on the tribunal's ability to empanel a three-member panel to hear applications under section 28. The amendments are supported by the president of the tribunal.

Schedule 1.2 to the bill amends section 65 of the Children and Young Persons (Care and Protection) Act 1998 to support the increased use of alternative dispute resolution in care proceedings in the Children's Court. This is consistent with the recommendations arising from the Special Commission of Inquiry into Child Protection Services in New South Wales, otherwise known as the Wood inquiry. The Wood inquiry made a specific recommendation that alternative dispute resolution should be used more—both before and during care

proceedings. The Government's response to the Wood inquiry supported this recommendation. This bill will rename "preliminary conferences" in the Act to "dispute resolution conferences". The bill will emphasise that the primary purpose of a dispute resolution conference is the resolution of disputes and that, specifically, the conference should provide the parties with the opportunity to agree on the action that should be taken in the best interests of the child. The confidentiality of the dispute resolution conference process is also expressly guaranteed under the bill. Schedule 1.3 to the bill makes a consequential amendment to the Children and Young Persons (Care and Protection) Regulation 2000 to reflect the renaming of the "preliminary conference" to "dispute resolution conference".

Schedule 1.4 to the bill amends the Children (Criminal Proceedings) Act 1987 to enable the Children's Court to call on an offender, on its own motion, who has failed to comply with a condition of a probation order, or a good behaviour bond, or a condition of an outcome plan determined at a conference. Currently the Children's Court can only deal with a breach by an offender of a previous court order when the police prosecutor or a Juvenile Justice officer brings it to the attention of the court. On receiving the information, the court can then issue a court attendance notice or an arrest warrant for that offender. The power for the court to call on an offender who fails to comply with a good behaviour bond already exists in adult courts. There is no policy basis for the different treatment of juvenile offenders in this regard.

Schedule 1.5 to the bill amends section 6A of the Children's Court Act 1987 to allow the President of the Children's Court to sit on the District Court. The President of the Children's Court must be a District Court judge but under the current provisions the President is prevented from sitting as a District Court judge while holding the office of the President of the Children's Court. There are benefits to allowing the President to sit on the District Court. The President can maintain relevant skills and knowledge for when he or she returns to the District Court at the end of his appointment. The President can also bring to the District Court an expertise in care matters and other related matters. Further, the ability to continue to sit occasionally in the District Court could be an incentive for future District Court judges to agree to an appointment as President for the full five-year term. It is intended that the President will sit on the District Court only in limited circumstances and, in particular, only where there is no adverse impact on the workload of the Children's Court. This amendment is supported by both the Chief Magistrate and the Chief Judge of the District Court.

Schedule 1.6 to the bill makes amendments to the Civil Liability Act 2002. Firstly, it amends part 2A to provide that, in an action against a protected defendant for the award of personal injury damages where the act or omission that caused the injury or death was a tort—whether or not negligence—of a person for whose tort the protected defendant is vicariously liable, a court cannot award exemplary or punitive damages or damages in the nature of aggravated damages. This amendment ensures that offenders in custody are treated the same way as other citizens under the Act, who are unable to obtain exemplary, punitive or aggravated damages for personal injuries in negligence actions, or in actions in tort—whether or not for negligence—against a person who is vicariously liable for the tort of another. Secondly, the bill amends part 2A to allow a court to determine claims under part 2A "on the papers", that is, without conducting a hearing. If the court is satisfied that the interests of justice require otherwise then a hearing will be held in the presence of parties. The intention for not holding a hearing is to minimise trauma and expense for victims. New section 26X is inserted.

Schedule 1.7 to the bill amends section part 9 of the Civil Procedure Act 2005 to allow proceedings to be transferred between the Supreme Court and the Industrial Court in appropriate circumstances. This amendment is the first of three amendments contained in the bill identified by the Industrial Relations Commission to, firstly, assist its transition to the Uniform Civil Rule regime, which began in the Industrial Relations Commission earlier this year, and, secondly, assist in transferring the jurisdiction of the Chief Industrial Magistrate to the Industrial Court. In practice, such transfers are not likely to occur often, but the provisions will provide a formal mechanism for this to occur.

Schedule 1.8 to the bill amends schedule 1 of the Criminal Procedure Act 1986 to increase the maximum property value for break and enter offences, dealt with summarily by the Local Court under chapter 5 of the Criminal Procedure Act 1986, from \$15,000 to \$60,000. The current limit has remained unchanged for more than 20 years and does not reflect the proper relationship between the seriousness of the crime and the sentencing level. This issue was considered by the Sentencing Council as part of a reference the Government made in December 2010 asking the council to examine the relative merits of increasing the sentencing powers of the Local Court. The Sentencing Council recommended the increase, highlighting in its letter of support that it will:

... ensure the continued disposal of appropriate break and enter offences in the Local Court, with the concomitant benefits in terms of the efficient allocation of resources.

The Chief Magistrate and Chief Judge of the District Court also support the amendment. Schedules 1.9 and 1.13 to the bill amend the District Court Act 1973 and the Local Court Act 2007 to allow a Chief Magistrate to also hold a commission as a District Court judge. This will enable a District Court judge to be appointed as Chief Magistrate while continuing to hold a commission as a District Court judge. It will also enable anyone who has been appointed as Chief Magistrate to also be appointed as a District Court judge. The provisions will enable a Chief Magistrate who is also a District Court judge to exercise the jurisdiction of the District Court if requested by the Chief Judge of the District Court, but not in relation to an appeal from any decision made by the Chief Magistrate in his or her capacity as a member of the Local Court. This reform recognises the significance of the Local Court within the New South Wales court system and the important leadership role of the Chief Magistrate. Affording the status of District Court judge on the Chief Magistrate is another step in the evolution of the Local Court and will further enhance its standing.

Schedule 1.10 to the bill amends the Industrial Relations Act 1996 to allow the President of the Industrial Court to authorise the Industrial Registrar or another officer to exercise criminal and non-civil functions. This is the second amendment requested by the Industrial Relations Commission to assist its transition to the Uniform Civil Rules regime. It appears this amendment was overlooked in earlier amendments incorporating the provisions of the Civil Procedure Act into the Industrial Relations Act. Schedules 1.11 and 1.14 to the bill amend the Land and Environment Court 1979 and the Supreme Court Act 1970 respectively to allow Supreme Court judges to act as Land and Environment Court judges, and vice versa.

An arrangement may take place for a given period or for particular proceedings with the consent of the judge in question and his or her head of jurisdiction and the certification of the other head of jurisdiction that to do so is expedient. This will help ensure greater flexibility in the operation of the courts and builds on provisions in the Civil Procedure Act 2005 allowing the transfer of proceedings between the Land and Environment Court and the Supreme Court, as the circumstances require. The amendments may also reduce the need for acting judges by enabling each court to utilise judges available in the other court. Finally, it will encourage the sharing and transfer of expertise, knowledge and skills between these two courts, which will benefit the judicial officers, court users and the court system at large.

Schedule 1.12 to the bill makes two amendments to the Legal Profession Act 2004. The first amendment inserts a new section 302B to provide that the goods and services tax [GST] referable to the provision of legal services is to be taken into account when making or reviewing a determination of the legal costs payable for the provision of those services. This amendment aims to address the recent Court of Appeal decision in *Boyce v McIntyre*. This amendment will extend to any application for the assessment of costs made, but not determined, before the commencement of the section. However, it will not extend to any application for a review of, or an appeal against, an assessment of costs by a costs assessor if it was determined by the costs assessor before the commencement. The Law Society of New South Wales and the New South Wales Bar Association have been consulted in the development of this amendment.

The second amendment in schedule 1.12 is the third and final amendment requested by the Industrial Relations Commission. It amends section 329 of the Act to allow for fixed costs in the Industrial Court for small claims matters. This amendment is designed to limit professional costs that can be recovered for small claims matters under the Industrial Relations Act 1996. This is to ensure that when the Chief Industrial Magistrate jurisdiction is transferred to the Industrial Court, parties will not be subject to a higher costs regime than previously existed in the Chief Industrial Magistrate jurisdiction. Schedule 1.15 to the bill amends section 80 of the Victims Support and Rehabilitation Act 1996 to correct an error in the formula used to adjust the victims compensation levy for increases in the consumer price index. The amendment will apply only to levies imposed after 1 July this year.

The bill addresses a number of issues relating to the smooth and effective running of courts and tribunals in New South Wales. The amendments contained in the bill have been the subject of thorough consultation with key stakeholders, including the Chief Justice of the Supreme Court, the Chief Judge of the District Court, the Chief Magistrate, the President of the Industrial Relations Commission, the Law Society of New South Wales and the New South Wales Bar Association. I commend the bill to the House.

**Debate adjourned on motion by the Hon. Don Harwin and set down as an order of the day for a future day.**

## **BUSINESS OF THE HOUSE**

### **Postponement of Business**

**Government Business Order of the Day No. 3 postponed on motion by the Hon. Penny Sharpe.**

**RESIDENTIAL TENANCIES BILL 2010****Second Reading**

**The Hon. PENNY SHARPE** (Parliamentary Secretary) [11.41 a.m.], on behalf of the Hon. Peter Primrose: 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 Residential Tenancies bill 2010, which will modernise and reform the existing tenancy laws.

The structure and composition of the residential rental market in New South Wales has significantly changed since the current laws were developed more than 20 years ago. Families and older people are now a much bigger part of the rental market. Shared households are becoming increasingly common and many tenants now rent for their entire lives, compared to the past when renting was often seen as just a stepping stone into home ownership.

About one-third of New South Wales households are currently living in approximately 800,000 rental properties. This figure will only grow in the years ahead as our population expands.

The changing rental market means that it is becoming increasingly important to make sure our tenancy laws are up to date, that they are unambiguous, and that they are responsive to the needs of the community. We need a regulatory regime that reduces unnecessary costs, promotes equity and supports the future provision of rental housing in New South Wales.

Members will be well aware that the tenancy laws have been under review for some time, with a view to replacing the current laws with more contemporary legislation. The review began in July 2005 when an Options Paper was released by one of my predecessors, the Hon John Hatzistergos, and I commend him for starting this much needed reform process.

The rental market is today regulated by two separate pieces of legislation: the Residential Tenancies Act 1987 and the Landlord and Tenant (Rental Bonds) Act 1977. These Acts have remained largely the same, and are no longer the best way to regulate modern residential tenancy relations in New South Wales.

A lot has changed since the 1970s and 1980s, and the rental property market has not been immune to these changes.

- Rents are now paid mostly by electronic means, not by cash or cheque as they once were.
- Tenancy databases are a relatively new phenomenon. In the 70s and 80s the main way to check a tenant's rental history was to phone the former landlord or agent. Security, safety and water conservation are much more topical issues now than they were in the past.
- Tenants are staying in the same rental property for longer. The average length of a tenancy has increased from around 18 months in the mid 80s to twice as long today.
- Most mum and dad investors own only one or two rental properties and the majority now choose the services of a professional agent to manage the tenancy rather than do the work themselves.

It is essential that the law regulating this area reflects current market practices and is ready to stand the test of time in the 21st century.

This Government wants to see landlords being able to manage their investments in a way that optimises their returns. At the same time the Government wants to see tenants having access to suitable rental accommodation and being able to make informed choices about where they live, how long they live there, and what exactly they are paying for.

We want landlords and tenants to be clear about their rights so they are empowered to enforce those rights. We want landlords and tenants to take a responsible approach to their obligations to each other, to the people they share their homes with, and to their neighbours and the wider community. We want to see a rental market that is efficient, responsive, and well informed. This bill enables that vision.

The bill strikes a fair and equitable balance between the often competing interests of landlords and tenants. The reforms embodied in the bill are aimed at the clear need to bring the current law up to date, which is acknowledged by all sides. Even the harshest critics of the bill concede that the law in many areas is in urgent need of reform.

There is an old saying that all landlords are not devils and all tenants are not angels. This bill protects those who do the right thing from those who would not, whether they are tenants or landlords. It is about striking a balance.

The bill has been developed following a long period of extensive community consultation.

There have been no fewer than three major rounds of public consultation during the course of the review.

As I have mentioned, it began with the release of an Options Paper in July 2005 which identified the key issues for discussion and possible reform alternatives. Close to 100 submissions were received in response to the Options Paper.

The next public stage of the review came in September 2007 with the release of a report titled 'Residential Tenancy Law Reform—A New Direction'. The Report outlined more than 100 reform proposals. Feedback from over 1600 individuals and groups were received in response to the New Directions report. This consultation directly led to changes and refinements being made to a number of the reform proposals.

The third stage of the review saw a Consultation Draft bill released in November last year. Over 350 landlords, tenants, agents and other interested parties have taken the opportunity to let the Government know what they thought of the bill. While support for various provisions differed according to the perspective of the person making the submission, hundreds of suggestions for how the bill could be improved were received and many of these have been adopted in the final bill.

In addition to the public rounds of consultation, there have also been at least 20 meetings since 2005, either at a Ministerial or Departmental level, with key interest groups, including the Tenants' Union, the Real Estate Institute, and the Property Owners Association to discuss the reform proposals.

It cannot be said that the Government has failed to adequately consult on these long-awaited reforms. Where sound policy arguments have been put forward in a constructive manner, the Government has taken these on board and amended the bill accordingly. Changes have also been made to the bill to address any unintended consequences that have been identified.

This type of complex legislation, which affects so many people given that almost everyone in the community is a tenant or landlord at some stage of their lives, will always have critics. Landlords and agents will always say that the law goes too far while tenants will say that the law does not go far enough.

The Government believes that any fair reading will show that the bill contains a balanced and appropriate set of measures that will even-handedly update the regulation of the rental market.

Many of the provisions of the bill have simply been carried forward from the existing legislation. Other provisions have been developed, having regard to effective legislation from interstate and internationally and, importantly, in response to suggestions from tenants, landlords and the real estate industry.

Arguments can always be made about why now is not a good time to make changes to the tenancy laws. The rental market moves in a cycle. Some years there is a glut of rental properties and tenants have the upper hand. At other times like now, when the vacancy rate is lower, it can be difficult to find a place to rent in some areas.

It seems that no matter where we are in the rental cycle the same cry is heard from real estate industry lobby groups and their supporters on the other side ... who say

"making changes to the tenancy laws will drive away landlords push up rents which will, in turn, hurt tenants".

If we had listened to these doomsayers before we would still have the old feudal laws from the 1800s. You only have to look at the history of the existing laws to see how wrong these claims can be.

In 1977 when 'Mr Consumer Affairs', the Hon. Syd Einfeld, first introduced the Rental Bond Board, the Coalition vehemently opposed the bill claiming it would result in a lack of rental properties being built. They argued that 'within 12 months bonds will disappear because neither tenants nor landlords will want to be involved in the inevitable red tape that will follow from the vesting of this money in a Government bureau'. According to the Opposition at the time, in place of bonds landlords would simply increase rents by twenty per cent. The Opposition came to this conclusion having been taken in by a scare campaign run at the time by the Real Estate Institute and the Property Owners Association.

Were the critics right back in 1977? Did the practice of charging rental bonds disappear? No. Every tenant today still pays a rental bond and having bonds held by the independent Rental Bond Board has been a very successful initiative.

Similarly, the Coalition opposed the introduction of the current Residential Tenancies Act in 1987. The Opposition at the time said 'it will frighten investors out of the rental market, until there are absolutely none left'. The 'appalling legislation', according to the Opposition, would 'devastate the fragile private rental market, which will wither away as landlords take their money and invest elsewhere'. Again, a fear campaign based on misinformation and untruths was run in the media. It is important to remember that in 1987 the vacancy rate was historically low at 0.6 per cent, a rate almost three times worse than it is claimed to be now.

However, with the benefit of hindsight we can all see that the scaremongering campaign whipped up 1987 was wrong and the dire predictions for the rental market never eventuated. Figures from the Rental Bond Board show an increase of more than 10 per cent in the total number of properties rented in the year or so after the current laws commenced. It was not long before the rental cycle had fully turned and prospective tenants were being enticed with offers of free rent and Gold Coast holidays. Today there are more than twice as many rental properties in New South Wales as there was back then.

The Opposition has again fallen prey to industry scaremongering with wild claims that the bill, if implemented, will lead to landlords fleeing the State. Ironically, the Opposition now wishes to cling to some of the provisions from the 1987 Act they were so against at the time.

There might be some validity in their argument if most of the reforms were pro tenant or the bill was generally biased in favour of tenants. But that is clearly not the case. The Government has gone to considerable effort to ensure this bill contains a balanced set of measures, which are not tilted towards either side.

There are numerous reforms in the bill which address the concerns of landlords. The number one issue for most landlords is the time it can take to evict a tenant who stops paying their rent. It can result in a significant financial loss for those affected and can particularly hurt landlords who rely on rent to meet their mortgage commitments.

Currently, most eviction notices are mailed which means four additional working days must be allowed for delivery time and applications can only be made to the Tribunal once the eviction notice runs out. This bill will cut up to 3 weeks from the current process by enabling landlords to serve notices directly to the tenant's letterbox and apply to the Tribunal for a hearing at the same time as serving notice.

The Tribunal has also been given broader powers to overlook minor errors in the content or service of notices. This will prevent landlords from having to start the whole eviction process over again because of a simple mistake.

The second major criticism of the current law from landlords is the lack of certainty when they want to get their property back after the lease has expired. Presently, if the landlord seeks an eviction order from the Tribunal the 'circumstances of the case' must be considered. If the tenant can mount a good enough argument the Tribunal has the power to refuse to make an eviction order. The bill removes this discretion and makes it certain that the Tribunal must grant an eviction order if the lease has expired and proper notice has been given. This is a major win for landlords.

There are numerous other provisions in the bill which address the concerns of landlords too many to mention them all ... but among them are:

- a new streamlined process to deal with goods left behind when a tenant moves out, which will reduce red tape and compliance costs. Landlords will no longer have to put an ad in a newspaper about unclaimed goods or pay to have them moved and stored for 30 days.
- Extra grounds for gaining access to the rented premises have been added.
- The bill extends the time period for landlords and agents to lodge a tenant's bond.
- Disputes about the accuracy of condition reports will be able to be taken to the Tribunal at the beginning of a tenancy rather than left to fester until the tenancy ends.
- New grounds on which a landlord may seek immediate termination have been provided.
- The bill will limit the capacity of tenants to recover compensation from the landlord following a break-in if they have previously failed to raise concerns about the security of the premises.
- Specific provision has been made for landlords to recover costs from tenants such as replacing lost keys and bank fees for bounced cheques.

Sometimes landlords who go to the Tribunal can find rent increase notices from years ago being trawled over and the slightest mistake can result in them have to repay thousands of dollars to the tenant. The bill will put an end to this unjust situation with tenants only being able to contest errors in notices from the last twelve months.

Of course, as well as these many benefits for landlords, the bill will improve and clarify the laws as they apply to tenants. For example, this bill will:

- tighten the regulation of bad tenant databases to make them fairer
- provide more protections and certainty for victims of domestic violence
- ensure tenants are given at least one free and easy option to pay their rent rather than being charged an extra fee for the privilege

These are only a few examples that will make life easier for tenants, but the most significant reforms in this bill are actually specifically designed to improve outcomes for both tenants and landlords.

One of the provisions that has attracted a lot of attention is section 75, under which tenants will be able to sub-let part of the property such as a spare room or an unused garage or change one of the named tenants on the lease for example, if the relationship between flatmates breaks down. There has been a well orchestrated misinformation campaign suggesting that tenants will be able to sublet without asking or even telling the landlord. That is simply not correct.

The bill continues the current requirement for tenants to obtain the landlord's consent before making such arrangements. The bill retains the existing control of landlords over sub-letting the whole property. In terms of partial sub-letting landlords will still have the right to say 'no' if they have a reasonable objection. As most landlords are reasonable people this should not present any major hurdles. All other States in Australia require landlords to be reasonable about any sub-letting request, not just subletting part of the premises as we are proposing in this bill.

The Government does not believe, in 2010, with shared households increasing, it is appropriate that landlords have an absolute and unchallengeable right to decide who their tenants can live with.

Having said this, the Government has listened to those who asked for more clarity about what is meant by 'reasonable' in these situations. Section 75(3) has been inserted into the bill to make it clear, for instance, that it would be reasonable for a landlord to reject a request if it would exceed the number of occupants permitted by the landlord under the lease, result in overcrowding, or if the person is listed on a 'bad tenant' database.

Another area of the bill which has attracted comment in the media and elsewhere is Division 6 of Part 3. This deals with tenants' requests to add a fixture or make a minor alteration to the premises. Let me be clear that tenants will still have to obtain the landlord's consent before making any alterations—as they do now. Any failure to do so will still be a breach of the lease.

The types of minor changes intended to be covered by this provision include:

- window safety measures for young children so they don't fall out;
- extra security features such as a deadlock on the front door; installing a grab rail in the bathroom to assist elderly occupants or tenants with a disability;
- getting a home phone or internet cable connected;
- hanging a picture in the living room or planting some flowers in the garden.

Remember, we are talking about minor changes that tenants are willing to organise and pay for themselves to improve their living conditions. Currently such requests can be unreasonably refused leaving no right of appeal for the tenant. Having a more balanced approach to this issue will encourage more tenants to do the right thing and ask up front, rather than making the change without seeking consent for fear of refusal.

The bill will not give tenants a licence to do what they like to the property despite the scare campaign from those opposite who claim tenants will be able to cement the garden, rip out the kitchen or add an extra room out the back all without landlord or council approval. This is simply not true.

The bill makes it absolutely clear that a landlord is well within their rights to refuse any request if it would involve structural changes, if it is inconsistent with the nature of the property, if the change would not be reasonably capable of rectification, repair or removal, or the work is prohibited under any other law. Furthermore, tenants can be required to make good at the end of the tenancy or compensate the landlord for the costs involved if the work is not done to a satisfactory standard or is likely to adversely affect the landlord's ability to let the premises to other tenants.

In submissions to the Consultation Draft the main area of concern raised by landlords and agents related to cosmetic changes, and in particular painting. It was suggested that tenants, if they do the work themselves, may not paint to an acceptable standard or may use a colour scheme that would not be palatable to future tenants or buyers forcing landlords to incur considerable cost and effort in rectifying the work.

In response to these legitimate concerns, the Government has omitted the word 'cosmetic' from the bill and added internal or external painting to the list of requests that it would not be unreasonable for a landlord to refuse.

After sub-letting and alterations the third major area of concern identified by landlords related to the proposed 'break fee'. The 'break fee' is a set penalty payable by a tenant who breaks their lease early. The intention here was to provide a simpler means for resolving the parties' obligations when a lease is broken, thereby providing certainty for both tenants and landlords, and removing these disputes from the Tribunal. When added to the high cost of relocation, a break fee would ensure that tenants did not make a decision to walk away from a lease lightly.

Some submissions from landlords supported the proposal, correctly observing that, in many cases, they would benefit from the outgoing tenant paying a break fee while the new tenant paid rent as well. Under the current legislation this is not possible, as the former tenant can only be charged until the new tenant takes over. Having a break fee would remove restrictions on landlords over the re-letting process. It may also reduce the incidence of tenants simply packing up and disappearing or ceasing to pay their rent as a way of getting out of the lease.

Other landlords submitted that a break fee would undermine the purpose of having a lease. It was considered that, while the break fee proposal may benefit some landlords, it may hurt landlords with hard to rent properties or those in the upper end of the market.

