

LEGISLATIVE COUNCIL

Tuesday 9 November 2010

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

The President read the Prayers.

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

ASSENT TO BILLS

Assent to the following bills reported:

Drug Misuse and Trafficking Amendment (Medically Supervised Injecting Centre) Bill 2010
 Electricity Supply Amendment (Solar Bonus Scheme) Bill 2010
 Parliamentary Budget Officer Bill 2010
 Protected Disclosures Amendment (Public Interest Disclosures) Bill 2010
 Protection of the Environment Operations Amendment (Environmental Monitoring) Bill 2010
 Road Transport (Vehicle Registration) Amendment (Written-off Vehicles) Bill 2010
 Veterinary Practice Amendment Bill 2010
 Courts and Crimes Legislation Amendment Bill 2010
 Central Coast Water Corporation Amendment Bill 2010
 Plantations and Reafforestation Amendment Bill 2010
 Radiation Control Amendment Bill 2010
 Firearms Legislation Amendment Bill 2010

ADMINISTRATION OF THE GOVERNMENT OF THE STATE

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

J. J. Spigelman
 LIEUTENANT-GOVERNOR

Office of the Governor
 Sydney 2000

The Honourable James Spigelman, Lieutenant-Governor of New South Wales has the honour to inform the Legislative Council that he assumed the administration of the Government of the State at 8.00 a.m. on 2 November 2010.

2 November 2010

ADMINISTRATION OF THE GOVERNMENT OF THE STATE

The PRESIDENT: I report the receipt of the following message from Her Excellency the Governor:

MARIE BASHIR
 GOVERNOR

Office of the Governor
 Sydney 2000

Professor Marie Bashir, Governor of New South Wales has the honour to inform the Legislative Council that she re-assumed the administration of the Government of the State at 1.55 p.m. on 3 November 2010.

3 November 2010

POLICE INTEGRITY COMMISSION

Report

The President tabled, pursuant to the Police Integrity Commission Act 1996, the annual report of the Police Integrity Commission for the year ended 30 June 2010, received out of session and authorised to be made public on 29 October 2010.

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

OMBUDSMAN

The President tabled, pursuant to the Ombudsman Act 1974, a special report entitled "Unresolved Issues in the Transfer of the NSW Child Death Review Team to the Office of the NSW Ombudsman", dated November 2010, received out of session and authorised to be made public on 4 November 2010.

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

MINISTRY

The Hon. JOHN HATZISTERGOS: I inform the House that on 28 October 2010 Mr Barry Collier, MP was appointed Parliamentary Secretary assisting the Attorney General, and the Treasurer, and the Minister for Ports and Waterways.

TABLED PAPERS NOT ORDERED TO BE PRINTED

The Hon. John Robertson tabled, pursuant to Standing Order 59, a list of all papers tabled in the previous month and not ordered to be printed.

TABLING OF PAPERS

The Hon. John Robertson tabled the following papers:

- (1) Annual Reports (Statutory Bodies) Act 1984—Reports for the year ended 30 June 2010:
Jenolan Caves Reserve Trust
Lord Howe Island Board
Royal Botanic Gardens and Domain Trust
Zoological Parks Board of New South Wales.
- (2) Report of Independent Transport Safety and Reliability Regulator entitled "Implementation of the NSW Government's response to the Final Report of the Special Commission of Inquiry into the Waterfall Accident—Reporting period July-September 2010".

Ordered to be printed on motion by the Hon. John Robertson.

AUDITOR-GENERAL'S REPORT

The Clerk announced the receipt, pursuant to the Public Finance and Audit Act, of a financial audit report of the Auditor-General entitled "Volume Four 2010, Focusing on Electricity", dated November 2010, received out of session and authorised to be printed on 3 November 2010.

STANDING COMMITTEE ON LAW AND JUSTICE**Report**

The Clerk announced the receipt, pursuant to standing orders, of report No. 44, entitled "Inquiry into Judge Alone Trials under Section 132 of the Criminal Procedure Act 1986," dated November 2010, together with transcripts of evidence, tabled documents, submissions, correspondence and answers to questions taken on notice, received out of session and authorised to be printed on 8 November 2010.

The Hon. CHRISTINE ROBERTSON [2.33 p.m.]: I move:

That the House take note of the report.

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

LEGISLATION REVIEW COMMITTEE**Report**

The Clerk announced the receipt, pursuant to the Legislation Review Act 1987, of a report entitled "Legislation Review Digest No. 15 of 2010," dated 8 November 2010, received out of session and authorised to be printed on 8 November 2010.

GENERAL PURPOSE STANDING COMMITTEE NO. 2**Government's Response to Report**

The Clerk announced the receipt, pursuant to standing order, of the Government's response to report No. 33, entitled "Review of the Inquiry into the Management and Operations of the Ambulance Service of New South Wales," tabled on 30 April 2010, received out of session and authorised to be printed on 3 November 2010.

PETITIONS**Euthanasia**

Petition praying that the House will oppose any attempts to legalise or decriminalise the practice of euthanasia to ensure that the quality of life of the elderly, handicapped or terminally ill is not subject to these unjust or unethical procedures, received from **Reverend the Hon. Fred Nile**.

Dying With Dignity

Petition requesting that the House enact legislation in a timely manner to create and protect the right to die with dignity, including appropriate safeguards, received from **Ms Cate Faehrmann**.

Bondi Road Summer Clearway

Petition opposing the Government's decision to reintroduce a summer clearway on Bondi Road from 1 December 2010, and calling on the Government to work with the community to resolve local traffic congestion, received from the **Hon. Don Harwin**.

Identity Concealment

Petition opposing any face covering that conceals the identity of a person and prevents Australia from being an open society, and requesting that the House support the private member's bill of Reverend the Hon. Fred Nile that prohibits within all public areas the wearing of any article of clothing that conceals a person's identity, received from **Reverend the Hon. Fred Nile**.

Byrrill Creek Dam Proposal

Petition praying that the House ensure that any dam within Byrrill Creek is prohibited in the forthcoming Tweed River Area Unregulated and Alluvial Water Sharing Plan 2010, received from the **Hon. Ian Cohen**.

Religious Education and School Ethics Classes

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

BUSINESS OF THE HOUSE**Withdrawal of Business**

Government Business Notice of Motion No. 1 withdrawn by the Hon. John Hatzistergos.

BUSINESS OF THE HOUSE**Postponement of Business**

Government Business Orders of the Day Nos 1 to 5 postponed on motion by the Hon. Tony Kelly.

Business of the House Notice of Motion No. 1 postponed on motion by the Hon. Duncan Gay.

OCCUPATIONAL LICENSING (ADOPTION OF NATIONAL LAW) BILL 2010**Second Reading**

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [2.59 p.m.], on behalf of the Hon. Peter Primrose: I move:

That this bill be now read a second time.

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

Leave granted.

I am pleased to introduce the Occupational Licensing (Adoption of National Law) Bill 2010. The bill adopts the Occupational Licensing National Law, as in force from time to time, set out in the schedule to the Occupational Licensing National Law Act 2010 of Victoria, as a law of New South Wales. The national law gives effect to the Intergovernmental Agreement for a National Licensing System for Specified Occupations signed by the Council of Australian Governments [COAG] on 30 April 2009. This national law is the first step in a major Council of Australian Governments national reform project aimed at achieving a seamless national economy.

The national law sets out the regulatory framework for the national licensing system—a system that will see workers in licensed occupations all over Australia operating under one scheme that enables them to work in any State or Territory under the same set of rules.

The Council of Australian Governments recognised that Australia's overlapping and inconsistent regulations impede productivity growth and, consequently, committed to moving towards a seamless national economy through the reform of business and other regulation.

These Council of Australian Governments reforms will make it easier for businesses and workers to operate across State and Territory borders, while continuing to provide the necessary protections for consumers and the community.

The Council of Australian Governments agreed that initially the scheme will apply to seven economically important occupational areas.

These are air-conditioning and refrigeration, building and building-related occupations, maritime, land transport, electrical, plumbing and gasfitting, and property-related occupations.

The bill before the House deals with the first wave of occupations comprising air conditioning and refrigeration, electrical, plumbing and gasfitting, and some property-related occupations. It is envisaged that other occupations will follow in the future.