In order to accommodate the differing views about the merits of the break fee proposal, the bill has been refined to make 'break fees' optional. The parties can agree to have a break fee term in their lease if they wish. Landlords who do not see any merit in the break fee proposal can choose not to include a break fee term in the lease, in which case, the current law—that a tenant who breaks a lease is liable to compensate the landlord for any loss, with the landlord having an obligation to mitigate those losses—will continue to apply.

A number of landlords and agents also expressed concern about the proposed extension in the bill of the notice period from 60 days to 90 days if tenants are asked to vacate after their lease has expired. On the other hand, tenant groups argue that even 90 days is too short, especially in a tight rental market like we have now, and some suggest landlords should not be able to give notice without a reason. This is an example of the competing interests I mentioned earlier.

The Government believes that 90 days is a fair and reasonable period of time for tenants who have done nothing wrong in which to try to find suitable and affordable alternative accommodation. It is the same period they have in South Australia. A number of other jurisdictions have even longer notice requirements.

It is illogical to look at the 21 days notice required from tenants who wish to vacate and say that the bill is biased because this number is not equal with the notice landlords have to give. They are completely different situations.

All the landlord has to do is advertise the availability of the premises. Tenants, on the other hand, will need to move out of their home. They will need to find the money to pay for their moving costs, look for and find alternative accommodation and then make arrangements for all of their goods and belongings to be packed up and moved. If they have children, they may also need to find a new school.

Under the existing laws landlords have to specify a precise day for the tenant to vacate. Many tenants simply wait until after that day comes and goes before they start looking for another place, because if they leave any earlier they have to give their own

notice or pay double rent. The bill will address this issue by giving tenants the flexibility to move out at any time during the notice period. This will encourage tenants to look for a place as soon as possible, meaning that many landlords may get their property back well before the 90 days runs out, or even before the existing 60 days, reducing the need for a tribunal hearing.

A further claim from real estate industry groups is that the bill somehow opens the door to the possible reintroduction of rent control. The Government does not accept that this is the case, given that the excessive rent provisions largely mirror those in the existing legislation and in other States. Nevertheless, to remove all doubt, a provision has been added to the bill making it abundantly clear that the income of the tenant or their ability to afford a rent increase are not relevant factors for the tribunal to consider in deciding whether or not a rent increase is excessive.

Some submissions drew attention to what they saw as a proliferation of penalty provisions in the draft bill. This largely resulted from the bringing together of the penalty provisions from the two existing Acts. Naturally, there will always be more offence provisions against landlords, as tenants who do the wrong thing are usually penalised by being evicted and there is no need to impose further penalties on top of that. However, upon further review a number of penalties have been reduced and a number of other proposed offences have been taken out altogether as they are no longer seen as necessary.

Those matters I have just outlined address all of the major issues identified by some landlords and agents during the public consultation period. It would be wrong to try to imply that all landlords and agents are opposed to the reforms. Positive feedback has been received from a number of landlords and agents who support what the Government is trying to do.

This bill contains a range of measures to improve the rights of tenants, who include some of the more vulnerable members of our community.

Part 11 of the bill will tighten the regulation of "bad tenant" databases. Any person listed on a tenancy database faces great difficulty in being accepted to rent a property. Such listings should, therefore, not be made lightly or for frivolous reasons. Importantly, Part 11 of the bill will, for the first time, give the tribunal the power to determine disputes and make orders in respect to listings.

Currently, tenants have nowhere to go if they believe they have been wrongly or unjustly listed on such a database. Tenants who are knocked back when applying for a property because of a listing will need to be told how they can go about finding out what the database says about them.

Part 11 has been based on uniform provisions developed in conjunction with all other Australian jurisdictions in recognition of the fact that tenancy databases operate across borders.

The bill will also, for the first time, introduce provisions to deal with disputes between co-tenants. One co-tenant will be able to give notice to the other co-tenant and the landlord to have their name taken off the lease if they decide to move out. Under the current laws they can remain legally liable for anything that goes wrong even years later. Victims of domestic violence in rental properties will have the right to take action to secure the premises and to seek to take over the tenancy if their name is not already on the lease. Currently, the law protects the perpetrator of the violence if they are the tenant not the victims and this is clearly an unjust situation in need of reform. These changes have been particularly welcomed by domestic violence advocates.

The bill will also guarantee the continuation of a tenancy where a tenant, having fallen behind with the rent, then catches up or complies with an agreed repayment plan. This is designed to help genuine tenants who encounter temporary financial difficulties. The current law says the opposite payment of rent once notice has been served does not prevent eviction action from continuing.

This is in nobody's best interest. It provides no incentive to tenants to try to do the right thing and pay what they owe, leaving landlords with a large debt with little chance of recovery. Tenancies which can be salvaged should be. A guarantee of continuation will reduce unnecessary terminations and homelessness.

However, the bill has been amended in response to suggestions that it could be open to abuse by unscrupulous tenants deliberately waiting until the last minute repeatedly to pay their rent. The bill now gives the tribunal the power to overrule the continuation guarantee where the tenant shows a flagrant or habitual disregard for their obligation to pay rent on time.

Section 35 will require tenants to be given at least one free and easy option to pay their rent, in response to the increasing use of third party rent collection agencies imposing fees on top of the rent. This is becoming a major concern for many tenants who are often given no choice but to pay by the method which incurs the extra fee.

Section 39 of the bill will require rented premises to contain water efficiency measures before tenants can be asked to pay for water usage. This has been modelled on the Queensland tenancy laws. As tenants pay for the water they use the Government believes it is only fair and reasonable that landlords ensure that taps, showerheads and other water fittings in the property are efficient and are not wasting water at the tenant's expense. The bill provides a 12-month transitional period for existing landlords to get any necessary work carried out.

This reform reinforces the Government's commitment to water conservation, particularly when a large part of the State remains in drought. It will not impose a significant cost on landlords. While the efficiency standards will be set by regulation, it is envisaged that Sydney Water's Waterfix service, costing only \$22, would be sufficient to make rented premises "water efficient".

Division 2, part 6 of the bill will ensure that any personal documents that are left behind by a tenant at the end of a tenancy, such as photographs and passports, are not simply disposed of by the landlord because they are of no monetary value. While other goods can be more easily replaced this is clearly not the case with personal documents, some of which may be of huge sentimental value to the former tenant. The bill requires that such documents be kept in a safe place until reclaimed for up to 90 days.

The bill will also reform and modernise the laws surrounding reservation fees, or what are called in the bill, "holding deposits". Section 24 of the bill ensures that multiple holding deposits cannot be taken from prospective tenants for the same property. The



bill will also put an end to the practice of taking such fees from people who may not have even looked at the property or formally applied. Holding deposits will only be able to be accepted once the premises can be truly reserved when the application for tenancy has been approved by the landlord.

These are only some of the main changes in a significant reform package which the Government believes will benefit both tenants and landlords now and well into the future.

The bill is predominantly about modernising and streamlining the existing laws and addressing areas of common dispute. It is the first comprehensive revamp of the laws in more than 20 years.

In the last financial year there were almost 45,000 tenancy matters heard by the Consumer, Trader and Tenancy Tribunal. While this figure was down some 13 per cent on the previous year, tenancy applications still make up the bulk of the tribunal's workload, accounting for 75 per cent of all applications.

There will always be disputes between landlords and tenants ... that is simply the nature of the rental industry. The bill seeks to provide greater clarity and certainty on a wide range of issues including, reasonable security, access for sale purposes, the fees and charges payable by tenants, bond claims and what cannot be put in a lease. This will help to reduce disputes in these areas.

I would like to thank all individuals and groups who have taken the time to have their say during the course of the review, including the Tenants' Union, Real Estate Institute, Property Owners Association, the Law Society of NSW, the Legal Aid Commission, Shelter NSW, the Federation of Housing Associations, the Combined Pensioners and Superannuants Association, Housing New South Wales, the Property Council of Australia, EAC Multilist, the NSW Council of Social Services, individual Tenant Advice and Advocacy Services, the Consumer, Trader and Tenancy Tribunal and many others.

The bill is a positive demonstration of the Keneally Government's commitment to improving the lives of the people of New South Wales.

I commend the bill to the House.

**The Hon. JOHN AJAKA** [11.42 a.m.]: I lead for the Opposition on the Residential Tenancies Bill 2010, which amends the Residential Tenancies Act 1987 and the Landlord and Tenant (Rental Bonds) Act 1977. At the outset I indicate that the Opposition does not oppose the bill. The main objects of the bill are to provide for the rights and obligations of landlords and tenants. The bill also makes provision for rental bonds and related matters.

It is imperative that a proper balance be found and delivered to the two main stakeholders when it comes to issues relating to residential tenancies. Those two stakeholders are, of course, the tenant or tenants and the landlord or landlords. We are all aware that both stakeholders are entitled to appropriate protection and both should be bound by appropriate obligations. The operative word is "both". Neither should have any unfair advantage over the other. On many occasions, over many years, I have been either a tenant or a landlord in respect of residential property. I am well aware of the concept of fairness in respect of the rights and obligations of either role, and in my role as a solicitor for more than 20 years I became aware of problems faced by both types of stakeholders.

The bill is the first major reform to residential tenancies that has been brought on by this Government in the entire period of its tenure over the past 15 years. Notwithstanding the fact that no prior action had been taken by the Government, this bill was suddenly rushed through in haste, without giving anyone an opportunity to properly consider the provisions of the bill and the effects of same, remembering that the main aim is to find an appropriate balance between the two main stakeholders—what is fair in the circumstances.

Worse still, without any real prior consultation the Government presented a draft bill that was so erroneous and so ill-conceived that numerous changes were made to produce the bill we are looking at today. Clearly, the draft bill had failed to properly consider or take into account the very severe adverse impact on at least one stakeholder—the landlord—and in some cases even the other stakeholder, the tenant. The conditions in the draft bill were so unreasonable to landlords that it was evident to all but the Government that the Government had failed to understand the consequences that would have flowed from its ill-conceived draft bill. This just demonstrates what happens when a draft bill is rushed through without proper consultation with all of the stakeholders. It is interesting that the Government publishes a draft bill and then awaits a response and starts to consider consulting stakeholders. I believe it was best stated by the shadow Minister for Fair Trading, Greg Aplin, in the other place:

I have two salutations to deliver to the Government: the good news and the bad news. First, the good news. I thank the Government for making so many fundamental changes to this bill. I thank the Government for listening to what stakeholders have argued for and to the arguments raised by the Opposition through what the Minister has termed its "scare campaign". I am pleased that the Government has so diligently taken note. However, the second salutation is more pointed. I must admonish the Government for wasting the time of so many people with its draft bill. What was the Government thinking when it released that document?

There are numerous provisions in the bill, and they are well summarised in the explanatory note at the front of the bill—all 19 pages. The provisions of the bill, and their effect and impact on stakeholders, were also well covered by the shadow Minister, Greg Aplin, in the other House. Accordingly, I will not canvass each and every provision of the bill but refer members to the explanatory note and to the speech of Greg Aplin.

I propose to speak briefly on a number of the provisions outlined by the shadow Minister in the other place, and there are a number of issues. On the issue of professional cleaning, while a lease can no longer include a term making professional carpet cleaning mandatory at the end of a lease, a new section 19 (3) will apply when the landlord permits that tenant to keep an animal on the premises. However, that means there can be a requirement for professional carpet cleaning when the landlord has approved the keeping of a pet by the tenant, but not when the tenant has kept a pet without informing the landlord or seeking approval. The Government should look at this possible inconsistency.

Under proposed section 33 (3) a landlord cannot appropriate rent to any other purpose, but the landlord is then placed in a difficult position when a tenant owes money other than rent—such as for making good a minor alteration—and refuses to pay. Again, this is something that the Government should look at. Paragraphs (c) and (d) of proposed section 51 (3) add that the level of cleanliness required on vacating premises is having regard to the condition of the premises at the commencement of the tenancy. Sections 70 to 73 place new obligations on landlords to provide secure premises. The test is "reasonably secure" and is defined in proposed section 191, but without reference to items such as alarms, bars or whatever this might mean. The obligation therefore remains uncertain.

In proposed section 53 a limit of two times per week has been inserted, with notice not less than 48 hours required by a landlord to advise that an inspection is to be undertaken by a prospective purchaser wanting to view leased premises when they are placed for sale. This is an example of a far more desirable provision than was originally provided for in the draft bill, which required only 24-hours notice and there was absolutely no limit on the number of inspections. I quote further from the speech of Greg Aplin:

By section 26 (4) the landlord must give the tenant an approved information statement, currently the renting guide prepared by the Office of Fair Trading. The landlord must ensure the tenant has a written agreement at commencement of the agreement—by section 14 (1)—and the lease may be in a standard form prescribed by the regulations under section 22 (a). However, section 27 (1) compels a landlord, even where there is a managing agent, to provide the tenant with personal contact details such as their phone number. The point of having an agent is to place separation between landlord and tenant. Tenants, too, do not want to be compelled to give their phone numbers or email addresses direct to their landlord as a means for communication. This provision of proposed section 27 (1) should be amended to be voluntary.

Some provisions in the bill are designed primarily to benefit the landlord. Let us look at defects in termination notices. First, it is appreciated that by the amendment of section 113 (b) the tribunal can make a termination or other order even though there is a defect in a termination notice, or in the manner of service, given either by tenant or landlord, provided the recipient of the notice has not suffered any disadvantage because of the defect, or service, or where the defect can be overcome by an associated order of the tribunal. It is helpful that there is now clear power to fix minor procedural defects and not send the parties back to the start again. The application of this principle will be improved if the Government amends section 113 further, replacing the word "and" with "or" where it falls between subclauses (a) and (b), so that a notice or service defect can be remedied by the Consumer, Trader and Tenancy Tribunal because the member thinks it appropriate to do so in the circumstances of the case or where no disadvantage will be suffered. I recommend this amendment to the Government.

Proposed section 88 (4) provides that a landlord may, under this section, apply to the tribunal for a termination order before the termination date specified in a non-payment termination notice—the 14 days minimum notice period required. Proposed section 96 (1) says such termination by the tenant can take effect only on or after the end of the fixed term. Proposed section 107 sets out a procedure that reinstates the traditional position that a defaulting tenant is liable for compensation to the landlord for any loss, including loss of rent, to the end of the fixed term, as agreed, with a positive obligation on the landlord to take steps to mitigate the loss. A break fee is invoked under proposed section 107 (3) only if the agreement provides for such a limitation. Proposed sections 74 and 75 provide that it will not be unreasonable for a landlord to withhold consent to sub-letting that would increase the number of occupants or otherwise result in overcrowding of the premises. The new provision in proposed section 75 (3) (b) notes that it will be reasonable for the landlord to reject a sub-tenant who is listed on a tenancy database.

Under proposed section 159 the bond is limited to four weeks rent. Under proposed section 24 (1) (b), for the protection of tenants at last there is a limit on the holding fee—it must not exceed one week's rent. However, proposed section 24 (1) (a) says the agent or landlord must not require or receive from a tenant a holding fee unless the tenant's application for tenancy has been approved by the landlord. Again I quote the shadow Minister, Greg Aplin, in the other place:

Just how do people get their tenancy applications approved by the landlord on the spot on a Saturday? If people want the property as their home but need to check with their partner before signing up and committing, this new arrangement leaves them out of the

game. If they cannot complete an application and have it approved by the landlord, then the agent cannot lawfully take a holding fee and will move on to the next applicant. This procedural problem must be fixed. The alternative is that the person and their partner will have to go out home hunting together. By the way, they should make sure the landlord is available to check references too.

One of the problems is that, firstly, the draft bill was ill-conceived. There were numerous problems with it and it is an admission by the Government of those problems that the bill now before us has had many of those provisions removed. There should have been appropriate consultation with stakeholders before the finalisation of the draft bill to ensure that the problems did not occur. Landlords, in particular, and tenants should not have been faced for a considerable period of time with the dilemma and the fear that those provisions in the draft bill would come into effect. As indicated, the Opposition does not oppose the bill.

**Ms SYLVIA HALE** [11.55 a.m.]: The Greens support the Residential Tenancies Bill 2010. Indeed, we are very pleased that the bill is finally before the Parliament as the original legislation has not had a thorough review since its enactment in 1987. Clearly, times have moved on since then. The bill before us today is the culmination of a very lengthy review process whereby submissions were called for and received. The final stages of the review process have been somewhat glacial and have been going for the past five years or so. There was a continual revolving door of fair trading Ministers, which I suspect contributed to slowing the process considerably. We were told the bill would be before us the year before last, then last year and, finally, this year. I congratulate the current Minister for Fair Trading, Virginia Judge, on achieving what her predecessors could not. She has delivered this long-awaited bill, and we recognise the effort put in by the Minister and her staff.

Both tenants and landlords will be well served by the bill. It is a genuinely fair piece of legislation and the Greens believe the final version before us today is essentially very satisfactory. The Government has listened to those making submissions and has tweaked the draft bill before producing the final version. The bill does not cave in to the dire warnings of imminent disinvestment coming from the Real Estate Institute of New South Wales. Perhaps we can compare the reaction of the institute to that of the mining multinationals to the resource profits tax. They love predicting gloom and doom and the sky falling in as soon as a minimum of sharing or fairness is asked of them. The Minister in her speech in the other place referred to previous examples of scaremongering from the Opposition and the real estate lobby when the Residential Tenancies Act was introduced in 1987. Of course, none of the apocalyptic predictions came to pass. Regulation did not destroy the rental market; in fact, the Residential Tenancies Act has enhanced it because it has provided clear rules and guidelines.

The bill before us modernises the Act and properly recognises that renting, because of increasing house prices and changing styles of living, is a tenancy both of necessity and of choice for one-third of the people of New South Wales. The bill protects tenants' rights while ensuring that landlords can terminate tenancies where tenants breach their obligations. In fact, in the case of rental arrears, landlords will be able to move to terminate more quickly where a tenant does not remedy. On the other hand, tenants are given a chance and if they remedy by paying arrears after having received a notice of termination the tenancy will not be terminated.

The bill contains important reforms that take account of the reality of shared housing arrangements, such as allowing a change in tenants and sub-tenants where a landlord agrees and where there is no good reason to refuse the addition of a person as a tenant or sub-tenant. This makes sense in tenancies where people are moving in and out.

The landlord still has the option to refuse someone who would not otherwise be accepted as a tenant had he or she applied for the tenancy if, for example, he or she had been listed on the bad tenant database, or the TICA. In regard to the database, stricter rules are being imposed to ensure that listings are accurate. Only tenants who have had an order against them whereby the money owed was more than the value of the bond would be listed on these databases. Tenants will have recourse via the Consumer, Trader and Tenancy Tribunal if there is a listing about them that is incorrect or erroneous.

My office met with a representative of one of the database companies and made the point that we need national consistency. Database operators charge \$14.30 to \$15 for express report delivery services, or over the phone it is \$5.45 per minute to call the TICA from a landline. One database operator does not charge at all if the request for information is from tenants themselves and express delivery is not required, but another of the database companies does charge. We need national standards and consistency. The bill tightens up database listing requirements but, as I said, the penalty regime needs to be consistent.

**Pursuant to sessional orders business interrupted at 12.00 noon for questions.**

## QUESTIONS WITHOUT NOTICE

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### STATE EXPENSES GROWTH

**The Hon. MICHAEL GALLACHER:** My question without notice is directed to the Treasurer. Is the Treasurer aware that the average expenses growth from 2006 to 2010 was 8 per cent and that in 2009-10 expenses growth was in fact 9.6 per cent? Given this historic expenses growth, how can the Treasurer claim that a 2.7 per cent expenses growth figure will be achieved in 2010-11? If expenses growth continues to the trend established over the past four years rather than the 2.7 per cent that is now being claimed, how does this Government propose to maintain a budget surplus, or will the Treasurer allow the budget to be plunged into deficit in order to maintain spending in the lead-up to the 2011 State election?

**The Hon. ERIC ROOZENDAAL:** I acknowledge the member's interest in the budget and begin by announcing more good news for the people of New South Wales. Forty-eight hours after I brought down the budget, unemployment figures in New South Wales are 5.2 per cent. The figure for Victoria is 5.4 per cent, the figure for Queensland is 5.5 per cent, the figure for South Australia is 5.3 per cent, and the unemployment figure for New South Wales is 5.2 per cent, which is further evidence of the green shoots of recovery. I am more than happy to respond to the issue of expenses growth.

Let me reflect on what was said in the other House earlier today in the announcement by the Leader of the Opposition, whose plan to deal with the challenges of Sydney's international city is to pay people to leave. He wants to pay people to leave Sydney. Members might be interested to know that he is offering a rebate of \$7,000. It would cost anyone moving to a four-bedroom home in Tamworth \$5,000 and it would cost anyone moving to an average four-bedroom house in Lismore \$7,000. Barry O'Farrell's solution to the challenge of Sydney is to pay people to leave. The amount being offered might just help with people's removal costs. That is the way in which the Leader of the Opposition deals with expenses. On the issue of expenses, last year was a high year for expenses because of the global financial crisis.

**The PRESIDENT:** Order! Opposition members will cease interjecting. I cannot hear the Treasurer's response to the question asked by the Leader of the Opposition.

**The Hon. ERIC ROOZENDAAL:** I must reflect on another aspect of Barry O'Farrell's speech. He has a plan for the assets of New South Wales. His plan is to franchise them. New South Wales is not McDonald's. We will not be part of a plan to franchise New South Wales assets. The 2010-11 budget marked the next phase of building towards the economic future of New South Wales. In recent times the Government has used the strength of its balance sheet to support the economy. Stimulus measures produced a rapid rate of expenses growth in 2009-10—by design—precisely because the Government intended to support the economy and working families economic security.

Our economic circumstances have shifted with the recovery. Having supported the economy, evidenced by today's unemployment figures going down, the 2010-11 budget takes steps to consolidate recovery and to start strengthening our balance sheet. This will be a better position for New South Wales to address future challenges and opportunities. The Government has put in place a number of measures to control expenses and expenses growth, principally, the Better Services and Value Plan and the Better Services and Value Taskforce. Our efforts are delivering better value for New South Wales and, over the year ahead, we will continue our efforts. Of course, technical accounting, or uncontrollable cost increases, can also bounce around the numbers a bit, as they have this year. But the details show that the Government has been very disciplined. Policy discretion expenses grew by just 0.4 per cent in 2009-10, most of which reflects Commonwealth policy decisions about national partnerships, not policy changes in New South Wales.

### COALITION BUDGET RESPONSE

**The Hon. IAN WEST:** My question is addressed to the Treasurer. Will the Treasurer respond to the Coalition's proposal for the New South Wales budget?

**The Hon. ERIC ROOZENDAAL:** Today members of the Opposition responded to the budget that I brought down 48 hours ago, a response that comprised the four "Bs"—Barry's big budget blunders. Today the Leader of the Opposition made a startling number of elementary mistakes. I will begin with the plan of the

Leader of the Opposition to lease the New South Wales desalination plant. His idea is to lease the desalination plant to the private sector for 25 years. He claims that he will get \$1.2 billion and he will take that money and go and spend it elsewhere. The problem is that the Leader of the Opposition took advice from a merchant banker who does not understand accounting standards. Accounting standards would require that all of the debt that was put into the desalination plant to build that plant would stay on the government books.