COAG agreed that the national system will be implemented through cooperative national legislation without involving a referral of powers to the Commonwealth Government. This agreement provides for the national system to commence with a delegated agency model.

The National Occupational Licensing Authority will develop licence policy on advice from advisory committees representing various occupations, but delegate the operation of licensing services to the States and Territories.

States and Territories will also retain responsibility for regulating licensee conduct. Under the national scheme, businesses and workers with a licence issued by the national authority will be able to operate across Australia without the need to hold multiple licences. Effectively, this will reduce unnecessary red tape, provide a standard qualification requirement, require payment of only one licence fee and, most importantly, facilitate a much more mobile workforce.

For the first time, licensees will be able to move across Australia, going wherever the work is, under one consistent set of rules, without the burden of applying for multiple licences. This is a particularly significant issue for individuals and companies trading in border towns.

Recently I was advised of an air-conditioning company located in Banora Point which, like most businesses in that area, trades on both sides of the Queensland-New South Wales border. This business pays \$865 for a three-year licence in New South Wales and an additional \$635 each year for a licence in Queensland. The introduction of the national occupational licensing system will immediately save this business \$635 every year. These savings are in addition to the red tape reduction arising from no longer being required to submit a licence renewal in Queensland every year.

Every border town in Australia will enjoy this improvement. In addition to a reduction in the payment of duplicate fees and processing red tape, the national law provides also for national consistency in licensing policy and disciplinary arrangements for licensees, while still providing a sufficient amount of flexibility for issues specific to particular jurisdictions or occupations.

This new legislation will also facilitate a consistent skills and knowledge base for licensed occupations.

A prime objective of the national system is to ensure that licensing arrangements are effective and proportionate to ensure consumer protection as well as worker and public health and safety while also improving economic efficiency and equity of access. The national law reflects the guiding principles of transparency, accountability and, of course, efficiency.

The public will also be provided with easy access to information about licensees through the establishment of a national register, enabling consumers to confirm that an individual or business is appropriately licensed.

Governance arrangements for the national system are set out in the national law. Responsibility for the effective implementation and operation of the national system resides with a ministerial council comprising a Commonwealth Minister and Ministers of each State and Territory.

During the implementation phase of the national system, this responsibility rests with the Ministerial Council for Federal Financial Relations. The National Occupational Licensing Authority, which is governed by a board appointed by the ministerial council, is established by the national law to administer the system and make policy recommendations to the ministerial council.

The licensing authority will be supported in its policy role by occupational licensing advisory committees established under the national law for the purpose of providing advice to the licensing authority on licensing policy for the regulated occupations.

On 1 July 2012, the first wave of occupations comprising air-conditioning and refrigeration, electrical, plumbing and gasfitting and some property-related occupations will commence under the national system. The remaining occupations, such as building and building related, other property-related occupations, maritime and land transport, will commence after 1 July 2013.

This staged approach is necessary to provide adequate time for the development of licence policy for each occupational area and transitioning to the national system, including the establishment of the licensing authority.

The New South Wales Government is committed to the implementation of the new system and has offered to host the licensing authority in Sydney. New South Wales has also played a significant role in the work to develop the scheme, including the secondment of an expert, full-time officer to the National Licensing Taskforce that has day-to-day responsibility for management of the project.

The purpose of the bill is the adoption of the National Occupational Licensing Law in New South Wales. This provides a single mechanism for updating the national law and for ensuring that consistency of the law across jurisdictions is maintained.

The bill also excludes the operation of certain New South Wales Acts from the operation of the national law. In particular, the bill excludes the operation of the Annual Reports (Statutory Bodies) Act 1984, the Public Finance and Audit Act 1983, the Public Sector Employment and Management Act 2002 and the Subordinate Legislation Act 1989. The administrative and reporting matters dealt with by these New South Wales Acts have been replaced with appropriate national mechanisms within the national law for the operation of the National Occupational Licensing Authority. The application of a number of other New South Wales Acts has been limited so that they continue to apply to New South Wales licensing agencies when they are acting in their capacity as delegates of the licensing authority, but do not apply to the licensing authority itself.