Barry O'Farrell's budget blunder would increase the debt levels of New South Wales. At a time when governments all around the world and in this country—both sub-sovereign and sovereign—are reducing debt, Barry O'Farrell wants to increase debt for New South Wales. He wants to gorge himself on debt; he wants to go on a debt binge. What would be the result? We would be like Queensland. In Queensland one would need binoculars to see the next time that State received a triple-A credit rating. One would need binoculars to see the next time Queensland had a budget in surplus. Barry O'Farrell's plan for New South Wales would wreck the triple-A credit rating and substantially risk this State paying hundreds of millions of dollars in additional interest rates.

Simple accounting standards state that, if one leases an asset, one must keep the debt on the government books. One would need the income from that lease to pay off the debt. If one spends it on something else one will end up like Queensland or California. I cannot believe that 10 minutes after Barry O'Farrell presented his response there was a \$1.2 billion Barry blunder. Let us talk about the rest of the plans of the Leader of the Opposition. He wants to franchise New South Wales.

**The Hon. Greg Pearce:** Point of order: The Treasurer obviously does not understand the \$1.2 billion of proceeds. If there is debt repaid it allows for further borrowings.

**The PRESIDENT:** Order! The Hon. Greg Pearce will resume his seat. I place the Hon. Greg Pearce on a first call to order.

**The Hon. ERIC ROOZENDAAL:** I acknowledge the member's point of order. He just gave it away!

**The Hon. Greg Pearce:** You couldn't figure it out yourself.

**The Hon. ERIC ROOZENDAAL:** There he goes again. The Hon. Greg Pearce said, "We will use that money to pay the debt and there will be further borrowings." Last year Barry O'Farrell, in his response speech, lectured this Government about the fact that it would never go back into surplus. He lectured this Government about the need to reduce debt. At a time when the rest of the world is reducing debt, Barry O'Farrell is about to launch himself on a debt binge and risk this State's triple-A credit rating. Today Barry O'Farrell clearly said that he would take the proceeds from the leasing of the desalination plant and use it for another fund. Clearly, he did not even realise that there was debt owing on the desalination plant. He does not understand the simple budget requirements. I have with me Australian Accounting Standards Board standard AASB 117. It is about time the Opposition learned about these things. There is no magic pudding. The only magic pudding is that Barry O'Farrell wants to announce \$1.4 billion in procurement savings. We already centralise our procurement. We already have whole-of-government contracts.

**The Hon. IAN WEST:** I ask a supplementary question. Could the Minister elucidate his answer?

**The Hon. ERIC ROOZENDAAL:** These procurements are in place. Another \$1.4 billion in savings cannot just be discovered because someone says they are going to do it. Clearly, the Opposition has no serious financial nous. Opposition members want to go on a debt binge and push this State back into serious debt and risk this State's solid gold triple-A credit rating. Indeed, in last year's speech Barry O'Farrell said the State was in recession. He was wrong. Last year Barry O'Farrell said it would be years before we were back in surplus. He was wrong. This year his announcement on the desalination plant is wrong. This year his announcement to franchise New South Wales assets is wrong. This year his announcement risks the credibility and reputation of this State moving forward.

I am concerned that the best policy the Opposition can announce is a plan to pay people to leave Sydney, which may cover their removalist costs. That is the best plan of the Opposition. The Opposition even endorsed our stamp duty policy. Yesterday that side of the House attacked us. Today Barry O'Farrell endorsed our stamp duty policy and then tried to tack onto the end of it a bit of a change to make it look like someone in the Opposition understands basic economics and the economy of this State. Today the announcement was made that New South Wales has the best unemployment figures, better than many other States. Today the green shoots

of recovery in this State continue. Today we still lead the nation into recovery. All the Opposition can do is offer to franchise our assets. We are not McDonalds, Kentucky Fried Chicken or even Oporto chicken. [*Time expired.*]

### DUBBO BASE HOSPITAL REDEVELOPMENT

**The Hon. DUNCAN GAY:** My question without notice is directed to the Attorney General, representing the Minister for Health. Why has the Government announced only \$232,000 for the redevelopment of the Dubbo Base Hospital—an amount equal to less than a single year's salary for any of the top-10 Health bureaucrats in Sydney? Given that Parkes and Forbes hospitals were left out of the budget, can the Attorney General explain why one day later Carmel Tebbutt was able to find \$150,000 for the planning of those hospitals? Can the Minister now understand the doubt emerging in these communities about this Government's commitment to provide health in their region?

**The Hon. JOHN HATZISTERGOS:** There is a \$16.4 billion record health investment and a \$16.6 billion record infrastructure building program. The member's question, in many senses, is misconceived from the big picture painted by the Treasurer the other day. In relation to the specifics of the question, I will obtain advice from the Minister.

**The Hon. Duncan Gay:** If there is \$16 billion, why was the \$150,000 not given?

**The Hon. JOHN HATZISTERGOS:** It is \$16.6 billion in the infrastructure building program in 2010-11. Indeed, funding for that program over four years is \$62.2 billion, supporting 155,000 jobs.

**The Hon. DUNCAN GAY:** I ask a supplementary question. In light of the Minister's answer, what did Minister Tebbutt mean by her statement that strategic planning will be undertaken to determine the most appropriate configuration of services at the two hospitals—that is, Parkes and Forbes? What services should be networked with Dubbo or Orange hospitals?

**The Hon. Greg Donnelly:** Point of order: My point of order raises two issues. First, the Minister answered part of the question and said he would refer the remainder to the Minister. The second issue to the point of order is that the supplementary question is a brand new question. Opposition members continue to do that every day.

**The Hon. Duncan Gay:** To the point of order: The Minister answered and went into detail. I am seeking further information regarding his answer. It is important that, when the Minister makes an announcement and qualifies that announcement, the community understands the meaning of that qualification. Did it mean a downgrade? Is this code for the hospitals being downgraded?

**The PRESIDENT:** Order! The Deputy Leader of the Opposition is now talking to the substantive matter. I uphold the point of order.

### TAFE NEW SOUTH WALES LANGUAGE, LITERACY AND NUMERACY PROGRAM

**Dr JOHN KAYE:** My question is directed to the Minister representing the Minister for Education and Training. What was the dollar-per-student bid amount of TAFE New South Wales for the language, literacy and numeracy program services for the three-year period from 1 July 2010? What was this figure for the period from 1 July 2007? Has this bid cost increased by 400 per cent? If so, why was TAFE New South Wales priced out of the market?

**The Hon. JOHN HATZISTERGOS:** I will refer the question to the Minister for Education and Training.

### BUDGET INITIATIVES

**The Hon. KAYEE GRIFFIN:** My question is addressed to the Treasurer. Could the Treasurer outline the budget initiatives for the future of New South Wales?

**The Hon. Greg Pearce:** The ones he forgot the other day?

**The Hon. ERIC ROOZENDAAL:** It is obvious that the Hon. Greg Pearce did not help Barry O'Farrell with his budget response this year. I thank the member for her question and interest in this important matter. This has been a critical budget for the people of New South Wales as it was returned to surplus two years earlier than originally forecast—something, of course, the Opposition said was impossible. The budget puts in place a plan for \$62.2 billion worth of investment infrastructure over the next four years, an historically high investment in infrastructure. This budget also reaffirmed the State's solid gold triple-A credit rating by providing a surplus two years earlier than originally forecast.

**The Hon. Michael Gallacher:** More like fool's gold.

**The Hon. ERIC ROOZENDAAL:** The House should draw its attention to the terrific Australian Public Affairs Channel [APAC] on Foxtel to watch a number of interesting things happening around the country. I watched the press conference covering the Queensland Government's budget. It is heart warming for the people of New South Wales to know that we protected and improved our credit rating during the global financial crisis. Queensland is planning to try to rescue its triple-A credit rating in four or five years' time. It is the number one issue occupying the Queensland Government through its budget process. That is what happens when governments gorge on debt or go on a debt binge, as Mr O'Farrell suggested we do. That simply is bad economics and bad for the future of the State. The budget has been well received throughout the community. Brendan Lyon of Infrastructure Partnerships Australia said:

Business welcomes the early return to surplus.

Stephen Cartwright of the New South Wales Business Chamber said:

... this budget delivers on reducing business costs, dealing with housing supply and invests in infrastructure ...

The budget initiatives announced on Tuesday have been welcomed by the community. Our New South Wales Home Builder's Bonus, which saves new homebuyers up to \$22,490 in stamp duty, will give the housing and construction sector a real boost. This has been acknowledged by industry stakeholders. The Urban Taskforce's Aaron Gadiel said:

NSW State Budget will give an unprecedented boost to new home construction.

He said, "zero stamp duty buying off-the-plan is a fundamental reshaping of the stamp duty regime so that it supports new housing development." Glen Byres of the New South Wales Property Council agreed. He said:

Eliminating stamp duty for the off-the-plan purchase of new homes will help drive housing supply across Sydney and New South Wales.

According to the Combined Pensioners and Superannuants Association, "Stamp duty relief for downsizers is a win-win-win for the Government, the community generally, and seniors." On 8 June on *ABC News* that association said:

Age pensioners welcome the stamp duty exemption for the purchase of a newly-constructed home, which will better enable some pensioners to downsize.

Our double-cut to payroll tax announced in this budget has been roundly supported by business. Greg Fisher of the Illawarra Business Chamber said:

New South Wales is in competition with the other states to be an attractive place to do business ...

Alison Peters of the Council of Social Service of New South Wales [NCOSS] said:

We are pleased to see an ongoing commitment to many programs that make a real difference for people who are doing it tough. The additional money for neighbourhood centres is especially welcome.

This budget also contains our record infrastructure program with \$62.2 billion invested over the next four years. I note the Hon. Lee Rhiannon said:

The budget certainly shows that the Government is on track to finish projects that they have announced.

This is a budget for the people of New South Wales; a budget that supports families and businesses in New South Wales.

### SUNSCREEN SAFETY

**Reverend the Hon. Dr GORDON MOYES:** I address my question to the Minister for Transport, and Minister for the Central Coast, representing the Minister Assisting the Minister for Health (Cancer). Is the Minister aware that the respected United States-based Environmental Working Group recently released its annual sunscreen guide, which recommends only 39 out of 500 sunscreens that are available for purchase in United States shops? Is the Minister aware that sunscreen claims of above-50 sun protection factor [SPF] have been proven to mislead people into staying longer in the sun, which is the main risk factor for developing skin cancers, including melanoma? Is the Minister aware that new evidence about the retinyl palmitate form of vitamin A, which is found in nearly half of all sunscreens sold in Australian shops, shows that it appears to accelerate the growth of skin tumours, and so should be strictly avoided? Will the Minister indicate the type of ongoing evaluation and assessment that will ensure product safety of sunscreens? [*Time expired.*]

**The Hon. JOHN ROBERTSON:** I am an advocate of slip, slop, slap. Someone like me always put a hat on when out in the sun.

**The Hon. Trevor Khan:** Oh, yes.

**The Hon. JOHN ROBERTSON:** The Hon. Trevor Khan tells me that he does the same thing. These are serious matters. I will undertake to obtain a response. Obviously the time people spend in the sun and melanomas are serious issues. I will take the question on notice and obtain an answer.

### HOUSING SHORTAGE

**The Hon. GREG PEARCE:** I direct my question to the Minister for Planning, Minister for Infrastructure, and Minister for Lands. Given his assurances that New South Wales is building the infrastructure required to meet recent population growth forecasts and his assurance that New South Wales can handle growth to nine million by 2036, can he explain the most recent National Housing Supply Council's report, "2nd State of Supply report 2010", which forecasts that, on a medium growth scenario, by 2029 New South Wales will have 261,800 fewer dwellings than are required? Can he explain to the House how this shortfall in dwellings will be met?

**The Hon. TONY KELLY:** I thank the member for his question. Obviously, he did not take much notice of the Treasurer's budget speech because the figures he quoted represent one suggestion by one group. Obviously, that was prior to the significant changes to the Government made in recent weeks, such as capping of development charges or housing infrastructure charges at \$20,000, including stamp duty. As I said yesterday, one of the big problems is that the banks now are demanding presales before they will lend to companies for any infrastructure or any development whatsoever. The banks are demanding a much greater percentage of presales than previously. The Treasurer's budget speech and new budget have allowed for significant reductions in stamp duty—in some cases, zero stamp duty will apply—will accelerate that. I will elucidate on that a little later. Obviously the Government believes that its new policies will ensure that we meet our housing supply targets. We will make sure that we have more supply than there is demand so that we drive down housing prices across the State.

### CENTRAL SYDNEY PLANNING COMMITTEE

**The Hon. PENNY SHARPE:** I address my question to the Minister for Planning. Will he explain to the House the reason he is undertaking a review of the Central Sydney Planning Committee?

**The Hon. TONY KELLY:** I thank the member for her question. The delivery of appropriate development in the city of Sydney is vital to ensuring Sydney's future as a global city. The Central Sydney Planning Committee was established in 1988. It operates under the City of Sydney Act. It has a responsibility to determine major development applications worth more than \$50 million that are made to the council, it has responsibility for development applications that seek to vary development standards under State environmental planning policy No. 1, and it endorses the preparation of the council's new local environment planning proposals, as distinct from everywhere else in the State where that is a function of the Department of Planning.

The Central Sydney Planning Committee is chaired by the Lord Mayor of Sydney, Clover Moore, and includes two councillors from the Council of the City of Sydney, two senior New South Wales Government officers, and two independent State-appointed members who are not employed by the Government. The Central



Sydney Planning Committee has been in operation for 22 years. It is timely to now take a step back and examine the Central Sydney Planning Committee model and how it is operating, and to receive advice on whether there is any way in which we may improve processes to maintain Sydney's position as a global city.

The Central Sydney Planning Committee model was one of the examples on which was based establishment of the Joint Regional Planning Panels, which were introduced across the State on 1 July 2009. Six regional panels are now functioning as a successful part of the planning system in New South Wales. Importantly, both the Central Sydney Planning Committee and the Joint Regional Planning Panels share a number of similarities. Both combine State expertise and local knowledge, and that strengthens merit-based decision making for high-value and important projects, resulting in stronger independent decision making for the New South Wales planning system.

Over the past 10 years, some great changes have taken place in the planning system, including the introduction of Joint Regional Planning Panels, new plan-making provisions last year and a new assessment regime for major projects that was introduced in 2005. In the light of those changes, now is the appropriate time to review the role of the Central Sydney Planning Committee. I should also point out that the amalgamation of the Council of the City of Sydney with part of the Leichhardt City Council and part of the South Sydney City Council had the unintended consequence of extending the Central Sydney Planning Committee's jurisdiction beyond the original boundaries to include those former local government areas.

Review of the Central Sydney Planning Committee's operations will be undertaken by an independent panel that will be chaired by Ms Gabrielle Kibble, who was chair of the Planning Assessment Commission and the Heritage Council. The panel will include one independent panel member who will be appointed by me, Professor Kevin Sproats, and I have asked the Lord Mayor of Sydney, Clover Moore, to nominate one person to be a member of the review panel. I have issued terms of reference to the panel. The panel has called for public submissions from the community, industry, the council and other stakeholders.

The terms of reference require the panel to examine the role, the functions of the operations of the Central Sydney Planning Committee, particularly its decision-making role and the efficiency of the functions and operations to deliver planning and development outcomes in the context of Sydney as a global city; the consistency of the Central Sydney Planning Committee roles and functions with that of other determining regimes applicable in New South Wales; the consistency of the Central Sydney Planning Committee's role with the outcome of recent planning reforms; its performance in ensuring public consultation and stakeholder engagement in decision making; and the expertise of the panel in carrying out its functions.

The panel will be required to make recommendations, including implementation measures, as applicable, and to take into account stakeholder and committee consultation, including any public submissions. I encourage the public to participate in the review.

### **POKER MACHINE TAX**

**Ms LEE RHIANNON:** I direct my question to the Treasurer. Can he explain the rationale behind policy changes that will impose, from 1 July, a new tax scale and result in some hotels enjoying a tax-free threshold of \$200,000 on poker machine profits, resulting in 65 per cent of hotels paying either no tax or less tax? Does that concession to the hotel industry relate in any way to a decline in political donations from the Australian Hotels Association to the New South Wales Labor Party over recent months, culminating in no donations being handed to the Labor Party in the last disclosure period?

**The Hon. Greg Donnelly:** Point of order: The question contains clear argument. The member knows that is not the form questions take in this House.

**The Hon. Don Harwin:** To the point of order: In the context of the member's question and the point of order taken, asking whether a particular matter was a factor in the decision is not argument. It is just seeking information.

**The PRESIDENT:** Order! I do not uphold the point of order. The Treasurer may answer the question.

**The Hon. ERIC ROOZENDAAL:** I am very happy to respond to the question. The changes in the taxation rates to hotels do not change and are broadly revenue neutral. There is no great tax change in terms of revenues back to the Government; the overall tax take is basically the same. Stakeholders have told me that

there is a major problem with the threshold level for tax for these very small hotels with very few gaming machines. The changes that were made are an investment in local communities across New South Wales, especially in regional New South Wales. The large hotels with a higher number of gaming machines are actually paying more tax under this proposal, according to my advice. These changes are important reforms. They help small businesses to build a future for their communities. The new tax rates will benefit small and regional hotel businesses, most of which are generally run by families. These changes will provide business certainty for the future.

### **BOMBALA TIMBER MILL PROPOSAL**

**The Hon. MELINDA PAVEY:** My question is directed to the Treasurer. Is the Treasurer aware that his Labor Government for 10 years now has promised the community of Bombala in the Monaro electorate a second softwood timber mill? Is the Treasurer aware that a former forestry Minister Kim Yeadon announced just before the March 1999 election that 300 new jobs would be created through the construction of a \$50 million new softwood mill? Is the Treasurer aware that Willmotts Timber is on the cusp of a development approval for a new mill, but requires assistance with local infrastructure improvements for the development to proceed? What will the Treasurer do to ensure that this mill is finally approved?

**The Hon. ERIC ROOZENDAAL:** I have to confess I was not aware of some of the extensive detail in the question. In my role as Treasurer I cannot be expected to know the details of every portfolio, but I will refer those issues to the appropriate Minister.

**The Hon. Melinda Pavey:** You are the appropriate Minister as Minister for State and Regional Development. Have you forgotten that?

**The Hon. ERIC ROOZENDAAL:** There were planning issues in the question and I am happy to get those reviewed. I am happy to talk about what I am aware of, that is, regional and rural investment, both of which were raised in the question. I am aware that today in the Legislative Assembly the Leader of the Opposition made some interesting comments about coal royalties. The geniuses on the other side of the House have decided that somehow the numbers in the budget—

**The Hon. Don Harwin:** Point of order: My point of order relates to relevance. Coal royalties clearly have nothing to do with a timber mill in Bombala.

**The PRESIDENT:** Order! The Minister should continue to be generally relevant in his answer.

**The Hon. ERIC ROOZENDAAL:** I am being relevant to the regions as this matter was raised in the Legislative Assembly. Coal royalties make up 95 per cent of all our royalty revenue. The volume of coal we export determines the value of our coal royalty revenue and the price the miners receive for that coal. The more coal we export, the higher the price and the higher royalty. In 2010-11 we expect significant increases in coal volumes and forecasts based on existing production, and the increase will be due mainly to the increase in export capacity with a third coal loader in Newcastle and further expansion of the Kooragang coal terminal.

**The Hon. Melinda Pavey:** Timber mills and coalmines are different.

**The Hon. ERIC ROOZENDAAL:** This is further evidence that the Opposition does not understand how coal royalties work in the State and their contribution to the economy. There is record investment in rural and regional communities in the 2010-11 budget. The budget includes a \$3.5 billion allocation for rural and regional roads this year, including the three major highways around the State. There is \$340 million for the Hunter expressway between the F3 and Seahampton and the New England Highway at Branxton. A number of serious funding announcements have been made in the budget to support rural and regional roads—regional transport receives a boost of \$355.4 million in private bus services for rural and regional regions, and an amount of \$34.2 million will fund concession travel for pensioners and students on the CountryLink services. These initiatives will improve road and transport networks that are vital in supporting economic growth in our towns and regions.

The Government is also investing heavily in rural and regional health and education: a record investment of \$4.4 billion in country hospitals following this Government's historic agreement forged through the hard work of Premier Keneally with the Commonwealth on health reform; an amount of \$5.1 million to finalise planning, and then commence a \$91 million stage one redevelopment of Wagga Wagga Base Hospital;

and jointly with the Commonwealth, \$16.8 million for new and expanded regional cancer centres in Coffs Harbour, Gosford, Illawarra, Lismore, Port Macquarie, Shoalhaven and Tamworth. Funding is being provided for: planning for a \$83 million Wollongong Hospital elective surgery unit; \$35.1 million has been allocated to continue expansion upgrading and planning for multi-purpose services at Werris Creek, Gundagai, Lockhart, Manilla and Balranald; funds have provided for health service facilities at Cootamundra, Pottsville and Corowa; and \$21.7 million has been allocated to continue development of Narrabri Hospital. We are continually supporting rural and regional areas.

*[Interruption]*

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

### REHABILITATION AND SENTENCING

**The Hon. CHRISTINE ROBERTSON:** My question is addressed to the Attorney General. What is the latest information on rehabilitation and sentencing?

**The Hon. JOHN HATZISTERGOS:** The Minister for Corrective Services, the Hon. James Wood, the Commissioner for Corrective Services, Howard Brown from the Victims of Crime Assistance League, and Martha Jabour from the Homicide Victims Support Group joined me to outline our proposed new sentencing option to be called an intensive correction order. Under the changes offenders can be subject to strict conditions including: mandatory participation in rehabilitation and education programs, strict curfews and association restrictions, electronic monitoring, restrictions on travel, completion of at least 32 hours community service work per month, a ban on consuming alcohol and random breath tests and urinalysis. These laws that the Government will bring forward give effect to the recommendations of the New South Wales Sentencing Council report on the review of periodic detention.

As the Premier said this morning, the intensive correction order is designed to punish and incapacitate offenders while forcing them to confront the causes of their offending behaviour. Earlier today, founder of the Enough is Enough anti-violence organisation, Ken Marslew, made public comments saying that the new intensive correction orders will have a better focus on rehabilitating offenders. In a media release Mr Marslew said, "This is about getting fair dinkum with repeat criminal offenders." The Hon. James Wood, who chaired the Sentencing Council when it undertook its review, also made some comments this morning, saying that the New South Wales Sentencing Council has found that offenders placed on periodic detention faced high rates of failure and have limited access to rehabilitative programs. He also said in a media release issued earlier today:

The Council recommended replacing periodic detention with a community-based order, which can be made available across the State, even in those more remote areas.

In light of these proposed new laws it is interesting to note comments made by the member for Epping in the Legislative Assembly, who described me as a "hardliner" and in particular drew attention to the Government's policy with regard to young offenders who are serving custodial sentences for serious crimes. He told the House that the Government has not honoured its promise to try to help to rehabilitate young offenders. He said, "We want to try and save them to cut out the law and order madness that the Government has been practising." I might be a hardliner but I am not a hypocrite and I am certainly not inconsistent. But that hypocrisy and inconsistency has been noted on the part of the Opposition because at the same time as we have heard statements saying that the law and order option is not going to be part and parcel of this election, I have seen a number of press releases issued by the shadow Attorney General with which the House needs to be acquainted.

This is the team that at the next election is not going to be involved in the law and order option. What have they said? On 7 April 2010 the shadow Attorney General said, "Community must be protected from violent offenders. A Liberal and Nationals Government will provide our community with reassurance that strong laws will protect them from known violent offenders." He also said, "Knife increase requires tougher penalties and imprisonment for possession", and on 22 July 2008 he said, "Petty sentences won't deter laser criminals." These are the people who will not have a law and order option. He also said, "Dangerous young murderers must be controlled", and he rejected a Sentencing Council report that said that we can have provisional sentencing with downward reductions in sentences. He said that they should also be able to be increased.