The New South Wales Acts, by being limited in this way, cover a number of privacy, information and interpretation issues. An appropriate national approach to these issues has been included in the national law for application to the licensing authority. The bill also specifies that reviews and appeals of licensing decisions under the national law will continue to be made to the Administrative Decisions Tribunal of New South Wales and applications for injunctions against traders operating in contravention of the national law will also continue to be made to the New South Wales Supreme Court. The bill also declares that the disciplinary scheme for the first-wave occupations will be the administrative show cause process that is currently used in New South Wales, rather than the alternative court-based option included in the national law. This continues the existing and effective disciplinary process for those members of these occupational groups who fail to meet their responsibilities under the licensing regime.

The development of the national law has been underpinned by a comprehensive consultation program involving relevant stakeholders in several rounds of consultation meetings around the country, as well as opportunities for direct comment on proposals through submissions and input into advisory processes.

The new scheme has received strong support from industry and consumer groups alike. I am delighted to join my counterparts in other jurisdictions in introducing this significant law. It is a major step in the implementation of a truly national system for the regulation of a broad range of occupations within this country.

I commend the bill to the House.

The Hon. CATHERINE CUSACK [3.00 p.m.]: I lead for the Liberal-Nationals Coalition on the Occupational Licensing (Adoption of National Law) Bill 2010. The Coalition does not oppose the bill. The bill gives effect to the Council of Australian Governments Intergovernmental Agreement for a National Licensing System for Specified Occupations, signed on 30 April 2009. It does this by adopting the Occupational Licensing National Law, which is hosted by the Victorian Parliament and set out in the schedule to the Occupational Licensing National Law Act 2010 of Victoria. The purpose of the bill is to facilitate a national occupational licensing scheme to replace the eight different State- and Territory-based systems. A national licensing scheme will improve business efficiency and the competitiveness of the national economy, reduce red tape, improve labour mobility and enhance productivity. The scheme will provide benefits to businesses and individuals by allowing a licensee to work anywhere in Australia without having to reapply for a licence when moving to another State or when seeking to carry out work in another State.

The bill introduces national licensing for the first tranche of industries, including refrigeration and air-conditioning mechanics, electrical, plumbing and gasfitting, and some property services, and sets out the

occupations covered. New occupations can be added over time, either by amending the National Law or by prescribing additional occupations in the regulations. It is to commence on 1 July 2012. I understand that the remaining sectors to be included are the building and building-related occupations; land transport, passenger vehicle drivers and dangerous goods only; and maritime services. The national licensing scheme will operate as a national delegated agency model. A national licensing body will develop the licence policy, administer the system and delegate the operation of licensing services to the individual States and Territories.

The benefits of a national licensing system are that licensed businesses and workers will be able to work anywhere in Australia without the need for multiple licences; it will establish nationally uniform standards and qualification requirements; it will reduce the cost of business by requiring the payment of only one licence fee; and it recognises the mobility of our workforce, particularly in cross-border communities such as mine, where the scheme will be particularly beneficial. Under the terms of the Council of Australian Governments agreement, all other State and Territories are to enact complementary legislation by the end of 2010. This is mirror legislation; legislative power is not being transferred to the Commonwealth. Each State will establish its own occupational licensing advisory committee to maintain the scheme in the respective jurisdictions.

Interim advisory committees for each industry sector have been established to develop a licence policy, including the licence structure, scope, duration and eligibility for each occupational group. The real test of the legislation that will be passed today is achieving national agreement on the licensing criteria. Industry stakeholders consulted by the New South Wales Liberal Party and The Nationals have supported the bill on the proviso that industry standards are not dumbed down. I note the concerns expressed by my colleague Mr Greg Aplin, the shadow Minister for Fair Trading, about lower licensing standards in Victoria to install refrigeration and air conditioning. The Opposition does not oppose the bill.