Then he said, "More Iemma fiddling. Victims and their families deserve more meaningful sentencing amendments." Members will recall that this is the team that said it would not have mandatory sentencing. On his website and in one of his press releases the member for Epping said, "New standard non parole periods for child

killers not mandatory." This is a key statement. Also, "Labor has failed to act. Rock throwers need big penalties and no bail." For negligence in throwing a rock he suggested, "In my view we need a specific offence with a greater maximum penalty, 25 years imprisonment." This is the team that says, "No law and order option." We look forward to seeing how those statements in the press releases will be weaved into the no law and order option debate. [*Time expired.*]

### ETHANOL PRODUCTION

**Mr IAN COHEN:** My question is directed to the Minister for Lands and Minister for Planning. What legal certainty does the Minister's listing of ethanol production as critical infrastructure give to ethanol investors when Federal Government agencies, embarrassed by the New South Wales Government's policy support for first generation ethanol, are looking to withdraw incentives and trade barriers that encourage domestic ethanol production? Is the Minister monitoring the impact of processing and converting approximately 25 per cent of an average New South Wales cereal grain harvest for ethanol on food prices in New South Wales? If so, how is the Minister doing this?

**The Hon. TONY KELLY:** I do not understand why the Greens political party is the only party in New South Wales that does not support home-grown ethanol production to replace oil imported from overseas wherever possible. It will underpin at least 900 jobs in New South Wales—I think the Hon. Don Harwin agrees with that—and reduce adverse effects on the environment. I do not understand why the Greens continually attack businesses in New South Wales and jobs in rural and regional New South Wales.

### VICTORIA BRIDGE UPGRADE

**The Hon. DON HARWIN:** My question without notice is directed to the Treasurer. Why was there no itemised funding in the New South Wales budget for safety upgrades to the Victoria Bridge over the Nepean River?

**The Hon. ERIC ROOZENDAAL:** There is a \$4.7 billion investment in roads in New South Wales—a record roads budget for the people of New South Wales, the largest budget in the history of New South Wales in roads in this State. Not only is there a record investment in roads, but also the Government is investing \$7 billion in transport, putting into action its 10-year Metropolitan Transport Plan, delivering literally hundreds of brand new air-conditioned buses, in fact 676, and trains. There will be a record \$1.1 billion funding for bus services and a record \$3.3 billion for rail services.

We are committed to supporting front-line services and infrastructure in this State. That is why the State has an investment in infrastructure of \$62.2 billion, which will support over 155,000 jobs each year for the four years of the forward estimates period. Let us contrast our achievements—the budget back to surplus two years early and historical high investment into infrastructure supporting 155,000 jobs—with the efforts of the Opposition, which plans to franchise New South Wales assets, like McDonalds outlets, and pay people to leave Sydney. This side of the House represents the future of New South Wales as a strong, prosperous State. The other side of the House wants to pay people to leave Sydney, it wants to franchise our assets, and of course it wants to drive this State into debt and destroy our triple-A credit rating.

### INQUESTS INTO DEATHS IN CUSTODY

**Ms SYLVIA HALE:** I address my question to the Attorney General. On 17 June last year, and again on 11 September, I asked the then Minister for Corrective Services a number of questions about the death of transgender Aboriginal woman Veronnica Baxter, who had been arrested on 10 March 2009. Ms Baxter died in Silverwater Metropolitan Reception and Remand Centre six days later, on 16 March 2009. I also asked why Ms Baxter was remanded to a male-only prison in breach of departmental guidelines. On 27 August last year another prisoner Mark Holcroft died in appalling circumstances in a prison transit van. Why is it that, 15 months after Ms Baxter's death and nine months after Mr Holcroft's death, no coroner's investigation has commenced into either death? When will they commence? Has the closure of the coroner's facilities at Westmead contributed to the delays?

**The Hon. JOHN HATZISTERGOS:** No. In fact the backlog of the State Coroner has reduced significantly. All matters that involve deaths in custody, as the honourable member would be aware, are reported to the State Coroner. The length of time that it may take for an investigation to be concluded can vary obviously according to the complexity of the investigations that are undertaken by the police, and then a decision has to be

made by the Coroner. In addition, of course all deaths in custody are the subject of a report that comes to this Parliament annually. I will investigate with the State Coroner's Office those particular cases to find out whether any issues are impacting upon the length of time that it has so far taken and I will report to the House in due course.

### DEVELOPER LEVIES

**The Hon. TONY CATANZARITI:** My question is addressed to the Minister for Planning. Could the Minister advise the House as to the importance of section 94 reforms for homebuyers?

**The Hon. TONY KELLY:** I thank the honourable member for his question. As I told the House earlier this week, I was proud to be with the Premier last week when she announced the Government's reform to section 94 levies. Let me repeat: These reforms are some of the most sweeping changes ever made to the development sector in New South Wales. We have capped the levies charged by councils on new housing lots at \$20,000; provided councils with additional resources to approve more homes each year in New South Wales—in fact the Treasurer gave the Department of Planning some \$44 million of which \$30 million will go to the councils; we have tasked the Independent Pricing and Regulatory Tribunal [IPART], the independent umpire, to work with councils to develop a system to determine rates using criteria that truly reflects local costs; and reassessed the Greenfield land release program and aligned it more effectively with infrastructure.

On the same day—Friday—a direction to set the cap for section 94 contributions at \$20,000 was issued to all councils under the Environmental Planning and Assessment Act. This will mean that councils will need to justify every levy imposed on housing projects by having them reviewed by the Independent Pricing and Regulatory Tribunal. This will depoliticise the whole rate process. It will provide more certainty, transparency, and fairness to councils, landowners, developers and the community, and will give councils the autonomy that they have been requesting to set their own rates and manage their finances. It will allow them to fund their own infrastructure. More importantly, these changes will stimulate housing supply by lowering upfront housing charges. I am encouraged by the response of the media commentators to this initiative. Ross Gittins wrote in the *Sydney Morning Herald*:

The highlight of the budget's new measures is its strategy to increase the supply of new homes by reducing local councils' developer charges and offering a temporary incentive for people to buy apartments off the plan.

This is a welcome and generally well thought through initiative.

The key issue, of course, will be what is considered essential infrastructure. In this regard I have had meetings with the Local Government and Shires Associations and different council representatives to discuss infrastructure classifications and transitional arrangements. One topic of discussion—and these discussions will continue before I give any further ministerial direction—will be the classification of general infrastructure. The discussions are not just about non-essential infrastructure to community. What we are talking about is defining what is essential to the commencement of housing construction, and that is why section 94 contributions were designed.

It is clear from the Treasurer's fiscally responsible and much-applauded budget that the Government is committed to driving down housing prices. As part of the package that the Government is delivering, along with stamp duty cuts the capping of section 94 charges, which will cut up-front costs for housing construction, will provide very real savings for new homebuyers. There is no one solution to providing affordable housing. What is required is a range of measures. As Stephen Cartwright of the New South Wales Business Chamber said, this "good budget seeks to create workable solutions to issues around business costs, expanding housing supply and investing in transportation and infrastructure". We have no shortage of land or zonings for construction. Our aim is to stimulate the construction of new homes to ensure that supply is greater than demand.

As the news of these reforms spreads we are receiving reports of the keenness of Australian Capital Territory and Queensland construction industries to move into New South Wales. This morning's *Australian* reported, under the headline "Developers fear new exodus across border", that "Queensland developers fear a new exodus of home buyers to NSW". According to Don O'Rourke, managing director of Brisbane-based Consolidated Properties—[*Time expired.*]

### PROGRAM OF APPLIANCES FOR DISABLED PEOPLE

**The Hon. RICK COLLESS:** My question is directed to the Attorney General, representing the Minister for Health. With \$7.7 million issued in yesterday's State Budget for the upgrade of the Bathurst

Hospital heritage building and the inclusion of ambulatory care services in the building, can the Minister outline why no funds were allocated to retain the Program of Appliances for Disabled People, which was also to be housed in the building and will now close due to this funding shortfall? Will the Minister acknowledge that Tuesday's State Budget represents a wasted opportunity to retain these vital services for disabled residents and their carers throughout the Bathurst region?

**The Hon. JOHN HATZISTERGOS:** Clearly the question is in breach of the standing orders as it contains argument. Nevertheless I will refer what is left of it to the Minister for Health and obtain an answer.

### TRANSPORT PLAN

**The Hon. SHAOQUETT MOSELMANE:** My question is addressed to the Minister for Transport. Can the Minister please update the House about the implementation of the Government's Metropolitan Transport Plan?

**The Hon. JOHN ROBERTSON:** I thank the honourable member for his question. This week the Treasurer handed down a budget that included wins for communities right across the State. In the coming financial year the Keneally Government will invest \$11.7 billion across Transport and Roads as part of the 2010-11 budget, putting into action the 10-year Metropolitan Transport Plan and delivering hundreds of new buses and train carriages. That is \$11.7 billion in this financial year. Today the Opposition put forward a figure of \$5 billion. We do not know whether that amount will be spread over three, five or 10 years. It is \$5 billion over what period of time? We are talking about \$11.7 billion this year alone for Transport and Roads.

There will be record funding of \$1.1 billion for bus services and a record \$3.2 billion for rail services. That includes more than \$323 million for 506 new and replacement buses, funding for the delivery of 74 new outer suburban carriages [OSCars], as well as for the first sets of the new Waratah train carriages. The budget will deliver more buses, more train carriages and more safe, comfortable and air-conditioned seats across the public transport network. But it is important these extra buses and trains have extra infrastructure to operate on. As part of the budget we are spending \$5.8 billion on transport and roads infrastructure this year. Over 10 years we have a fully funded \$50.2 billion Metropolitan Transport Plan. What does the Opposition have? It is putting aside \$5 billion. By my very rough calculations, that is \$45 billion short of our Metropolitan Transport Plan.

But one has to give the Opposition credit: it is a tad more than its last piece of transport policy brilliance. The last transport plan the Opposition had was launched by Peter Debnam just before the 2007 election. That is how long ago it was. It was the cornerstone of the Opposition's campaign; a massive injection into public transport infrastructure, unprecedented funding of—wait for it—\$460 million. What a bonanza! What a huge investment in public transport. You have to give Opposition members credit though; they are getting better. They are only baby steps, but they are starting to wake up to the fact that they have no idea. They have gone from \$460 million to \$5 billion, but it is still well short of \$50.2 billion fully funded for our Metropolitan Transport Plan.

One has to wonder how anyone could ever believe what the mob opposite says. Barely had the ink dried on the Government's Metropolitan Transport Plan when the Opposition was already looking to scale back one of its key projects, the North West Rail Link. The link will run from Epping to Rouse Hill with six stations to be constructed at Franklin Road, Cherrybrook, Castle Hill, the Hills Centre, Norwest Business Park, Burns Road and Rouse Hill. The local member for Castle Hill, Michael Richardson, who is unknown to most people in the area, confirmed on ABC Radio and in the *Hills Shire Times* that the Liberals are looking at ways to cut back the project. They have not even got there with their big, key transport feature, the North West Rail Link, and they are already cutting it back. Mr Richardson wants less for the north-west. He told ABC Radio in April:

The Hills Centre Station—

[Time expired.]

**The Hon. SHAOQUETT MOSELMANE:** I have a supplementary question. Will the Minister elucidate his answer?

**The Hon. JOHN ROBERTSON:** He said on ABC Radio:

The Hills Centre Station has the lowest passenger throughput of any station on the line. You might actually consider scrapping it altogether.

Then he told the *Hills Shire Times*:

The government must start looking at ways of cutting costs ... we need to consider whether building the Hills Centre station is a must.

He is saying there are too many stations on the Government's proposed North West Rail Link. Have members ever heard of a local member who lives in the north-west wanting to scale back the transport project in his electorate that they argue is so important? At least the positive of committing only \$5 billion to transport infrastructure, \$45 billion less than the Government, is that they will have less to scale back. The Opposition does not know what to do. It is too scared to make a policy announcement or allocate this so-called fund to any particular project. It is offering to spend less and delivering nothing. It has a fund but it has no plans—no new buses, not one new train service and not one extra seat on public transport.

### ELECTRICITY INDUSTRY PRIVATISATION

**Dr JOHN KAYE:** My question without notice is directed to the Treasurer. Given the record of delays in the Keneally Government's electricity privatisation and the pressure the Government is currently under to further delay the privatisation project, at what point will the Treasurer put the electricity transactions on hold, recognising that even under the existing very fragile time line the transaction will be concluded on the eve of a State election?

**The Hon. ERIC ROOZENDAAL:** The member is yet again on his jihad against the energy reform strategy of the Government. The fundamental redesign of our electricity market is very important for the people of New South Wales. We have announced that the data rooms are opening on 1 July. That is the next major step in the process. The realistic and practicable timetable for completion of the reforms is by the end of the year. This has been developed with expert advisers and of course after feedback from interested parties. The strategy is well understood and supported by the market. The best evidence of this is the strong field of capable and qualified parties, both domestic and international, that have expressed interest in participating—

**Dr John Kaye:** It is just not true.

**The Hon. ERIC ROOZENDAAL:** Like you would know! I love the way the Greens sit over there and take little pot shots at a massive attempt to reform the energy market. All they can do is take shots with their little slingshots and rocks. The reality is—

**Dr John Kaye:** It is a little thing called democracy.

**The Hon. ERIC ROOZENDAAL:** The member is entitled to do it, but I just wish the quality was a little bit better. Those in the market welcome the opening of the data rooms and are keen to participate in the process, both nationally and internationally.

**Dr John Kaye:** That is just not true.

**The Hon. ERIC ROOZENDAAL:** The member sitting opposite is deliberately attempting to sabotage something that is in the best interests of the people of New South Wales. We will not even talk about the little bets he has on the side with every man and his dog to try to talk things down. I am advised by the electricity reform project office that the transaction—

**Dr John Kaye:** Have you had any bets, Eric?

**The Hon. ERIC ROOZENDAAL:** I have certainly made a bet that this process will go ahead.

**Dr John Kaye:** Ah! You have a financial interest.

**The Hon. ERIC ROOZENDAAL:** It is like being flailed with a wet lettuce leaf. Dr John Kaye sits there and yaks away. I just wish he would sit quietly. I am advised by the electricity reform project office that transactions can be completed by the end of the year, and the Government has no intention of deviating from this timetable. This process, which is in the best interests of the people of New South Wales, will ensure future electricity generation in this State. We will proceed with this process, which has been warmly welcomed by the market, and move to the next process.

## RAIL RESIGNALLING AND OVERHEAD WIRE PROJECT

**The Hon. JOHN AJAKA:** My question without notice is directed to the Minister for Transport, and Minister for the Central Coast. Is the Minister aware of substantial capital overspending in respect of the Oatley to Sutherland re-signalling and overhead wiring project as allocated for the 2009-10 budget? Is the Minister aware that, since the start of the project in 2005 when the estimated total cost was \$49 million and set to be completed in 2008, the project is now delayed by three years, has a \$38 million budget blowout, and is now estimated to cost a total of almost \$87 million when set for completion in 2011? Will the Minister explain the reasons behind this massive cost blowout and the extraordinary delay in completing the project? How many additional commuter car park spaces could have been built with this \$38 million blowout?

**The Hon. JOHN ROBERTSON:** I am aware of this project, which is about enhancing our transport network. It is associated with the duplication of the Cronulla line—a project that is delivering enhanced services and will result in the introduction of a new timetable.

**The Hon. Tony Kelly:** They might want to wind that one back too.

**The JOHN ROBERTSON:** That is true; that might also be wound back. This part of the project was implemented to ensure the safe operation of the network as services for people in the Sutherland shire were increased as a result of the duplication. That particular signalling project will result in a greater frequency of services and ensure the smoother running of trains. I am pleased to inform members that the upgraded duplication project was completed on 19 April, and that means that the Government has delivered 6.6 kilometres of new rail track that, as I said, will improve reliability and add to the capacity of the CityRail network. The full benefits of the upgrade and duplication project will be realised with the new timetable that will be introduced this year. The new infrastructure is already generating benefits for commuters in those areas.

*[Interruption]*

I am happy to talk about commuter car parks and to rattle off all the commuter car parks that this Government is delivering in addition to the 7,000 additional car parking spaces. I will conclude my remarks on the Cronulla duplication and I will then deal with car parks. We have seen new peak services on the Cronulla branch line. The former 7.18 a.m. Sutherland to Bondi junction service now starts from Cronulla at 7.00 a.m.; the 5.33 p.m. Bondi Junction to Sutherland service will now extend to Cronulla; the Cronulla duplication project has included eight bridge extensions, four station upgrades, a program of track work construction, installation of new overhead wiring structures, and the replacement of old signalling equipment from Sutherland to Oatley and Loftus.

The duplication of this branch line is part of the New South Wales Government's Rail Clearways Project. Work at stations along the line includes minor platform extensions at Sutherland station; easy access upgrades at Kirrawee and Woolooware stations, including new lifts, new platforms, seating, new concourse areas, landscaping, a new public announcement system, closed-circuit television and lighting; and major work at Cronulla station to extend and resurface a section of the platform, upgrade the station's entrance, extend the pedestrian underpass and reconfigure train stabling facilities. The completion of these projects provides additional infrastructure necessary for the introduction of the new timetable due later this year.

The new timetable will provide more services between Cronulla and the city during peak and off-peak periods and on weekends; introduce express services from Cronulla in the morning peak; more weekend services on the eastern suburbs and the Illawarra line, including a 10-minute service frequency at Bondi Junction; extension of the Wollongong to Dapto services to the city to start from Kiama in the off-peak periods on weekdays; and the extension of most Kiama services to Bondi Junction on weekends. Commuters will experience the full benefits of all these works, including the Cronulla duplication with the introduction of the new timetable later this year.

**The Hon. JOHN HATZISTERGOS:** If members have further questions, I suggest that they place them on notice.

## INQUESTS INTO DEATHS IN CUSTODY

**The Hon. JOHN HATZISTERGOS:** Earlier in question time Ms Sylvia Hale asked me a question relating to two inquests that are before the New South Wales State Coroner. I am advised that the Holcroft inquest is listed for 23 July and the Baxter inquest is listed for call over on 23 July. In the Baxter matter the brief is yet to be finalised. After it has been finalised a hearing date will be able to be set.



**ABATTOIR FINANCIAL ASSISTANCE**

**The Hon. ERIC ROOZENDAAL:** Yesterday the Hon. Jennifer Gardiner asked me a question relating to abattoirs. I undertook to provide a response to her question with respect to government assistance to the abattoir industry. The New South Wales Government, through Industry and Investment NSW, provides financial and in-kind assistance to a wide range of value-adding manufacturing and service sector industries to create new investment and employment in New South Wales.

Assistance that Industry and Investment NSW has provided to abattoirs during the 2009-10 financial year includes the following. In 2009 GM Scott Pty Ltd in Cootamundra was provided with financial assistance under the Business Investment Program for the expansion of its abattoir by-products division, enabling entry into new export markets. Another meat processing operation assisted by Industry and Investment NSW during this financial year is Bindaree Beef at Inverell, which has been offered assistance to upgrade electricity infrastructure to enable expansion of the operation. Late last month Industry and Investment NSW worked with the receiver of Burrangong Meat Processors in Young to provide assistance to the new buyer, BE Campbell, under the department's Regional Business Development Fund. BE Campbell expects to reopen the abattoir in 2011 with 88 jobs initially and up to 400 local jobs in its fifth year of operation.

In the event of a business closure or downsizing, whether it is an abattoir or any other business, the Government mobilises a rapid response to assist displaced workers in the local community to find alternative employment and new investment. In some instances this means finding a buyer for the business. When that occurs, as with the Burrangong Meat Processors, the assistance is provided to the new investor in the business to make a capital investment and create employment, not to the failed owner. In a situation of major closure or downsizing where a community faces the prospect of losing a substantial number of jobs in an industry all at once, the Government can provide assistance under the Regional Economic Transition Scheme, or RETS, to assist a community to develop a more diverse economy and attract new investment and jobs.

The Regional Economic Transition Scheme provides assistance to regional areas that have experienced sharp economic shocks as a result of structural adjustment in an industry on which the community is highly dependent or which is facing restructuring. The meat processing industry, by its nature, is seasonal and this is exacerbated by fluctuations in supply over the years of the drought. Assistance is available for operations creating new investment and new employment in the value-adding side of their operations. Assistance is not committed in the forward budget as the department's assistance is provided on a case-by-case basis as the need arises, undergoing rigorous assessment in accordance with program guidelines.

**Questions without notice concluded.**

**APPROPRIATION BILL 2010****APPROPRIATION (PARLIAMENT) BILL 2010****APPROPRIATION (SPECIAL OFFICES) BILL 2010****STATE REVENUE LEGISLATION AMENDMENT BILL 2010**

**Bills 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 bills through all their 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.**

**SPECIAL ADJOURNMENT**

**Motion by the Hon. Tony Kelly agreed to:**

That this House its rising today do adjourn until Tuesday 22 June 2010 at 2.30 p.m.

*[The President left the chair at 1.09 p.m. The House resumed at 2.40 p.m.]*

## UNFLUED GAS HEATERS

### Production of Documents: Tabling of Report of Independent Legal Arbiter

The Clerk tabled, pursuant to resolution of the House this day, the report of the Independent Legal Arbiter Sir Laurence Street dated 4 June 2010, on the disputed claim of privilege on papers relating to unflued gas heaters.

## PRIVILEGES COMMITTEE

### Reference

#### Motion by the Hon. Penny Sharpe, by leave, agreed to:

That, under section 14A of the Constitution Act 1902, the draft Constitution (Disclosures by Members) Amendment (De Facto Relationships) Regulation 2010 be referred to the Privileges Committee for inquiry and report by Wednesday 23 June 2010.

## RESIDENTIAL TENANCIES BILL 2010

### Second Reading

#### Debate resumed from an earlier hour.

Ms SYLVIA HALE [2.42 p.m.]: Although the bill was a long time coming, the Greens welcome it and are pleased with many of its provisions. I turn my attention now to some of the bill's detail. Tenants will be able to make minor alterations and modifications to the rented premises that would allow such things as picture hooks, a grab rail or a deadlock to be installed. Contrary to the propaganda emanating from the Real Estate Institute of New South Wales, under this bill tenants will not, without obtaining the landlord's permission, be able to make major changes, such as painting walls or undertaking other structural alterations, where those changes are not reasonably capable of being rectified and are not consistent with the nature of the property. No tenant will be able to paint the house purple or any other colour unless the landlord agrees.

The Government received varying submissions about what should be paid as compensation if during a fixed term of the tenancy agreement a tenant leaves the tenancy prematurely. For example, if a tenant signed a 12-month lease the landlord cannot issue a no-grounds termination notice or seek a rent increase until the fixed term has expired. Similarly, the tenant cannot give 21 days no-grounds notice until the fixed term has expired. However, sometimes a tenant will want or need to leave early. If a tenant in Sydney obtains a job in Brisbane and is required to move there prior to the fixed-period of the tenancy expiring the law acknowledges that the landlord deserves some compensation for the tenant's early departure. Clause 107 specifies the break-fee that will be payable. If less than half of the fixed term has elapsed when the tenant departs the break-fee will amount to six weeks rent, and four weeks rent in any other case.

Alternatively, the parties can choose to continue with existing provisions by excluding altogether a break-free clause from the lease. In this case the current situation would apply, namely, a tenant leaving before the expiry of the fixed term is obliged to continue to pay the rent and any advertising costs until such time as the landlord finds new tenants. If the premises are in a high-demand area and the period taken to re-tenant the property is brief the tenant may end up paying less than would be the case where a break-free clause operated. If the landlord gives a tenant a no-grounds termination, which the landlord may do at any time after expiry of the initial fixed term, the tenant will now be given 90 days rather than 60 days to vacate the premises. This provision is more consistent with those operating in other States and Territories. Currently a tenant who wishes to leave after the expiry of the fixed term is required to give the landlord 21 days notice unless some other mutually agreeable arrangement has been made.

Under the new provisions a tenant will be able to leave before the 90 days has expired and will not be liable for rent for the period after vacating. Therefore, landlords will be able to gain possession of the premises earlier. This is a sensible accommodation of potentially conflicting interests. When a landlord wants to sell the property with vacant possession the period of notice to the tenant will remain at 30 days. In another improvement for tenants and landlords, when a property is being sold tenants must be given the chance to negotiate open-house times with the landlord. Open-house inspections may be minimised to two per week. A tenant is required to give reasonable access for open-house inspections. If this is refused the landlord can seek orders at the Consumer, Trader and Tenancy Tribunal.

In the case of shared tenancies, one cotenant will now be able terminate their tenancy via notice to the landlord, thus ensuring their name is removed from the lease. The cotenant will no longer be liable for future liabilities, such as subsequent rental arrears or damage to the property that may occur after they have left. Other changes allow a tenancy or cotenancy to be ended swiftly when an apprehended violence order is in place. These provisions are important. People who are escaping domestic violence or who do not wish to maintain the tenancy with a violent partner should be assisted rather obstructed. The Government must also be given credit for encouraging landlords to install water-efficiency measures. A landlord will be required to implement such measures. Otherwise the tenant may argue that they should not be required to pay water bills until such time as the landlord complies with the law. Though the required water-efficiency measures are minor—for example, consisting of water efficient showerheads—they are important.

The Greens' one major criticism of the department is that the bill still does not provide any rights of tenancy, even of a limited nature, for boarders and lodgers. Victoria, the Australian Capital Territory and Queensland all have limited tenancy rights for this particularly vulnerable group of people, but in New South Wales a boarder or lodger may be evicted immediately and have absolutely no recourse against the landlord. They cannot go to the tribunal because the tribunal has no jurisdiction. They are non-tenants; but, in effect, they are almost non-persons so far as the Act is concerned. The definition section of the Act expressly excludes such persons from being considered to be tenants.

The treatment of boarders and lodgers is major unfinished business. A draft bill was prepared approximately 15 years ago but every time legislation of that type was suggested, I gather, someone in Cabinet said no and referred to an extraordinary time-worn argument, which has never been backed up by adequate evidence, that boarding house owners will cease investing should legislation be in place to provide boarders and lodgers with some protections. However, that type of legislation exists in Victoria, the Australian Capital Territory and Queensland. In each case there has not been a major flight of boarding house owners from that type of investment. I gather the Minister has indicated that she will address this issue at some stage. I certainly hope she does so before the end of the year, and certainly before the next State election.

In my view the bill requires improvement in several respects. To that end I have circulated a number of amendments. I stress that the purpose of the amendments is simply to clarify some issues rather than to alter in any way the intent of the bill. However, the Greens welcome the bill and are delighted that it finally looks as though it will be passed into law. I thank particularly Gregor Macfie and Chris Martin of the New South Wales Tenants Union for their forensic analysis of the various draft bills and their analysis of the finished product. I thank landlords and the Property Owners Association, which has seen the bill for what it is—fair legislation. The Real Estate Institute has been vociferous but the reasonable concerns buried within its overreactions have been dealt with by the Minister, who has explained how she incorporated her responses to legitimate concerns in the bill.

I thank the Minister for Fair Trading and her very competent staff for briefing the Greens on the bill and for the constructive manner in which they approached the reform process, although I regret that that did not extend quite as far as the amendments that I have circulated. In particular, I express my gratitude to Parliamentary Counsel staff for the patience and tolerance exhibited by them when faced with innumerable amendments, most of which, regrettably, have not seen the light of day.

In conclusion, we should not forget that New South Wales, and Sydney in particular, still confronts a housing affordability problem of crisis proportions. In many areas rental cost increases outstrip cost-of-living increases. The provision of affordable accommodation is a human right that is expressly stated in many United Nations conventions. It is incumbent upon the Government to ensure that there is an adequate supply of affordable rental housing and there needs to be a diversity of rental housing stock. We need social and affordable housing. We certainly should not be doing anything that will increase homelessness or add to the rental stress that so many people are currently experiencing. That means sharing the wealth that has been derived from housing—a massive amount of speculative wealth has been derived from investment in housing—and treating tenants fairly.

It behoves us to remember that as the system stands it really is weighted against tenants. Landlords who invest in property have a variety of measures available to them by which they may profit from their investment, such as through negative gearing or other taxation concessions. To that extent I believe that when it is asserted that a balance must be achieved we must remember that a tenant, almost by definition, does not own another property whereas in the majority of cases a landlord owns a minimum of two properties. I believe that the law needs to redress the imbalance that exists. I am pleased that the bill goes some way towards achieving that end. The Greens will support the bill.

**The Hon. JOHN DELLA BOSCA** [2.54 p.m.]: I support the Residential Tenancies Bill 2010. The bill will introduce important changes to the existing law that reflect changes in the rental tenancy market since the current Act was introduced more than two decades ago. In a speech in the other place the Minister for Fair Trading noted some key aspects of the contemporary rental market such as the gradual trend towards longer tenancies and some people choosing to rent long term as an alternative option to buying. In the same way as the existing Residential Tenancies Act introduced much-needed reforms in the late 1980s, the provisions of the Residential Tenancies Bill 2010 will introduce timely reforms and reflect the needs of present-day landlords and tenants.

The overriding concern during the review of existing laws was to develop a fair and balanced framework that clarifies the rights and responsibilities of both tenants and landlords. Although rental tenants do not own their dwelling, it is the place they call home. The bill recognises that tenants may, and should be able to, make reasonable but minor changes to their living environment. Under the new measures landlords will be expected to be reasonable when considering requests from tenants to make sensible and minor alterations at the tenant's own expense. The bill does not specify exactly what kinds of changes will be reasonable, as circumstances may vary so much between tenancies. However, the provisions of the bill will cover common situations, such as when a tenant needs to install child safety locks on windows or a telephone line or wants to add extra security features.

No rental property is perfect. It is only natural to expect that some tenants from time to time may wish to make minor changes at their own expense to suit their individual needs. The bill clarifies what will be considered to be unreasonable alterations. They will include structural changes, work that could not easily be rectified, repaired or removed, painting of the premises, alterations that are prohibited under another law and alterations that are not consistent with the nature of the property. In these cases the tribunal will recognise the landlord's right to refuse a request outright.

It is clear that these new measures will not allow tenants to go ahead and paint the whole premises with polka dots or remove internal walls. Furthermore, tenants will remain liable if they cause damage when undertaking approved alterations, or if the alterations turn out to be substandard. Clearly, the new measures do not give a tenant carte blanche to do as they wish: tenants will still be in breach of their lease if they make any change without approval of a landlord or the tribunal.

As the Minister stated in her speech, the bill does not allow tenants to do what they like on the premises without asking or letting anybody know. The bill makes it perfectly clear that tenants will still require a landlord's consent before they do anything. This is a fairly modest reform, and one with which I agree. I do not see anything wrong with asking landlords to be reasonable: the vast majority of landlords are reasonable people. Rather than increase the level of disputes, as claimed by Opposition members, the bill should reduce the volume of disputes. It will encourage tenants to be more up front with their landlords without fear of the landlord's right of refusal.

Having a more balanced and reasonable law in place will mean that tenants are more likely to seek approval before commencing any work. This will help to prevent disputes flaring up at the end of the tenancy when, during a final inspection, the landlord or agent discovers changes that have been made without their knowledge. Under the proposals in the bill the landlord will retain the obligation to keep the premises in a reasonable state of repair. Tenants will not be required to take over those obligations. If the property needs to be repaired or the stove needs to be fixed that will remain the landlord's responsibility. The discussion in the legislation concerns minor alterations for the benefit of the tenant, irrespective of whether the tenant does the work themselves or covers the cost involved. That puts its own limit on the types of things tenants will seek to do as most will not want to incur significant expense in improving a property they do not own.

This reform is based on a principles approach, which is much better than trying to come up with an exhaustive list of the changes that a tenant may or may not make to their premises: there will always be things missing from any list. The provisions of the bill provide clear guidelines as to the types of alterations that would be reasonable for a landlord to refuse, while being flexible enough to allow a range of tenants' requests to be given proper consideration. The bill provides that when a tenant and landlord cannot agree on what is reasonable the dispute to be taken to the tribunal, where I expect that within a short time the industry will get a fair idea of the tribunal's view of what is reasonable.

The tribunal is already called upon to determine what is reasonable in a range of other areas of the tenancy law, including "reasonable security", "reasonable access" and a "reasonable state of repair". Some

submissions on the bill have put forward the argument that tenants have the opportunity to inspect the property before signing the lease and they should not sign it unless the property perfectly suits their needs. This seems a fairly unrealistic position. We all know from searching properties to rent or buy that, if we are lucky, we can find a place that ticks most of the boxes on our wish list. But after we move in we find there may be potential for a few minor changes to make the place more liveable. We might want to put a grab rail in to help our elderly mother in the bathroom or even hang a picture on the wall.

As the Minister said in her speech, the bill requires a tenant to repair or compensate the landlord for any damage caused when making or removing an alteration or fixture. Furthermore, if the tenant does work that is not of a satisfactory standard or which will impact on the landlord's ability to re-let the premises, the tenant can be required to make good or pay compensation. Landlords should welcome the fact that the bill no longer refers to cosmetic changes, and a request by a tenant to paint the premises has been added to the list of alterations it would not be unreasonable for a landlord to refuse. These refinements to the bill clearly demonstrate that the Minister and the Government have listened and acted upon legitimate concerns. This reflects the approach that has been adopted to all the comments that were received on the proposed reforms and reflects how the community's views have guided the finalisation of the reform package. The Government is committed to monitoring the impact of the reform package after it has been introduced.

In any case, critics of this proposal have failed to recognise that what is proposed for New South Wales does not go as far as what is in place in many other Australian jurisdictions, which require a landlord to be reasonable in considering any request for alterations. Our understanding is that this has not led to widespread remodelling of premises in those States without landlord consent. The bill contains many important reforms, including this one, and is a significant step forward for the residential tenancy industry. It clearly deserves bipartisan support. I commend the bill to the House.

**The Hon. RICK COLLESS** [3.01 p.m.]: I support the Residential Tenancies Bill 2010, which was circulated in draft form in 2009, when it was described as being woeful in its harsh treatment of landlord investors. The bill as presented today represents a staggering about-face, and is now regarded as providing a fair balance with some broadly acceptable wins and losses for both tenants and landlords. The New England and Western Tenants Advice and Advocacy Service asked me to put its thoughts on the bill in *Hansard*. The service covers 55 per cent of the State, including the New England, north-west, western and far western areas. The service is of the opinion that the bill will mostly improve residential tenancy laws in New South Wales. The improvements that it will make are sensible and modest, and are mostly directed at fixing problems and omissions in current laws.

The service was very concerned about four areas in the draft bill and a fifth area in the current bill. The first concern related to access in the event of sale. The bill's provisions in relation to access to premises by prospective purchasers in the event of sale are a significant improvement on those in the draft bill. The bill provides that in the absence of an agreement between a landlord and a tenant as to access the tenant must receive not less than 48 hours notice of access, limited to not more than twice in a week. In the draft bill that was 24 hours with no limit of visits in one week. This year 158 tenants contacted the service about landlord or agent access to their home and sought general advice or help to resolve a dispute about access. Such disputes often arise when the premises are on the market or where the residential tenancy is part of an employment contract, particularly in the smaller farming communities. In many cases tenants have commitments to employment, including shift work, and education, and need to negotiate access for their landlords. Clarity in the legislation will provide a great improvement on the current situation.

The second concern related to former tenants' goods and possessions left behind after termination. While the provisions of the bill have been reworded to place greater emphasis on the intention that goods left behind should be disposed of by sale, they are substantially the same as those in the draft bill. They would allow landlords to dispose of valuable goods belonging to former tenants after only 14 days, and without specific regard to their value. The service holds the view that the period should be 21 days, and that goods of value greater than \$100 should be disposed of by sale for fair value. The service advised 101 tenants this year about compensation claims they are able to make against their landlords, some of which involved the disposal of tenants' goods by landlords. Such cases can be quite heartbreaking, involving precious personal documents, including family photographs and child immunisation records, and mementos, trinkets and furniture that may have very little financial value but that are of great sentimental value to the family concerned.

The third concern related to tenancy databases. This bill closes loopholes that were in the draft bill relating to tenancy databases. In particular, this bill prohibits tenancy database operators from listing persons,

except at the request of landlords and agents, and requires the removal of out-of-date information. Tenants in towns such as Inverell and Broken Hill often face significant difficulties if they have been listed on a tenancy database as the rental market can be small and rental properties in high demand. Since 1 January this year the service has advised 139 tenants across the region about tenancy databases. Ensuring that the information held on them is both correct and current will allow tenants, particularly young people, to learn from their mistakes and become better tenants.

The fourth area of concern relates to termination without grounds. The bill removes the discretion of the Consumer, Trader and Tenancy Tribunal under the current law to permit landlords to terminate leases without grounds. The service remains opposed to this change: it turns termination notices without grounds into trump cards and encourages their use, whereas the law should discourage or prohibit their use. The bill does not make any reference to the tribunal's discretion in relation to the date for possession of premises to be returned to the landlord after it makes termination orders without grounds. This is a serious defect: it should be clear in the legislation that the tribunal has such discretion, and that it is to be exercised considering the circumstances of the case.

There have been cases in the tribunal across the region where both private landlords and local real estate agents have issued no-grounds termination notices on tenants and then when questioned in the tribunal have made allegations of breaches by the tenant—or the tenant has made requests for repairs and subsequently received a no-grounds termination notice. In those circumstances landlords should use the appropriate recourse and issue notices upon tenants detailing the breach, and the tribunal should retain discretion not to terminate a tenancy. The final concern relates to termination on the ground of rent arrears. The provisions of the bill relating to termination on the ground of rent arrears are supported by the service. However, the bill makes one significant addition to those provisions, in clause 89 (5), which is misconceived and introduces a level of uncertainty into an otherwise sensible regime.

Across the region that the advocacy service covers, 103 tenants have contacted the service for advice about rent arrears. The service ensured that they understood their obligation to pay their rent in accordance with their agreement and has assisted them to work out payment plans to sustain their tenancies. In conclusion, the service believes the bill will be beneficial for both landlords and tenants, and by recognising the current reality of renting in New South Wales it will allow for faster and more effective resolution of issues faced by tenants in the region covered by the service.

**The Hon. SHAOQUETT MOSELMANE** [3.09 p.m.]: I support the Residential Tenancies Bill 2010, which is the result of a thorough and lengthy review of existing tenancy laws. The review involved extensive consultation with key stakeholders and provided members of the public with several opportunities to comment on the proposed reforms. I understand that the many submissions received during the consultation process were carefully considered and analysed and that this feedback played a vital role in informing and directing the development and finalisation of the proposals. As Virginia Judge, Minister for Fair Trading, made clear when introducing the bill in the other place, this reform package will deliver clear benefits to both landlords and tenants.

Specifically, I wish to highlight the important reforms in the bill around giving notice to tenants to vacate rented properties. The increase in the period of notice when a landlord wants to recover possession after a lease has ended is especially welcome. Under clause 85 tenants will in future be given a minimum of 90 days notice in these situations. Presently, tenants are entitled to only 60 days notice if the landlord wants the property back and the fixed term lease has expired. This is one of the lowest notice periods of all the Australian States. Historically, New South Wales has one of the tightest rental markets across Australia. Therefore, it is only fair and reasonable to expect tenants to be given a more appropriate amount of notice to vacate.

Tenants need to have enough time to find suitable and affordable alternative accommodation. We all know how hard that can be at the best of times when you are working, looking after your family and have other commitments. In a tight rental market such as we have now, there are often dozens of people competing for the one vacancy. Some tenants may have no choice but to move to another area. This can even involve changing schools for those tenants with children. All of this takes time to organise, let alone the packing and moving involved. It should be remembered that notice to tenants can, once their lease has ended, come out of the blue at any time. The lease may have run out years ago and the tenant may have no expectation of being asked to move, and they find out about it when the eviction notice arrives in the mailbox. This can come as a bit of a shock for tenants when they have been paying their rent on time, getting along with the neighbours and looking after the property.

Some landlords will no doubt argue that 90 days is too long, and even 60 days is too generous. They said similar things when the current 60-day period was first introduced back in 1987. It was suggested at the time that this would see landlords selling out in droves. Nothing of the sort eventuated and most landlords now accept that tenants should be given a fair amount of time to vacate. South Australia requires tenants to be given 90 days notice. Victoria has a 120-day minimum notice period, while in the Australian Capital Territory landlords must give tenants at least six months notice. Landlords seem to cope in those jurisdictions with no evidence that the longer notice periods have had a negative impact on their rental markets.

Bear in mind we are not talking here about tenants who are behind in their rent or trashing houses; we are talking about those who are abiding by the terms of their lease and have been asked to move simply because their landlord has made other plans for the property. The main issue for most landlords is not how much notice they give, it is about whether they get back possession after the notice period ends. It therefore follows that the more notice a tenant is given, the more likely it is that they will find a place and move out within the required time. If the tenant moves out within the notice period, the landlord does not have to worry about the time, cost and effort needed to obtain a tribunal eviction order.

As the Minister has indicated, the bill addresses ongoing uncertainty for landlords being able to recover possession if a matter goes to the tribunal. The bill removes the current discretion of the tribunal to consider the circumstances of the case and perhaps not give an order to terminate the tenancy. Under the bill, the tribunal will have to grant an order if the lease has ended and proper notice has been served. This is a significant reform for landlords and, I would have thought, a fair trade-off for having to give a tenant an extra month's notice. The fact that the tribunal will no longer have discretion will discourage tenants from staying on and trying their luck before the tribunal in the hope that they will be allowed to stay. It can take three to four weeks to get a hearing and then the tribunal may give more time for the tenant to vacate. Landlords will be better off under the bill if they can avoid needing to apply to the tribunal at all.

Those concerned about the 90 days notice should take note of clause 110 of the bill, which provides that a tenant who has been given notice can vacate at any time. One of the obvious problems with the current law is that the notice specifies a precise day on which the tenant must vacate—not a day earlier or a day later. Naturally, there is little point in a tenant who receives a 60-day notice going out and looking for a place too early. If they find one, the new landlord will expect them to move in almost straight away and they will have to pay double rent. To avoid these problems tenants commonly wait until close to the end of the 60 days or only start to look once the notice period is up. This causes delay for the landlord in getting the property back and makes it more likely that they will need to apply to the tribunal.

Enabling tenants to leave at any time within the 90 days will encourage tenants to start looking for another place early in the notice period, and that can only benefit landlords. As the Minister said in her speech, this could mean that many landlords will recover possession well before the 90 days run out and, in some cases, in less than the existing 60 days. If the main concern of landlords is being able to recover possession, they cannot complain about giving tenants some flexibility over which day they move.

Some will argue that it is inequitable for tenants to be allowed 90 days notice from the landlord when they only need to give 21 days notice if they want to move out. It is unfair and simplistic to compare the notice given to tenants to the notice tenants have to give landlords. This is comparing apples with oranges. It is simply not possible in some circumstances having regard to family, employment, availability of rental houses, and a whole heap of other matters that are beyond the control of the tenant. These notices serve two completely different purposes. Essentially, a landlord is being asked to readvertise their property for rent. The tenant is being asked to relocate their entire life to a new home. It is simply not realistic to suggest that the notice periods should be the same.

The bill is a significant step forward in the modernisation of existing residential tenancy laws in New South Wales. The knowledge and experience of landlords, tenants, managing agents and industry organisations have been essential parts of the development of the law reform package. I also wish to note the significant support that this bill received in the lower House, which was evident not only in the number of speakers in support of the bill but also in the depth of their arguments and their genuine belief that this is indeed an important piece of legislation. I commend the bill to the House.

**Reverend the Hon. FRED NILE** [3.17 p.m.]: I am pleased to support the Residential Tenancies Bill 2010, which will modernise and reform existing tenancy laws in New South Wales. This very important legislation affects many thousands of people in this State—landlords and tenants renting properties. Tenancy

laws have been under review for some time with a view to replacing the current laws with more contemporary legislation. The review began in July 2005 when an options paper was released by the Minister responsible for this legislation at the time, the Hon. John Hatzistergos. There has been a lot of background work done by people involved in the Office of Fair Trading and the office of Parliamentary Counsel to ensure that the legislation is developed to meet current modern needs.

The bill has been developed following a long period of extensive community consultation. There have been no fewer than three major rounds of public consultation during the review, and they began with the release of an options paper in July 2005 that identified the key issues for discussion and possible reform alternatives. On that occasion close to 100 submissions were received. The next public stage of the review came in September 2007 with the release of the report entitled "Residential Tenancy Law Reform: A New Direction". That report outlined more than 100 reform proposals. Again there was a great deal of feedback, from more than 1,600 individuals and groups, in response to the new directions report. Each of those stages and the feedback led to further refinements of the reform proposals.

The third stage of the review saw a consultation draft bill released in November last year, when more than 350 landlords, tenants, agents and other interested parties had the opportunity to let the Government know what they thought about the bill. Obviously there are differing views on the legislation but hundreds of suggestions were received, which were very important in helping to draft the final bill, which is now before us. There have been at least 20 meetings since 2005 of key interest groups, including the Tenants Union, the Real Estate Institute and the Property Owners Association, to discuss the reform proposals. I believe that that thorough background consultative work is the reason the bill received cross-party support in the lower House and will do so again in this House today, and that is a very positive development.

The bill removes some of the provisions about which doubts had been expressed. It removes reference to cosmetic changes and clarifies that landlords have total control over any work on the premises that is not minor or readily removed or repaired, including painting. The bill also gives guidance as to the reasons it would be reasonable for a landlord to reject a sub-letting request, such as overcrowding or if a person is listed on a "bad tenant" database. It also makes a break fee an optional term of the lease, with the agreement of both parties.

The main reforms that will assist landlords include: speeding up the eviction process when a tenant stops paying rent, limiting the time period for tenants to question rent increases, making it easier to deal with goods left behind by ex-tenants, and giving landlords certainty of getting their property back once the lease has expired. That is one side of the equation—the landlords' rights. However, the rights of tenants are also improved by the bill, by regulating bad tenant databases to ensure they work fairly and allow errors to be corrected; guaranteeing that a tenancy can continue if the tenant catches up the back rent and has a good rent history; requiring 90 days notice, up from 60 days, to move out if the lease has already expired and avoiding double rent by not having to give their own notice if they move out in less than 90 days; and, finally, providing more protection for domestic violence victims, who will be able to change the locks and have the names of offenders taken off the lease.

As members know, increasingly people are taking up the option of renting property and this sector is very important for the provision of accommodation for many thousands of people in this State. I am pleased we now have a bill that will provide fairness for both landlords and tenants and a clear understanding of their mutual obligations. For that reason I am pleased to support the bill on behalf of the Christian Democratic Party.

**The Hon. HELEN WESTWOOD** [3.23 p.m.]: I make a brief contribution in support of the Residential Tenancies Bill 2010, a major thrust of which is to provide greater clarity and certainty and to help reduce disputes that can arise between landlords and tenants. The bill also contains many measures aimed at reducing red tape and streamlining procedures.

An extensive consultation and review process has preceded the finalisation of the proposed amendments and influenced these extensive reforms to the tenancy laws. In particular, I wish to highlight reforms in the bill dealing with tenants who face eviction after they fall into rent arrears. A progressive reform in the bill is a change from the existing legislation, which states that payment of rent after a termination notice for arrears has been served does not prevent eviction proceedings from continuing. The bill allows for an agreed repayment plan or payment of rental arrears in full by a tenant at any stage up until the landlord regains possession, to guarantee continuation of the tenancy. This will provide a strong incentive for tenants who fall behind in payments to try to catch up with the rent.



In proposing this reform, the Government recognises that occasionally even a very good tenant may experience genuine, temporary cash flow problems. We can all appreciate that a car that is the tenant's only means of getting to work could suddenly break down and need expensive repairs, or a tenant who is in casual employment may be sick or hospitalised for a week or two and not be paid. Members will also be aware that many tenants have children. They may be single parents with children who are also ill and they may need to take perhaps unpaid leave, depending on their employment status. This reform will help to save these tenancies and get the parties back onto a good footing, to the benefit of both landlord and tenant. It will help good tenants avoid becoming homeless or incurring relocation costs because of a temporary cash problem, and it will help landlords keep a good tenant who is otherwise paying the rent regularly. It means the landlord will not be left with an outstanding debt that they have to try to recover from a former tenant. It also provides certainty for support agencies that may otherwise be disinclined to help the tenant pay the arrears if the tenancy was not guaranteed of continuing. This is a positive and progressive change and certainly a great win for social justice.

Of course, tenants must be dissuaded from falling behind in the rent. It is a part of every lease that rent be paid on time, and by not paying tenants are in breach of their lease. The bill does not change that. The bill guards against any potential for this proposed reform to be abused by unscrupulous tenants who could in a sense "game" the system by becoming serial or habitual late payers. Clause 89 (5) discourages that small number of tenants who could otherwise seek to milk the system by frequently waiting until the eleventh hour to pay their back rent.

The provisions that introduce a guarantee of continuation of tenancy are meant to protect tenants in genuine cases of temporary difficulty so that their tenancy can be saved if they follow an agreement to catch up the rent. It is not intended to protect serial offenders or to force landlords to continue to have to deal with a tenant who simply cannot afford the market rent for that property. A landlord should not have to go through the hoops of demonstrating hardship or special circumstances in order to get his or her property back from a tenant who frequently delays paying rent until the very last moment before eviction. Clause 89 (5) gives that security to landlords.

Clause 89 also has safeguards built in for tenants. The guarantee of continuation under clause 89 (3) will apply automatically unless the landlord specifically applies for a separate order asking the tribunal to override the guarantee because of the tenant's history of late payments. Tenants will have an opportunity to argue against such an order being made and will be advised if the tribunal decides the guarantee is not to apply. I am pleased that such a compassionate measure has been introduced. However, it would be pointless and unfair to force landlords to retain tenants who repeatedly cannot or will not pay their rent on time. There is no doubt that this measure achieves the right balance and with the entire suite of reforms in this bill is a progressive step forward for both landlords and tenants.

As all honourable members are aware, domestic violence is regrettably ever present in our State. We are also aware that many victims of domestic violence are also tenants. The bill has addressed one of the issues for victims of domestic violence. The bill will strengthen existing protections by allowing victims of domestic violence to take direct and immediate action to secure their premises. If a final apprehended violence order is granted excluding offenders from the property, their names can be taken off the lease and they will lose any legal right to live in the premises. The remaining tenants will also be permitted to change the locks and other security devices when an apprehended violence order is granted to better protect them without first having to seek the landlord's permission. I am sure that all members are aware that the granting of a domestic violence order is not something that the police and Local Court magistrates take lightly; it is a serious and vital step that many victims have to take. The bill acknowledges and strengthens the effectiveness of existing domestic violence prevention strategies. I am pleased to support this bill because I see it as progressive reform in this important area of residential tenancy.

*[Business interrupted.]*

#### **DISTINGUISHED VISITORS**

**The DEPUTY-PRESIDENT (The Hon. Kayee Griffin):** Order! I draw the attention of members to the presence in the President's gallery of the Hon. Elisabeth Kirkby, a former member of the Legislative Council.

**RESIDENTIAL TENANCIES BILL 2010****Second Reading**

*[Business resumed.]*

**The Hon. MATTHEW MASON-COX** [3.31 p.m.]: I speak in debate on the Residential Tenancies Bill 2010 and note at the outset that the objects of the bill are as follows:

- (a) to provide for the rights and obligations of landlords and tenants and for rental bonds and related matters
- (b) to repeal and re-enact, with modifications, the provisions of the Residential Tenancies Act 1987 and the Landlord and Tenant (Rental Bonds) Act 1977
- (c) to make consequential amendments to other Acts.

I acknowledge the great work done by shadow Minister Greg Aplin, the member for Albury in the other place, and the key industry stakeholders in endeavouring to achieve a balanced outcome for tenants and landlords in respect of this bill. In particular, key industry and consumer groups put a great deal of time and effort into improving many draconian measures in the draft bill. These groups include the Real Estate Institute, the Property Owners Association, Shelter NSW, the Property Council of Australia, the Tenants Union of New South Wales, the Law Society of New South Wales and the Institute of Strata Title Managers. Greg Aplin worked closely with those groups to try to resolve many of the problems that arose in this bill, which supposedly had gone through a comprehensive consultation process.

When a number of concerned investors in the property market, in particular, mum and dad investors, saw the provisions in the first draft bill they were concerned about their investments. I am sure that members received, as I did, many representations from landlords and some tenants in respect of the provisions in the first draft bill. In a number of the submissions that I received some investors said that they wondered whether or not the bill harked back to feudal times when tenants worked on their landlords' estates. At that time I think they were called peasants. It appears as though this bill reflects those times rather than the modern times in which we now live. It is good that we have come a long way since mediaeval times, although after reading the first draft of this bill one could be forgiven for wondering what era we are living in.

I refer to the consultation process that occurred in the lead-up to the first draft bill. In 2005 the Office of Fair Trading released its options paper and in 2007 the Office of Fair Trading released proposals for 102 changes to the Residential Tenancies Act entitled "Residential Tenancy Law Reform—A New Direction". In November 2009 the Government released the draft Residential Tenancies Bill. Throughout that process submissions were received from tenant groups, landlords and other interested parties. When the bill was finally introduced in this place there was a flurry of activity to introduce amendments that were required to bring some commercial reality to the bill.

Thankfully a number of key provisions in the draft bill were changed as a result of the discussions to which I referred earlier. In particular, provisions that enabled tenants to break fixed-term leases at will, with no compensation to the landlord, and a provision that enabled tenants to conduct cosmetic renovations and repairs to a landlord's property without the landlord's consent. The original bill failed to define what might amount to a cosmetic alteration and there was wild speculation that it might include painting a premises purple, as referred to by one member, perhaps concreting the garden, internal renovations, moving walls and putting up wallpaper—all sorts of options that were open under the original bill that struck at the heart of the long-established relationship between landlords and tenants.

Another provision in the former draft bill enabled tenants to sublet or transfer the lease to other parties without the landlord's consent or knowledge. What an extraordinary provision: a party was able to enter into a legal contract with a landlord that set out obligations and that party was then allowed to give that contract to somebody that the landlord did not know. What an extraordinary and flagrant breach of well-established principles of contractual obligation. I am pleased that the Government saw the light, came out of its mediaeval stupor and struck down that provision. I also note that the original provisions capped bonds at four weeks rent with no topping of bonds allowed and the lease fee itself was not chargeable to the tenant; the cost would have to be borne by the landlord—another example of this Government stripping landlords of their rights while stripping tenants of their responsibilities, which was a major problem in the initial draft bill.

In a tenancy agreement there are rights and responsibilities between a tenant and a landlord. The initial draft bill simply threw that out the window and the Government said, "If you are a tenant, you can do what you

like. You can sublet to whomever you like. You can make renovations to a property that you do not own without even telling the landlord." No wonder there was an outcry from many investors in this State, in particular mum and dad investors, about those extraordinary provisions. Why would they want to invest in a property market when their rights had been given away, where tenants can walk away from a legal and written contract at any time that they wish to do so. What an extraordinary range of provisions.

The Government, which is sorting out the problems that it introduced in the first place, should be condemned for wasting people's time. It is an absolute disgrace. It begs the question: How did we end up with those sorts of provisions in the first place? One need only look at the Government's paradigm in relation to many of these issues. It is determining people's rights rather than considering their responsibilities at the same time. The improvements made to the draft bill include deleting the subletting issue to which I have referred, revising the break fee issue relating to fixed leases, alterations relating to terminating a lease for non-payment of rent, and upholding a landlord's right to end a fixed-term lease upon its expiry without having to provide reasons. When a lease expires one should have the right to terminate it—a fairly well-established legal principle that this Government was looking to revisit under the guise of the first draft bill.

Despite all those issues there are still some problems with the bill. I note that in proposed section 50 a landlord is responsible for stopping a landlord's other tenants from interfering with the reasonable peace, comfort or privacy of a tenant. Subsection (3) of proposed section 50 states:

- (3) that the landlord's other neighbouring tenants do not interfere with the reasonable peace, comfort or privacy of the tenant in using the residential premises.

No explanation is provided about what amounts to "reasonable steps". Again, this provision will probably require determination by the tribunal and it may exacerbate disputes between landlords and tenants. This bill has a number of other similar provisions. New legislation that strikes at the heart of well-settled principles of existing legislation will always create problems. Time and again this happens with this Government, particularly at the Federal level.

**The Hon. Greg Donnelly:** As happened with WorkChoices.

**The Hon. MATTHEW MASON-COX:** The Hon. Greg Donnelly mentions some Federal legislation. One has only to consider the consultation process undertaken regarding the resources super profit tax. The same problems occur in this place. The consultation process bubbles in the background and suddenly a bill is introduced or an idea is floated that demonstrates that no-one listened to the people affected. In this instance, stakeholders provided their views on the Residential Tenancies Bill, but no-one listened to the views of all those affected by the proposed changes. No doubt, the Prime Minister will learn that he will have to change his proposal regarding the resources super profits tax just as this State Government had to change its response to the exposure draft of this bill. The process required some sense of commerciality, and recognition of responsibilities and rights, as well as understanding that tenants and landlords want a relationship that works, is reasonable and is based on mutual respect.

These fundamental principles will prevent disputes occurring under this or other legislation. In this case landlords and tenants will generally deal with disputes. We must ensure that we do not pass legislation that encourages disputes or seeks to tilt the balance towards one side or the other. As I mentioned earlier, the original bill was along those lines. A host of improvements have been made to the original bill. Again, I acknowledge the sensational contribution of the member for Albury in the other place. Whilst those changes are welcome, a number of others should be made. As this bill settles down over time, I imagine the need for further amendments will become more apparent.

Section 159 sets out that a bond is limited to four weeks' rent. This provision runs concurrently with existing conditions of four weeks rent for a bond for unfurnished premises and six weeks' rent for furnished premises. There is good reason for an additional bond for furnished premises. The chattels and furnishings provided by a landlord are subject to wear and tear and ultimately will need to be replaced. Obviously, such furnishings are assets of value that need protection, hence the purpose of a bond. In my experience as a tenant for a number of years while at university and at other places, a bone of contention at the expiration of a lease was always how to extract the bond from a landlord who was not willing to return it. My experience before a tribunal gave me a good understanding of how difficult it can be for tenants to recover bonds, particularly from a vexatious landlord. The bill generally deals with those situations quite well.

When dealing with poor legislation it is difficult to try to turn a lemon into a lamington, as the stakeholders have tried to do with this bill. The shadow Minister for Fair Trading, and member for Albury, made

a terrific contribution in that respect. The Government must learn not to reach back to feudal times when dealing with sensitive legislation. We must be cognisant of people's rights and responsibilities, rather than being swayed by preconceptions and out-dated paradigms, and seek to balance important legislation appropriately.

**Business interrupted and set down as an order of the day for a later hour.**

## **LEGISLATIVE COUNCIL VACANCY**

### **Joint Sitting**

**The Hon. PENNY SHARPE** (Parliamentary Secretary) [4.13 p.m.]: Madam President, in view of the holding of a joint sitting at 4.00 p.m. today in this Chamber to fill the vacancy in the Legislative Council caused by the resignation of the Hon. Ian Michael McDonald, I suggest that you do now leave the chair until after the joint sitting.

**The DEPUTY-PRESIDENT:** I shall now leave the chair. The business of the House will be suspended during the joint sitting. The House will resume at the conclusion of the joint sitting following the ringing of the bells.

*[The President left the chair at 3.45 p.m. The House resumed at 4.20 p.m.]*

**The PRESIDENT:** I report that a joint sitting of the two Houses was held this day at which Mr Luke Aquinas Foley was elected to fill the vacant seat in the Legislative Council caused by the resignation of the Hon. Ian Michael Macdonald. I table the minutes of proceedings of the joint sitting.

**Ordered to be printed on motion by the Hon. Penny Sharpe.**

## **RESIDENTIAL TENANCIES BILL 2010**

### **Second Reading**

**Debate resumed from an earlier hour.**

**The Hon. PENNY SHARPE** (Parliamentary Secretary) [4. 23 p.m.], in reply: I thank members for their contributions to this debate. As members have heard, the primary aim of the Residential Tenancies Bill 2010 is to rewrite and overhaul the current legislation. The bill will bring the regulation of residential tenancies up to date and in line with modern industry practices. It will remove archaic and redundant provisions. It will also make more than 100 reforms, which have arisen from a review of the existing legislation—laws that have remained largely the same for more than 20 years. The potential impact of these changes to tenancy laws, which were developed after careful consideration and wide-ranging consultation, is very significant for a large number of people.

Those opposite have criticised the Government for not undertaking consultation and complained that government consultation was a waste of time. They cannot have it both ways. In fact, stakeholders from all sides have had the opportunity to comment at every stage of the development of these amendments, starting in 2005 with the two-month release of an options paper. This was followed by the development of more than 100 proposed reforms contained in the New Directions Report, which was released for further public comment in 2007 and prompted more than 1,600 submissions from individuals and organisations across the board. Clearly this bill has had a lot of interest. Fifty face-to-face consultation meetings were conducted around the State. More than 100,000 brochures outlining the main reform proposals were sent out to tenants, landlords and agents. An online feedback forum was established. This important feedback led to the development of an exposure draft bill for a third round of major consultation.

I know that the Minister met on numerous occasions with major stakeholders, including the Real Estate Institute, the Tenants Union, the Property Owners Association and social housing providers to ensure all important issues were openly and comprehensively discussed. Following this carefully considered and comprehensive consultation process final refinements were made to the exposure draft bill. I again thank everyone who contributed to the debate and discussion, which led to the bill before the House. I am told that not one member of the Coalition contributed to the consultation process, despite the many opportunities to do so

during extensive rounds of consultation. I commend the constructive dialogue and assistance provided by other stakeholders through this extensive consultation process. We have listened to valid concerns and made changes, as has been acknowledged here today.

Turning to other issues raised today, the Government does not consider that the proposed reforms are prejudicial to landlords and they will not discourage investment. In fact, the bill will reduce the red tape and costs for landlords, which will serve as an incentive for investment in the rental property market. Many of the proposed reforms have been drawn from what is already working in other Australian States, and there is no evidence that these reforms led to a flight of investment or indeed had a negative impact on the rental market in those States. It is economic conditions that play the most important role in investment decisions and a number of studies have shown that the residential tenancy laws have little bearing on investors' decision-making processes. In March 2009 the Australian Housing and Urban Research Institute report found that the relationship between investment and tenancy law reform continues to prove weak. Similar concerns were raised during the last round of major reforms to the New South Wales tenancy laws in the late 1980s, but there was no flight of investors and since that time the stock of rental properties in Sydney alone has almost doubled.

Keeping pets without consent has also been raised. If a tenant keeps a pet without consent then that is a breach of the lease. The landlord could then recover cleaning costs in the tribunal if the carpet is not returned in the condition it was at the beginning of the lease. In response to concerns about water-efficiency measures, the bill provides important incentives to encourage landlords to install these measures. The bill will allow landlords to pass on water usage charges to their tenants but only if certain requirements are met including: that the premises are separately metered or receive delivered water, the premises contain water-efficiency measures and the landlord does not charge the tenant more than the appropriate amount for water usage. This will be further clarified in the supporting regulations, but the aim will be to encourage the uptake of water efficiency in all domestic homes without placing onerous or costly requirements on the landlord. For example, Sydney Water already provides a very affordable Waterfix program for only \$22.

The bill also provides a 12-month transitional period to make it easier for landlords to get any required work done before they need to comply with the new requirements if they wish to continue to directly recover the cost of water usage from tenants. Concern has also been raised about landlords having to give tenants their contact details. It is important that tenants have the landlord's contact details, not just those of the agent. This is necessary, for instance, if an urgent need arises when the agency is closed for holidays or the agent goes out of business. After all the agreement, is between the landlord and the tenant, not the agent and the tenant. On the issue of no-grounds notice, under the existing laws if a tenant continues to rent a property after the fixed term of the lease expires, the terms of the lease continue to apply as if a new lease had been signed.

These are generally referred to as "periodic tenancies". Periodic tenancies can still be terminated for any breach of the lease with 14 days notice. If there is no breach of the lease and the landlord wishes to recover the property for his or her own reasons, then the tenant must be given at least 60 days notice. The bill proposes to extend this notice period to 90 days to give tenants a more appropriate amount of time to find a new home and make all their moving arrangements.

I understand that a small number of submissions were received from tenancy groups arguing that landlords should be prevented from issuing these types of no-grounds notices altogether. However, the Government believes that landlords should retain the ability to issue a termination notice without having to prove or justify why they need their property back. This was also the view expressed in the majority of submissions to the review. This does not detract from a landlord's right to evict a tenant for a breach of the lease agreement, nor will it prevent the tenant from applying to the Consumer, Trader and Tenancy Tribunal if they believe that the termination was issued for retaliatory reasons. Ms Hale raised the issue of boarders and lodgers. From the outset of the review it has been made clear that the issue of boarders and lodgers was not part of this project. The Government has established a separate process to give full and careful consideration to the regulation of boarding and lodging arrangements.

**The Hon. Trevor Khan:** You are running out of time for doing anything about that. You have had 15 years to do something about it.

**The PRESIDENT:** Order!

**The Hon. PENNY SHARPE:** I note the member's lack of a private member's bill on the matter too. Boarders and lodgers are not captured by the current laws and it would be inappropriate to add provisions to the

bill at the last minute when the issues have not been considered or there has been no consultation during the tenancy law review process. Separate government action is underway to ensure that boarders and lodgers are protected in a way that is sensitive to the unique issues and circumstances in boarding house accommodation. That is not the same as a landlord and tenant relationship, and trying to force that regulatory framework onto boarding houses risks applying a lot of red tape that could threaten the supply of boarding house services.

In relation to holding fees, the objective of the reform is to clarify that the holding fee actually does reserve the property, but this can only be assured where the landlord has approved the application. It is pointless to pay the holding fee when the application has not been checked. Clause 33 ensures rent payments are only used for rent. If the tenant owes the landlord for other bills they can be separately pursued. Allowing rent to be used for other purposes may trigger eviction proceedings for rent arrears when in fact the rent has been paid. Mandating standards for security, such as alarms and bars, would be unduly prescriptive given the wide variety of premises and the locally specific security risks in different areas of the State. This would result in unnecessary costs and red tape for many "mum and dad" landlords.

On the issue of bonds for furnished premises, New South Wales is the only Australian jurisdiction that currently allows a larger bond for furnished rental premises. The bill proposes the same bond conditions for all rental properties. All bonds will be limited to a maximum of four weeks rent, regardless of whether the premises are furnished or not. This will prevent the dubious practice of leaving a few bits of unwanted furniture in the premises to justify charging a higher bond. In addition, genuinely furnished premises attract a higher rent than equivalent unfurnished premises. Consequently, even with the limit of four weeks on rental bonds, these bonds will still be higher. In relation to Opposition comments on section 50 (3), there is no obligation on landlords to investigate the cause of any particular disturbance, merely to ensure that their tenants do not cause nuisance for their own neighbouring tenants. This is merely holding them to the terms of their lease agreement, which contains a general obligation to not disturb their neighbours.

I thank all honourable members for their contributions to this debate. The regulation of residential tenancies in New South Wales will be much improved with the passage of this important bill. It fairly balances the rights and obligations of tenants and landlords, it modernises and updates the law in line with current practices, and it aims to reduce the level of dispute by providing greater clarity and certainty. I also place on record the Government's thanks to the staff and I place on record my thanks to the Minister's staff for their assistance in the preparation of this bill. It has been a complex and lengthy process and they have done very well. I commend the bill to the House.

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

**Motion agreed to.**

**Bill read a second time.**

### **In Committee**

**The CHAIR (The Hon. Kaye Griffin):** I propose that the Committee deal with the bill by parts. There being no objection, I will proceed accordingly.

**Parts 1 to 4 [Clauses 1 to 79] agreed to.**

**Ms SYLVIA HALE** [4.36 p.m.], by leave: I move Greens amendments Nos 1 to 7 in globo:

No. 1 Page 46, clause 89 (5), line 3. Omit "frequently". Insert instead "persistently or vexatiously".

No. 2 Page 62, clause 127. Insert after line 28:

(4) A landlord or landlord's agent must not, without reasonable excuse, fail to comply with this section.

Maximum penalty: 20 penalty units.

No. 3 Page 63, clause 130 (2), line 13. Insert ", for an amount that is reasonable having regard to the actual value of the goods," after "selling them".

No. 4 Page 63, clause 131. Insert after line 38:

Maximum penalty: 50 penalty units.

No. 5 Page 64, clause 132 (2). Insert after line 6:

Maximum penalty: 20 penalty units.

No. 6 Page 64, clause 132 (3). Insert after line 9:

Maximum penalty: 20 penalty units.

No. 7 Page 65, clause 135 (2), line 31. Insert "(other than liability incurred in accordance with this Division)" after "liability".

I move the amendments in globo because both the Government and the Opposition have indicated that they will not support them, which I consider to be a great pity because, as I said in my speech on the second reading, the aim of these amendments is simply to clarify certain aspects of the bill and, in a number of instances, to remedy what I believe is a glaring deficiency in that there is no provision for penalties to be imposed should a landlord fail to comply with the requirements of proposed sections 127 to 130, 131, 132 and 135. Be that as it may, I will deal with each of the amendments in order.

The Hon. Rick Colless, in his speech during the second reading debate, drew attention to a letter that he had received from the northern region Tenants Advice and Advocacy Service. I have received a letter from the Southern Sydney Tenants Advice and Advocacy Service, which, whilst it is centred in the Canterbury-Bankstown area, covers a considerable region of the metropolitan area. It wrote on 7 June specifically about two proposed sections, one of which is the subject of the first amendment, that is, proposed section 89 (5), termination of tenancies on grounds of rent arrears.

I had originally proposed a number of amendments, because there are at least three distinct problems with this clause, but in the hope of getting the Government's agreement I have reduced it to one amendment. The other two issues that exist in relation to that proposed section are identified by the Southern Sydney Tenants Advice and Advocacy Service in its letter, which states:

We support the issues raised by the Tenants' Union of NSW, and note the following:

Clause 89 (5) is unclear as to whether it is a special application of which the tenant should be specifically notified or is to be available for landlords to lodge an application seeking termination;

Clause 89 (5) creates uncertainty in regards to subsection (3) of Clause 89;

The use of the word 'frequently' could be open to widely varying interpretations and expectations.

I have focused purely on the issue of the word "frequently", which I am seeking to omit and replace with the words "persistently or vexatiously". The reason for doing that is set out very clearly in this letter from the tenants advisory service, which says:

It is our experience that there can be many reasons as to why a tenant may fail to pay rent. Often this occurs during periods of hardship, and during periods when a tenant's income is infrequent or uncertain. This can happen when a tenant is receiving workers compensation payments; when there is a family breakdown and families are awaiting approval for Centrelink benefits; or for tenants working in casual employment such as taxi driving where there is no guarantee of wages during periods of illness. All of these circumstances would leave vulnerable tenants to periods of homelessness and extreme hardship if termination applications were granted by the Consumer Trade and Tenancy Tribunal; yet in many instances the matter could be resolved with repayment agreements once the cause of temporary hardship had been resolved.

The word "frequently" puts the emphasis on the number of times a tenant fails to pay the rent on time. I think the emphasis should really be on whether in fact that behaviour is persistent over a period of time, or whether it is vexatious—whether it is done deliberately. Any number of problems can occur to a tenant who is anxious to pay the rent but is often or occasionally unable to do so due to a series of unfortunate circumstances. The word "frequently" is vague. Frequently in whose opinion? The object of the Greens first amendment is to isolate the reasons for the behaviour rather than focus solely on the frequency of the behaviour. That is the thinking behind amendment No. 1.

Amendment No. 2 relates to proposed section 127, which deals with disposal notices and the requirements for the tenant to be given notice about proposed disposal of goods. In the case of goods other than personal documents 14 days notice must be given, and 90 days notice must be given in the case of personal documents. Proposed section 127 (2) and (3) then go on to outline the way in which those notices can be given. I wish to insert a subsection (4), which states that a landlord or landlord's agent must not, without reasonable excuse, fail to comply with this section, and it includes a maximum penalty of 20 penalty units.

What is the point of saying what a landlord must do if the landlord can flout that requirement? This same argument applies to amendments Nos 4, 5 and 6, and I will not repeat it when we get to them. What is the

point of saying a landlord must conform to certain requirements but to have no penalty if they do not do so? I know the argument is raised that if goods are disposed of improperly or the landlord does not follow the required procedure it is open to the tenant to seek an order for compensation from the Consumer, Trader and Tenancy Tribunal. But how do you compensate people for the loss of personal documents, photographs, mementoes, passports and whatever? How do you compensate tenants for documents that may be of small pecuniary value but immense emotional value? How do you compensate tenants if they are really down on their luck and have received second-hand furniture from an organisation such as the Salvation Army, St Vincent de Paul or the Smith Family? The furniture they have received may be of little intrinsic commercial value but of extraordinary value to the tenant and very valuable to the organisation that has supplied those goods. Yet there is no penalty whatsoever.

We are dealing with people who often get behind with their rent and have multiple stresses upon them. They may be behind in their rent because of unemployment or sickness or family break-up and have been evicted. To then say to these people, "Take yourself off to a tenants advisory service and they will institute the processes for getting some compensation" is unreasonable. For people who do not speak English well, that is extraordinarily difficult. It also assumes that families that have been evicted will have the ready cash to avail themselves of those services if they are located far from where they live. Also, the process can be so longwinded as to be meaningless. For that reason the Greens believe there should be penalties in the relevant clauses. I believe the current wording is an absurdity. It is inviting a landlord to flout the requirements of the Act. It is true that any fine that may be imposed will not go to the affected tenant but it will act as a deterrent to landlords and ensure in some small measure that they do the right thing. That is why the Greens want to insert penalty points into the clause.

Amendment No. 3 deals with proposed section 130, disposal of non-perishable goods other than personal documents. Proposed subsection (2) presently says that the landlord or landlord's agent may dispose of any such goods by selling them or in any other lawful manner. The Greens are seeking to add the words "for an amount that is reasonable having regard to the actual value of the goods". A landlord may sell the goods to anyone, such as a neighbour, or even to himself, I suppose, for a farthing. There is no requirement that the landlord respect the intrinsic value of the goods. I believe that is inappropriate. The requirement should be that the landlord sell them for a reasonable price and, after having deducted whatever may be owing to him, give the remainder to the tenant.

Amendment No. 7 relates to proposed section 135 (2) and seeks to add after the words "a person does not incur any liability" on page 65 of the bill the words "(other than liability incurred in accordance with this Division)" in respect of the removal or sale or other disposal of goods. This would spell out and make it perfectly clear to everyone that they must follow this procedure. It will make it perfectly clear that they will incur a liability if they do not follow this procedure.

We often find with management agencies, in particular the larger ones, that they are familiar with the Act and, no doubt, they will become familiar with this Act. For the most part they tend to abide by the provisions of the Act. But many landlords who are acting as private individuals and who may not be so familiar with the Act may then decide to turn themselves into home-grown lawyers and read the provisions of the Act. For that purpose the Act needs to spell out very clearly what is required of them and what can be expected if they do not comply with those requirements. All that these amendments will do is to make it abundantly clear that there would be penalties if they did not comply with the provisions of this division. I commend the amendments to the Committee. This is one of those occasions when one wishes that commonsense rather than numbers prevail. Nevertheless, I think that these amendments deserve to be supported.

**The Hon JOHN AJAKA** [4.51 p.m.]: The Opposition opposes each of the seven amendments that have been moved in globo. I will go through each amendment individually and deal with them finally in globo. In relation to amendment No. 1, I again confirm the position that there must be a balance between the two types of stakeholders—the tenants and the landlords. In my view this amendment unfairly disadvantages the landlord. First, the requirement for a landlord to establish that someone acted vexatiously places an onerous requirement on the landlord. Are the Greens suggesting that a landlord should be entitled to this relief only when he or she has proved that a tenant acted vexatiously—a test that is quite difficult to establish in view of the various case authorities on this point? Why should a landlord wait until a tenant "persistently" acts vexatiously rather than "frequently" acts vexatiously?

I thank my colleague the Hon. Trevor Khan for providing me with the *Australian Oxford Dictionary*, in which the definition of "frequent" is "to go often or habitually". The definition of "persistent" is "enduring



constantly; repeated". The term "frequent" is more than sufficient in these circumstances to offer fair protection to both stakeholders—the landlord and the tenant. One must look at the right balance between the stakeholders. Ms Sylvia Hale tends to forget that many landlords have monthly mortgage repayments that are clearly dependent upon rent being paid on time and in accordance with an agreement that both parties had reached. If the money from the tenant is not paid frequently a landlord could default frequently on his or her mortgage repayment, and many penalties may apply. It has been argued that proposed section 89 does not go far enough to protect the landlord. It does not go far to protect them—the exact opposite of what the Greens are saying. I wish to read onto the record what one of the landlord representative groups recently forwarded to me. It states:

We prefer to see the only way for an order for possession or writ to be overturned by an application to the CTTT (as is now the case—section 65 of the 1987 Act), rather than having the order or writ voided by payments of arrears. If the section remains as drafted, the institute would like to see a provision for the recoupment by the landlord of the costs thrown away. If an order for possession or writ is voided (or at the bare minimum reimbursement of the CTTT filing fee and/or the fee for the Sheriff's writ).

The new section 89 (5) for "frequent offenders" is a welcome addition, but does not protect a landlord from a "first offender". Maybe it could be amended to "... has failed, or has frequently failed to pay ..." The CTTT still has a discretion here in any event but a failure to pay rental for a Palm Beach property might well be worse than a frequent failure to pay for, say, several weeks in Gunnedah.

Landlords are saying that "frequent" is not even enough and that the provision should apply also to first offenders. I believe that the balance has been found in relation to the section as it is currently drafted. I refer now to amendments Nos 2, 4, 5 and 6. One can summarise these amendments as the penalty provisions to be imposed on landlords or, more realistically, in effect, criminal penalty matters. Where is the fairness of imposing these penalty fines on a landlord? The Greens are not seeking similar type penalties on tenants who breach the provisions of the Act. In relation to amendment No. 2, section 127 clearly sets out the specific obligations on the part of the landlord. It clearly sets out the time periods required for notice—14 days for goods other than personal documents, and 90 days for personal documents. It clearly defines the method of providing notice.

If a landlord were to breach this notice provision he or she clearly would be liable at civil law for any damages suffered by the tenant. The entitlement to claim damages for losses by a tenant is the more appropriate remedy as it currently exists, not the imposing of criminal-type fines on a landlord. Those fine payments do not assist the tenant in any way. Similar arguments could be made in respect of Greens amendments Nos 4, 5 and 6. Again, the tenant is able to seek recourse for losses or damages suffered should the landlord breach any of these provisions. The onus is on the landlord to prove compliance with this specified obligation imposed in accordance with the provision. I do not understand why Greens amendment No. 3 is even required. The landlord would be bound by all the current legal precedents to ensure that the best possible arm's-length, full-value price was obtained.

I do not believe that the amendment is necessary or offers any additional protection to a tenant. In fact, it may restrict an entitlement of a tenant because it refers simply to the specific "actual value". Damages may be awarded in certain circumstances as the current law applies for more than simply actual value. Put simply, I do not know what amendment No. 7 would add to proposed section 135 subsection (2). Subsection (1) of proposed section 135 clearly refers to "goods sold in accordance with this division". It is in fact the qualifier for subsection (2). If we accepted Greens amendment No. 7 it would, in effect, reinstate the qualifier of subsection (1), which simply is not necessary. As I indicated earlier, the Opposition opposes each of these seven amendments.

**The Hon. PENNY SHARPE** (Parliamentary Secretary) [4.58 p.m.]: The Government opposes the Greens amendments. The new guarantee of tenancy to avoid eviction after rental arrears are made good, or a repayment plan is entered into, is intended to assist tenants in temporary difficulty that have fallen behind in their rent. The bill also provides for landlords to ask that this guarantee be set aside if a tenant has frequently failed to pay the rent on time. To apply a higher test of persistent non-payment or vexatious intent may prevent ordinary landlords who may be using rental payments to meet mortgage commitments from using this provision. The tenant has a contract with the landlord to pay the rent on time, regardless of any other factors.

If the tenant believes that the landlord has breached the agreement there are other mechanisms for redress. Non-payment of rent is not one of them. Whether or not the tenant is being vexatious is irrelevant. Testing whether the non-payment of rent has been persistent essentially would require continuous failure to pay the rent. This means the tribunal may have to find against the landlord if there have been perhaps one or two occasions when the rent had been paid on time. The reason or intent behind the non-payment of rent is not a factor to be taken into account. Frequent non-payment of rent should suffice to override all other factors. It

would be pointless and unfair to force a landlord to retain a tenant who cannot or will not pay the rent, regardless of intent. The proposed amendment for landlords to have regard to the actual value of goods left behind places undue pressure on the landlord to become an expert dealer in second-hand goods.

I remind the House that we are talking about goods the tenant should have either taken with them or made alternative storage arrangements for. This change is unnecessary as section 134 (1) (d) provides for tenants to apply to the tribunal for compensation for sale proceeds or an amount equivalent to the value of the goods. If it were the case that the landlord sold the goods to his or her cousin for \$1, the tenant can seek redress in the tribunal by applying for compensation for an amount that they believe the goods were worth. Legislation cannot provide for every potential, specific or isolated circumstance that may arise; the compensation provision is flexible enough to cover any situation.

The amendments seeking to rewrite proposed section 135 (2) essentially are a drafting preference that the Government believes makes no improvement to the operation of the bill, and would probably serve to make the drafting more confusing for both landlords and tenants. The intent of the bill is to provide clarity and certainty—not to insert circular language, as this amendment would do. In relation to the penalties suggested, we absolutely reject that new provisions should be inserted that will make landlords subject to criminal proceedings for failure to meet relatively minor administrative obligations that arise purely from the tenants' failure to take their possessions with them when they left. The proper action for a tenant who has been materially damaged by a landlord's actions is to seek compensation from the tribunal, which currently can be for an amount up to \$10,000. This is a more appropriate remedy for tenants than applying a penalty, and it serves as an effective deterrent for landlords. The Government opposes all of the amendments.

**Question—That Greens amendments Nos 1 to 7 be agreed to—put and resolved in the negative.**

**Greens amendments Nos 1 to 7 negatived.**

**Part 5 [clauses 80 to 118] agreed to.**

**Parts 6 to 12 [clauses 119 to 227] agreed to.**

**Schedules 1 to 3 agreed to.**

**Title agreed to.**

**Bill reported from Committee without amendment.**

### **Adoption of Report**

**Motion by the Hon. Penny Sharpe agreed to:**

That the report be adopted.

**Report adopted.**

### **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.**

**Pursuant to sessional orders business interrupted to permit a motion to adjourn the House if desired.**

**The House continued to sit.**

**BUSINESS OF THE HOUSE****Suspension of Standing and Sessional Orders: Order of Business****Motion by Reverend the Hon. Fred Nile agreed to:**

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 112 outside the Order of Precedence, relating to the Macedonian Orthodox Church Property Trust Bill 2010, be called on forthwith.

**Order of Business****Motion by Reverend the Hon. Fred Nile agreed to:**

That Private Members' Business item No. 112 outside the Order of Precedence be called on forthwith.

**MACEDONIAN ORTHODOX CHURCH PROPERTY TRUST BILL 2010**

**Bill introduced, and read a first time and ordered to be printed on motion by Reverend the Hon. Fred Nile.**

**Second Reading**

**Reverend the Hon. FRED NILE** [5.06 p.m.]: I move:

That this bill be now read a second time.

The objective of this bill is to constitute a statutory corporation to hold property for the Macedonian Orthodox Church Diocese of Australia and New Zealand, to specify the functions of that statutory corporation and to vest in the statutory corporation property held in trust for the benefit of the church. The Bishop of the Diocese, His Grace Metropolitan Peter Karevski, whom I have met on a number of occasions, as well as other church representatives, has asked for the enactment of this bill to facilitate the administration of his diocese and, in particular, to provide for a corporate trustee with perpetual succession to hold the church's property. The establishment of a corporate trustee will make it possible for property of the church in the diocese to be held by a single body, thereby overcoming the difficulties in having several trustee bodies acting for the church and ensuring a succession of trustees. It is a longstanding policy of this Parliament to assist churches to organise their financial and property affairs by sponsoring a bill such as this to establish property trusts to manage their present and future holdings.

The church acknowledges the existence within itself of juridical structures that are utilised for the proper administration and management of its operation, thus ensuring that the asset base of the church is identified, protected and preserved for the purposes of the church. The orthodox church is not dissimilar from other Christian denominations in this regard. The significant benefit from a supportive Government that passes legislation is that the community will understand that the church is acknowledged, organised and well administered. The trusteeship and property holdings of the church are disorganised at present. The lack of legal status and disorganisation of landholdings hinders the day-to-day financial arrangements of the church. Banking and mortgage dealings are defeated or impeded by the difficulties associated with the management through individual and sometimes missing or deceased trustees.

The advantages will be in relation to cross-collateralisation of the church's securities, as vesting properties in a single entity will enhance security for lenders. The need for the bill arises because the church seeks to vest its property in a single corporate body that is able, in perpetuity, to hold property on behalf of the church, its parishes and institutions. The concern is that when the property is vested in trustees incorporated associations or companies there is no accountability to the church. Further, there is concern that, should there be a failure to appoint future trustees, or a failure to comply with the requirements of legislation regulating a corporate body, the interests of the church may be adversely affected and property lost to the church. It is possible also that where property is held by a corporate body the interests of the church may be adversely affected by the actions of its members.

Whilst the spiritual affairs of the Macedonian Orthodox church are its concern and responsibility, the Parliament can assist the church to organise its property affairs. By this bill, the Parliament will assist the church

by providing an appropriate structure to support its religious and charitable activities and order its secular affairs. The bill will assist the church in its organisational and administrative affairs, providing a stable and solid foundation for development and activities of the Macedonian Orthodox Church in Australia.

A statutory body, the constitution of which cannot be changed except by an Act of Parliament, provides protection to the church and ensures that property vested in the statutory body is held in trust by the church in perpetuity until disposed of in accordance with the decision of the church. Vesting the property of the church in a single body also enables the church to maintain proper records of its property and facilitates any proposed borrowings on the security of its property. The bill deals only with establishing a corporate trustee and the holding by it of the property of the church and the administration of that property. For the benefit of honourable members I will outline the major provisions of the bill.

The bill will provide for the creation of a statutory trust to be known as the Macedonian Orthodox Church Property Trust, which is referred to in clause 5 (1). The trust will have power to hold property throughout Australia in accordance with clause 4, and will vest in it certain powers in relation to dealings with property and investment of funds in accordance with clauses 7 and 10. The bill will empower the holding of the property by the trust, the blending of the trust funds, and the variation of trusts pursuant to clauses 11 and 12. By the bill, the trust may make arrangements with a church of another denomination concerning the use of trust property in accordance with clause 13, and may be appointed the executor or administrator of an estate under clause 15.

The property trust will be a body corporate with perpetual succession. It will enable the property of the church to be held by the trust to overcome the problems associated with certain properties currently being held by individual trustees and for whom successors have to be appointed. The membership of the trust in clause 5 (2) reflects the composition of the Diocesan Committee of Trustees, being the protector of the church's assets, pursuant to its statute. As such, the bill follows the governance of the church in relation to matters regarding the assets of the church but causes the utilisation of property assets by the church to be subject to civil and canonical accountability required by its statute.

The bill is similar in content to other church property trust legislation passed by various Australian parliaments, including State parliaments, and has been prepared in accordance with the New South Wales Government's policy of assisting churches to better administer their temporal affairs. However, the further importance of this legislation is that it provides a facility by which the Parliament can assist the church to put at rest any feeling of misconception as to who has any entitlement to property. This has been at the heart of problems within the community. The bill will vest four diocesan properties in the trust pursuant to clause 17. Those properties are currently held by the bishop, the deputy bishop, and other clerics as trustees on appointment by the Diocesan Committee of Trustees. They hold those properties as trustees until the enactment of a property trust bill.

It is important to emphasise that the bill does not effect any automatic vesting, mandatory or compulsory transfers of any other properties to the trust, whether the properties are held by parishes of the church or otherwise. For example, for historical reasons a number of parishes hold parish property in the name of individual parish members, or in other legal structures. Properties held in such way will not be automatically transferred into the trust when it is created. The bill provides a mechanism for any property to be transferred to the trust at a later stage, after the bill takes effect, but only after the consent of both a current trustee wishing to transfer property in the trust, as well as the consent of the Metropolitan to such transfer. This is the most important part of this bill. It is provided for in clause 19, which reflects the reality of every other ordinary conveyance of property where the content and agreement of all parties to a transfer is necessary for a transfer to be effected.

Clause 20 deals with the circumstances of such later transfer if the consent of all current trustees cannot be obtained because of absence or death, in which case the Metropolitan can consent on their behalf, provided that the detailed procedure in clause 20 is followed. Clause 18 provides for vesting in the trust of property that is acquired after the date that the bill comes into effect when a gift, disposition or a trust of property is made or declared, for or on behalf of the church, or to the bishop or another person on behalf of the church, to ensure that such gifts, dispositions or trust property do not fail because of the bill. Division 2 of part 3 provides standard provisions relating to the requirement for relevant registration authorities to record the transfer of interests in land that are necessary as a result of the vesting or transfers of property under clauses 17, 19, or 20.

The bill also has standard provisions stating that vesting of property under part 3 of the bill is not a dutiable transaction for the purposes of the Duties Act 1997, and thus provides exemption from stamp duty for

such transfers. That is a very important provision. The bill will thus avoid the cost of transferring church property to new trustees each time a trustee dies or retires, and will enable the church to better invest its funds. These provisions of the bill are consistent with the approach taken in other property trust legislation. Similar orthodox church property trust bills have received bipartisan support when they passed through both Houses of Parliament. The bill will have a positive impact on the operations of the church and its capacity to manage its financial and property affairs. This will have specific benefit to members of the Australian Macedonian community and their families by assisting the church to grow in Australia. The bill is part of a tradition of assistance set by a long line of State governments to assist such institutions.

The background of the Macedonian Orthodox Church is that it is one of the most ancient Christian churches of the East that recognises the Patriarch of Constantinople, which is first in honour among all the Eastern Orthodox bishops, and presides over any council of orthodox primates and/or bishops in which the Patriarch of Constantinople takes part and serves as primary spokesman for the orthodox communion, especially in ecumenical contacts with other Christian denominations. The Macedonian Orthodox Church, which is one of the great family of orthodox churches, is a self-governing body. Its history dates back to the founding of Christian churches in Macedonian cities by St Paul the Apostle.

The church was founded on the day of the Pentecost when the Holy Spirit descended upon the Apostles in a small upstairs room in Jerusalem. That is recorded in the *Bible* in the Acts of the Apostles. When Saint Paul was travelling on his great evangelical work throughout Macedonia and Greece he wrote in his personal epistles the famous words to Silas and to the church in Jerusalem, "Come over into Macedonia and help us." The work of the holy Apostle Paul was continued throughout the centuries by the Macedonian Orthodox Church. The church's jurisdiction spreads not only throughout Macedonia, which has always been at the heart of the development of the Christian faith, but also in communities abroad. Worldwide the church has 13 dioceses, 500 parishes, more than 2,000 churches and 20 active monasteries.

The church is hierarchical in nature, with authority residing in a multilayered order and ascending ultimately to the Archbishop of Ohrid and Macedonia as its Governor, who is elected for life by the Archbishopric Electoral Church and Lay Council in accordance with the canonical and constitutional provisions of the Holy Orthodox Church. The Archbishop presides over the Holy Bishop's Synod, which is referred to as the Holy Synod, and that comprises all diocesan bishops and vicar bishops. The Holy Synod is the supreme legislative, judicial and doctrinal body of the church.

Under the constitution of the church, the Holy Synod is vested with responsibility for the creation of dioceses and the enthronement of bishops to govern them. Following such an appointment a bishop has supreme authority in all matters regarding the dioceses, including all pastoral, financial and administrative affairs. The bishop ordains the clergy and is responsible for their appointment to various offices within the diocese. In accordance with the constitution, all assets raised by the church in a diocese remain at all times the assets of the church in that diocese.

The church in the diocese of Australia and New Zealand is administered by His Grace, Metropolitan Petar Karevski—whom, as I said earlier, I have met a number of times—pursuant to the powers vested in him by the Holy Synod of the Mother Church and the Statute of the Diocese, which was passed by the Diocesan Assembly and authorised and certified by the Archbishopric Church and Lay Assembly of the Macedonian Orthodox Church on 24 February 1996.

Since its establishment in Australia in the 1960s the church has accumulated significant landholdings—parish churches, church halls, manses and other residential properties, picnic and sports grounds and licensed reception centres for the use and benefit of local communities, a cathedral and a monastery. The church engages in significant religious, charitable and education activities. The church fulfils a social role and keeps the community together in a unique way. I am pleased to have met with the Macedonian Parish Congregations and clergy, and when this bill is passed by both Houses of Parliament I look forward to its being a blessing to the Macedonian Orthodox Church. I pray that Almighty God will again pour out His Holy Spirit on the Macedonian Orthodox Church—as well as on all the other Christian churches in Australia—as he did on the day of Pentecost. I call on all members to support this important bill.

**Debate adjourned on motion by the Hon. Greg Donnelly and set down as an order of the day for a future day.**

#### **ADJOURNMENT**

**The Hon. MICHAEL VEITCH** (Parliamentary Secretary) [5.21 p.m.]: I move:

That this House do now adjourn.

**TRIBUTE TO MARJORIE HELEN TERNOVY****WOMEN'S EQUALITY**

**The Hon. LYNDIA VOLTZ** [5.21 p.m.]: I pay tribute to the life of a great and inspiring woman, Marjorie Helen Ternovy, nee McDonnell, who died last year at the age of 77. Coming from a farming family based near Gulgong, she had the importance of hard work pressed upon her at an early age. So too were the restrictive societal expectations that were placed on girls, which were compounded during her childhood and adolescence by the Depression and World War II. Despite these restrictions, she attended boarding school at Perthville convent, and then secured a rare scholarship for further education to the teachers college. Marjorie's first teaching appointment, at Brighton-Le-Sands, marked the beginning of a lifelong commitment to educating others, working as a teacher and principal throughout Sydney and New South Wales.

In 2001 Marjorie received a Premier's Award for outstanding service to the Community of New South Wales. Marjorie lived out her retirement in the Lake Macquarie area and was a member of the Australian Labor Party, campaigning for improvements to her local community and remaining active in her branch. However, it is not just her contribution to the Australian Labor Party that deserves praise; it is merely a reflection of a philosophy of collectivism and collaboration. This woman was a generous and involved member of her local community throughout her life. Whether working as a schoolteacher and principal or in community groups such as the multicultural care centre and the study group she established in retirement, her life always reflected a commitment to others.

This morning I read a report on the lack of equity for women in medical testing. The report commenced with the following words, "Women had made great strides in equality around the world but not in medical testing." I also read an article on a rally by the Australian Services Union regarding the ongoing issue of pay equity for women. It reported that 40 years after the commencement of the women's liberation movement, women are paid 17 per cent less than men are paid and that the gap between male and female wages is so large that on average women have to work 63 days more a year than a man works to earn the same income. While the media might suggest that women are making great strides around the world, those two articles are evidence of just how far women have not come. Perhaps the greatest impact on that inequality for women can be found in developing countries. The impact is huge. We have a more globalised economy, and the private sector has vastly greater amounts of money than government and non-government organisations and can wield significant leverage with its powerful brands and in extending promises of investment in employment.

The private sector has a particular role to play in educating developing communities. A good example is India. The spread of the GE portable sonogram machine to clinics across rural India brought low-cost foetal screening to millions. As a result, in some parts of the country as many as 140 boys were born for every 100 girls. Obviously what GE did caused an outrage. To protect its ultrasound business, and to avoid legal damages, GE responded with education campaigns on the importance to development of female children and women in society. But that campaign was in response to outrage against the business.

The \$450 billion global advertising industry across the world has one role, and one role only: to communicate messages. The key message should be for an organisation to be a good corporate citizen. We expect companies such as BHP and others to pay for the social costs of the impact of their industries, and the advertising industry should be no different. Fundamentally, with regard to equality women are being held back by the way women are portrayed in advertising, and it is about time that the advertising industry picked up some of the societal costs of that portrayal. I have raised this matter before. This \$450 billion industry has a huge role to play, particularly in developing countries, in providing a much better outcome for women and women's rights.

**ECOLOGICAL CONSULTANTS ACCREDITATION**

**Mr IAN COHEN** [5.26 p.m.]: As our endangered native plants, animals and entire ecological communities come under increasing pressure from development the role of ecological consultants in assessment and conservation is critical. We urgently need a regime in which the community can have faith, one that ensures that all ecological reports and recommendations arising from them are of the highest quality and objectivity. Instead, we have a regime that sees different ecological consultants providing conflicting findings on ecosystem classifications, which are then offered different levels of protection. The fact that developers can pick and choose their consultants has resulted in accusations that some consultants could be tailoring their findings so as not to result in a "red flag" for developers. This needs to be addressed as a matter of urgency. In my home area these consultants are clearly identifiable. Developers shop around. It makes a mockery of the process.

Existing provisions under the Threatened Species Act for the accreditation of species impact assessors and certification of environmental planning instruments, and in the Environmental Planning and Assessment Act for consultants assessing the significance of impact on threatened species, populations or ecological communities are presently not being used by the Government. This highlights the absurdity of allowing the accreditation of ecological consultants to be left to the discretion of the Government when dealing with such fragile aspects of our precious environment. Likewise, the reliance on protocols rather than legislative requirements to manage areas that are important to biodiversity and cannot easily be replaced—so called red flag areas—is equally disturbing, especially when the Government clearly states in its public information that, "There may be some circumstances in which developments impacting on red flag areas still meet the improve or maintain test" and that the protocols do not prevent these areas being cleared or modified by development projects if "avoiding red flag areas would be unnecessary and unreasonable in the particular circumstances".

A universal ecological consultant accreditation scheme to be administered by the Department of Environment and Climate Change would address those shortcomings by establishing a regime of peer oversight and requiring minimum qualifications and standards of work on the part of ecologists. The scheme should cover the seven key areas of assessment and reporting that is required by current legislation, that is environmental assessments under parts 3A, 4 and 5 of the Environmental Planning and Assessment Act 1979, and requirements of the Threatened Species Conservation Act relating to Species Impact Statements under sections 78A or 91, preparation of a licence application under section 91, proposals for biodiversity certification of environmental planning instruments under part 7, and proposals for bio-banking agreements under part 7A.

There are several models that could be referred to for guidance. The regime applied under the Contaminated Land Management Act is a good starting point. It sets out in the objects that accreditation of contaminated land site auditors are required to make sure that the right standards of auditing are applied to contaminated land management. Site auditors are overseen by an accreditation panel made up of governmental, community, industrial and professional representatives holding technical expertise in contaminated land management. This panel recommends whether a candidate is suitable to be accredited, along with other associated advice needed by the Environment Protection Authority. There are also explicit requirements for site auditors to avoid potential conflicts of interest and criteria for suspending or revoking accreditation in cases where the conduct or quality of the auditors work is in violation of the required standards. The cost of administering this scheme is not great, in the order of \$270,000 for 2008.

In the case of ecological consultants and the role they play in determining whether a particular development should go ahead and, if so, in what form, the accreditation scheme needs to go further to include a mechanism whereby complaints about the quality of an assessment can be subjected to peer review, provided certain complaint threshold criteria are met. This would give the community, as well as the Government and developers, the much-needed stamp of legitimacy before any destructive works can take place.

To avoid concerns about conflict of interest arising when consultants are being paid for their work by the very people proposing to potentially damage or destroy critical habitat and threatened species, consultants should be limited to getting only a set percentage of their income from any one developer, as is the case in the private certifier scheme under the Environmental Planning and Assessment Act. The Contaminated Land Management Act and private certifier schemes could also be used for guidance on managing conflicts arising from a consultant's relationship to the ownership of, or any other work being done on, the land in question.

Finally, the scheme will be no good without strong enforcement mechanisms. It must be supported by provisions stipulating the application of penalties, if a person fraudulently claims to be accredited when he or she is not, and through requirements to provide annual statements about where the income comes from. In January of this year I wrote a letter requesting a meeting with Minister Sartor to press the case for a comprehensive and robust accreditation scheme. I am yet to receive a reply to the request, let alone to actually discuss the matter directly with the Minister. To persist with a regulatory regime that does not include this scheme will continue to jeopardise our State's valuable ecological assets and is a sad indictment of the value we place on our environment. [*Time expired.*]

## NATIONAL PARKS AND RESERVES

**The Hon. CATHERINE CUSACK** [5.31 p.m.]: Our national parks exist for conservation purposes to protect outstanding and strategic tracts of native vegetation and provide habitat for native birds and animals. Our system of reserves is strongly supported by the community and loved by many. Thousands of conservationists have dedicated their lives to protecting our natural assets. Last night I listened with great interest to Mr Ian

Cohen, who spoke at length on this issue, as he is entitled. He is certainly one of those longstanding warriors. In a previous contribution he commented that saving the forests is why he is in politics, it is his "thing", and I certainly respect that.

The Greens and some others in the conservation movement, particularly Keith Muir of Colong Foundation, have strongly opposed the National Parks and Wildlife Amendment (Visitors and Tourists) Bill passed by this House last night. I have received an enormous number of emails expressing alarm and distress about the perceived risk to the integrity of our national parks as well as the local economy where towns such as Katoomba and Leura are the gateway to iconic views and walks in their national park.

I speak directly to those who love our national parks and reassure them on behalf of the Liberal and Nationals parties of our respect for your views and our profound commitment to maintaining the integrity of our reserves. There are conflicting legal opinions flying about. At times I have thought it has not been unlike the tornado that went through my hometown of Lennox Head last week. There has also been conflicting opinion within the conservation movement. On advice, however, we believe there are strong safeguards in place. Even if that is not the case, our approach to visitors and tourists in national parks is to permit only low-impact activities and facilities that would favour more equitable access for bushwalkers of all ages, abilities and origin.

There is a consensus on all sides of the debate that the National Parks and Wildlife Act is complex and dysfunctional, and in desperate need of reform. Our support for modernising visitor provisions was qualified in two ways: first, we opposed measures to facilitate commercial developments in world heritage listed areas, such as the Blue Mountains national parks; and, secondly, we are very concerned that the Parliament has granted too broad a power to the environment Minister in determining lease applications in national parks and other reserves. On the first issue we moved an amendment, which was defeated by a single vote, to exclude the development of new visitor and tourism facilities. On the second issue we supported one of the amendments moved by the Greens. Our amendment on world heritage areas provided for the retention of existing leases, such as exist in Kosciuszko National Park and Jenolan Caves. It was intended to cap the number of leases that already exist on the grounds—that much can be done to improve what we already have. Our world heritage listed areas are an enormous responsibility and it is inappropriate to alienate land within them for a private purpose.

The strengths we saw last night in the bill included strengthening environmental standards for existing visitor facilities, ending the secretive leasing arrangements that have been heavily criticised by environment groups, and facilitating low-impact initiatives such as the National Parks and Wildlife Service to license guided tours in wilderness areas and semi-permanent tents in established camping grounds. This will enable more equitable access to our majestic system of national parks and reserves, and it will enable our rangers to do a range of things, not just look after tourists.

A key provision in the bill is the requirement that the need for any proposed leases or facilities be identified in the park management plan. This limits any proposals for new visitor facilities and ensures they are evaluated with the best interests of managing the park in mind. The Liberal and Nationals parties support educational, scientific and recreational uses of our parks, so long as they are consistent with park values—for example, more equitable access to camping grounds for visitors who lack equipment will give more families and tourists opportunities to experience outdoor adventures and marvel at our natural wonders. This can only enhance the wider community's appreciation and support for our system of reserves.

Some wild claims were made in debate last night about things like resorts, McDonalds restaurants and private leases in wilderness areas. These are obviously beyond imagination, and a future O'Farrell government would entertain no such proposal. Members are aware that the Liberal and Nationals parties opposed the establishment of red gum national parks. We saw the loss of dispersed camping in the park as anti-tourism and a key reason why that form of reserve, which works well in rainforests, is inappropriate for red gums. We have said we will not seek to reverse that national park. It is possible that last night's legislation will assist in delivering on the grand promises made to the local community about an increase in jobs. Please be assured of our strong commitment to our national parks and wider system of reserves. Thank you for your concern and be assured we share your passion for protecting our amazing system of national parks and we will, if ever given the privilege to serve in government, work with all stakeholders to achieve that outcome.

### LEARNING DIFFICULTIES

**Reverend the Hon. FRED NILE** [5.36 p.m.]: The subject of my adjournment speech is Walt Disney comes to Parliament. Tonight I address an issue of fact, perception and parliamentary privilege. I believe it is an



abuse of parliamentary privilege to deliberately propagate fiction as fact, particularly if doing so for pernicious purposes. As elected representatives of the community, we have a duty of care to ensure that we do not capitulate to conditional integrity but rather tell the truth regardless of political opportunity. Walt Disney once stated, "Never let the facts get in the way of a good story." This was never more evident than a speech to this House on Tuesday 8 June 2010.

The speech in question, titled "Kids have the Write to Read", was given by the Family First representative Reverend the Hon. Dr Gordon Moyes. In his speech Dr Moyes highlighted the suffering endured by those afflicted with dyslexia and other learning difficulties. He empathised with that suffering as he was previously afflicted with similar learning difficulties. I wholeheartedly support his passion for the subject, and I highly commend him for helping to raise awareness and for his recent fundraising work, but I feel compelled to set the record straight with regard to some of the claims he has made.

Dr Moyes was only a few minutes into his speech before he began portraying himself as the one who fixed it all through the introduction of legislation in the New South Wales Parliament, claiming that he was the one who took the initiative and did all the community liaison work. Single-handedly, he said, he convinced the Coalition, the Greens, the Shooters Party and the Government to support its passage through the upper House. He claimed that single-handedly he convinced the Premier and the Minister for Education and Training to support the bill in the lower House. Single-handedly, he said, he then convinced the Treasurer to provide funding and spend \$10.9 million to employ 286 additional trained special needs teachers—all of which he said he achieved whilst I, Fred Nile, languished for a year in inaction and apparent apathy.

With all due respect to Dr Moyes, his account is mere fiction, a fact borne out by the lack of detail provided. Members of Parliament had raised the issue of dyslexia and other learning difficulties long before Dr Moyes was elected to office. There had been parliamentary inquiries, and community reports and research papers submitted to Parliament urging action. I became directly involved after our office was contacted on Monday 18 December 2006 by a distressed young mother from rural New South Wales who had just pulled her seven-year-old son out of their dam. The boy had tried to drown himself, convinced that he was severely mentally retarded. As it turned out, he was actually extremely bright, but suffered from severe dyslexia and had come to his false belief through his treatment by people in the education system. It was at that juncture that I gave a personal undertaking that I would try to remedy the situation.

In January 2007 my office began work on what was to become the Educational Support for Dyslexic Children Bill 2007. I consulted widely, particularly with Jim Bond who also suffered from dyslexia. I also worked closely in drafting the legislation with Dr Max Coltheart, then head of cognitive science at Macquarie University, Dr Pye Twadell and Dr Paul Whiting from the Specific Learning Difficulties Association of New South Wales, as well as international experts from the United Kingdom, the United States of America and New Zealand. Notice was given in the upper House on Wednesday 30 May 2007 and the bill was introduced on Thursday 7 June 2007. We spent the next several months circulating dozens of letters of support, trying to convince the Government to support the legislation, but sadly to no avail. Constant liaison with the office of the then Minister for Education and Training, John Della Bosca, led to a period from 13 November 2007 when several amendments were offered and rejected by both the Government and the New South Wales Greens.

Finally, on Wednesday 2 July 2008, my office began work on a completely new bill that would better address Government concerns. On 5 September 2008 a new Premier, Mr Nathan Rees, was sworn into office, and a new Minister for Education and Training, Verity Firth, was sworn in on 8 September 2008. The new Minister provided fresh impetus and on Thursday 30 October 2008 consensus was reached. Two weeks later, at 12 midday on 11 November 2008, the New South Wales Treasurer, Eric Roozendaal, introduced a mini budget in which the Government provided additional funds for special needs teachers.

On Tuesday 2 December 2008 I gave notice of my Education Amendment (Educational Support for Children with Significant Learning Difficulties) Bill 2008, and then had unanimous support in the upper House to introduce and pass the bill at 4.41 p.m. on Wednesday 3 December 2008. My bill passed unanimously in the lower House the following day. My initial bill, which Dr Moyes claimed he had passed, the Educational Support for Dyslexic Children Bill 2007, still sits on the *Notice Paper*.

Whilst I do not doubt Dr Moyes sincerely believes his account to be fact, the facts say otherwise. Therefore, I urge him to check the facts and the details, and to be accurate. Either way, I urge him to avoid expending so much energy in trying to malign my person and my office and instead work with me in Christian fellowship for the good of all in New South Wales.

## BOER WAR

**The Hon. KAYEE GRIFFIN** [5.41 p.m.]: The Boer War is a conflict often overlooked in Australia's history. Last month was the 108th anniversary of the end of the Boer War, which ended on 31 May 1902. It was in this struggle that the newly formed Australian Federation first tasted battle, found its first war heroes, and began to develop the nationalistic ideology of the bushman soldier, later to be cemented in the national psyche by the Anzacs at Gallipoli.

The conflict had its origins in the discovery of mineral wealth in the Boer republics of Transvaal and Orange Free State in the 1880s, a discovery that instigated the mass influx of British subjects in search of wealth. In fear of being overwhelmed and ultimate British subjugation, the Boer republics denied these new migrants the right to vote. This denial resulted in domestic unrest, which, in December 1895, was stoked by the Governor of Rhodesia, Leander Jameson, who launched a police raid on Transvaal in an attempt to trigger an uprising among the British expatriate population. Despite failing to incite revolution, the Jameson raid served to increase tensions, with both the Boers and the British steadily building up their respective military capabilities.

In Australia, as in Britain, opinion was divided between those who saw war as inevitable, and those who were determined to avoid it. The request for military assistance, cabled to the Australian colonies on 3 July 1899 by Joseph Chamberlain, was met with a reluctant response, which was only slightly altered by the commencement of hostilities on 11 October. Each colony committed to sending a contingent to represent the Empire. However, this commitment was not without its opposition, with the South Australian Legislative Council approving the measure by a single vote, and William Holman declaring, "I hope that England may be defeated." Tasmania sent a contingent of just 80, leading Banjo Patterson, war correspondent for the *Sydney Morning Herald*, to deride it as "fewer than might be seen on the stage of a London theatre".

This initial reluctance, however, evaporated as news of the conflict came through. The first months of the war went badly for the Empire, as the Boers mobilised quickly, defeating and besieging the ill-prepared British defenders. It was at Belmont, a railway station in Cape Colony, in November 1899 that Australian troops first joined the battle. The arrival of the main British force, under Sir Redvers Buller, initially did little to remedy the situation, with Buller's force suffering three defeats in just six days in December, the so-called "black week" of the campaign. As Winston Churchill, war correspondent for the *Morning Post* observed, Buller "plodded on from blunder to blunder and from one disaster to another".

These initial setbacks motivated colonial governments back home to commit more troops to the campaign, with second contingents duly organised. The following counteroffensive saw British forces steadily advance and occupy the major towns and cities of the Boer republics, with the last set-piece battle at Diamond Hill in June 1900. The Boers then organised into commando units, launching a brutal guerrilla campaign that lasted nearly two years. To counter the insurgency, the British implemented a scorched earth policy, destroying farms and forcing Boer families into concentration camps to remove guerrilla support networks. A lack of nutrition and sanitation at the concentration camps resulted in the outbreak of epidemics that claimed the lives of thousands, mostly women and children.

The war lasted 31 months. It had taken almost half a million British and colonial soldiers more than two years to defeat the thinly populated Boer republics. This perceived imbalance failed to account for the high mobility and local knowledge of the Boer forces, who used their homeland advantage to devastating effect. This advantage was the primary cause of the war's longevity, with the Boers' effectiveness in operating such a prolonged resistance compelling the British to launch a brutal war of attrition. Following their defeat, the Boer republics were incorporated into the Empire, retaining their language and culture, and eventually federating with the surrounding British colonies to form South Africa.

Australia's contribution to the Empire's victory was a modest yet notable one. More than 20,000 had signed up for the war, with all six colonies and later the new Australian Commonwealth sending contingents. Of those who served with these contingents, more than 600 perished, and hundreds more died serving as irregulars in British and South African colonial units. While the Boer War did much to embolden Australia's still infant nationalist sentiment, the brutality with which it was won resulted in the loss of popular support. The initial fervour turned to disenchantment as the conflict dragged on and its brutality became known. Near its conclusion, the war effort was being conducted by a small band of loyalists and opportunists, in the face of public apathy and discontent.

The Boer War has been neglected by history, dwarfed by the magnitude and loss of life in subsequent conflicts. Yet it is a war that holds an important place in Australia's imperial, colonial and national histories. The Boer War was the first military expedition for the newly federated Australia, and soldiers displayed the courage and fortitude that has come to typify the Australian fighting spirit.

### **NEPEAN CAMPAIGN AGAINST HOMELESSNESS**

**The Hon. GREG PEARCE** [5.46 p.m.]: The Nepean Campaign Against Homelessness is an innovative locally led attempt to deal with the homelessness problem and is deserving of Government support and funding. The objective of the campaign is to utilise up to 150 properties over the next three years through the Wentworth Community Housing organisation to provide permanent supported housing to those most vulnerable individuals and families experiencing chronic homelessness in the Nepean area.

The new model envisaged will provide support to prevent homelessness through early intervention and tenancy sustainability. The first stage of the project is called Project 40 and involves using 40 Wentworth Community Housing properties, 10 for each of the local government areas in the Nepean region, as they become available. The homelessness campaign is supported by a diverse range of service providers in the area who are showing great willingness to work together on a new approach to solving homelessness. There has been widespread enthusiasm and interest in setting up this program because the situation for individuals and families experiencing homelessness in the Nepean has become desperate.

Recently I had the good fortune to meet Stephanie Brennan, the convenor of the Nepean Campaign Against Homelessness, and a number of other service providers and interested parties. The campaign coordination group met last September. It involves key local homelessness agencies coming together to coordinate support within the program and collaborate on homelessness issues. The organisations involved include Blue Mountains Family Support, Salvation Army, Centrelink, Wimlah Women and Children's Refuge, Mountains Youth Support Team, the St Vincent de Paul Society, Gunnedoo Family Centre, BM Mental Health Team, Blue Gum Women's Housing, Blue Mountains Youth Accommodation Support Services, Brighter Futures program and Wentworth Community Housing. The various groups collaborated in May to do a count of the homeless in the region and identified 698 homeless people across the four local government areas on 3 May.

They are trying to do more by coordinating service delivery, in particular, as social housing is now so targeted to complex needs. The model is based on similar sorts of programs, including a program called the Housing First project in the area, where 10 high-needs young people are offered what are called wraparound individual needs for about 12 months. The service providers broker support and use existing services targeting a buy-in to deal with individuals' needs. This sort of collaborative approach to dealing with the problems of homeless people is to be commended.

The campaign sought funding from the Government but, unfortunately, at this stage no funding has been forthcoming for this remarkable and worthwhile approach to dealing with the problem of homelessness. The current Labor Government in New South Wales makes announcements about homelessness but as we look around Parliament House we find that homelessness is prevalent not just in the Nepean but also around Parliament House. The homelessness problem seems to be worse at Parliament House because this Government has erected metal grates and landscaped the areas surrounding the building in an attempt to move on homeless people rather than attend to their needs.

This Government used its powers to ram through the construction of new social housing developments, trampling on communities, and zoning and building requirements, but we have not seen any real action in relation to the homelessness problem. This Government should immediately look at the campaign and provide the funding that is needed to advance a collaborative, locally driven approach to dealing with the problem of homelessness.

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

**Motion agreed to.**

**The House adjourned at 5.51 p.m. until Tuesday 22 June 2010 at 2.30 p.m.**

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