Reverend the Hon. FRED NILE [3.03 p.m.]: The Christian Democratic Party supports the Occupational Licensing (Adoption of National Law) Bill 2010. The bill will apply the Occupational Licensing National Law Act 2010 of Victoria as a law of New South Wales. This is the first step in establishing a national licensing system for specified occupations, which is a component of the Council of Australian Governments seamless national economy reforms. Under the national partnership agreement to deliver a seamless national economy, all jurisdictions are required to have passed legislation applying the National Law, or mirror legislation in the case of Western Australia, by December 2010. The National Law will set out the regulatory framework for the national system.

For the first time, licensees will be able to move across Australia to wherever the work is and adhere to one consistent set of rules, without the burden of applying for multiple licences. An air-conditioning business operating on the Queensland-New South Wales border, for example, each year had to pay \$865 for a three-year licence in New South Wales and an additional \$635 for a licence in Queensland. The bill's provisions will immediately save that business \$635 per year. Savings will also result from red tape reduction. Further, the public will have easy access to information about licences through the establishment of a national register, enabling consumers to confirm that an individual business is appropriately licensed. The National Occupational Licensing Authority, which is governed by a board appointed by the ministerial council, is established by the National Law to administer the system and make policy recommendations to the ministerial council.

The introduction of the licences will be staged. On 1 July 2012 the first wave of occupations comprising air conditioning and refrigeration, electrical, plumbing and gasfitting, and some property-related occupations will commence under the national system. The remaining occupations, such as building and building related, other property-related occupations, maritime and land transport, will commence after 1 July 2013. This staged approach will provide adequate time for the development of licence policy for each occupational area and for transitioning to the national system, including the establishment of the licensing authority. I am pleased that the New South Wales Government has offered to host the licensing authority in Sydney, which will mean more jobs and give New South Wales an opportunity to provide leadership in this area. I support the bill.

The Hon. LYNDA VOLTZ [3.07 p.m.]: I support the Occupational Licensing (Adoption of National Law) Bill 2010. The bill aims to adopt the Occupational Licensing National Law passed by the Parliament of Victoria on 17 September 2010 as a law of New South Wales. The bill represents the second step in the implementation of the decision by the Council of Australian Governments to set up a national system of licensing arrangements for businesses and workers. Such arrangements are required to create consistency across Australia and enable licensees to carry out work anywhere in Australia without having to hold multiple licences, as experienced under the present system.

The National Law aims to reduce the existing overlap of regulations. Notably, the National Law is at quite a high level and the specific licensing requirements for each licensed occupation will be developed into industry-specific regulations. Importantly, the expertise of relevant industry, consumer and training stakeholders will be utilised in the development of these national licensing standards through the establishment of licensing advisory committees for each licensed occupation. It is critical that these new standards incorporate the best regulatory approach to protecting the rights of consumers and the health and safety of the licensees and workers, while not imposing unnecessary red tape burdens on businesses. The objectives of the National Law make it absolutely clear that worker and public health and safety is still to be a key priority, and it has incorporated adequate checks and balances to ensure that safety remains an important consideration under the national system.

It is also important that the bill retains the current New South Wales process for internal review of licensing decisions made by the relevant New South Wales regulator agency in its capacity as delegate of the licensing authority. The appeal rights to the New South Wales Administrative Decisions Tribunal are also retained for licences issued in New South Wales. These are proven mechanisms within New South Wales that support the rights of any person who feels aggrieved by a licensing decision to have their matter reviewed by a second person not involved in the original decision.

Necessary protection for consumers and the general public will be extended under the National Law by the introduction of a national register, where consumers and jurisdictional regulators will be able to check the history of licensees, regardless of which jurisdiction they may have operated in previously. The National Law provides consistency in licensing policy nationally, it retains the necessary flexibility to accommodate differing jurisdictional circumstances, and it demonstrates a national commitment to improving productivity without jeopardising occupational health and safety or public health standards. I commend the bill to the House.

Dr JOHN KAYE [3.10 p.m.]: I speak on behalf of the Greens on the Occupational Licensing (Adoption of National Law) Bill 2010. As previous speakers have indicated, this legislation creates a nationally consistent set of licensing standards across a number of economically important occupational areas, with the first wave of occupational transfers to the national scheme commencing on 1 July 2012 and the subsequent wave one year thereafter. In April 2009 the Council of Australian Governments [COAG] agreed on a delegated agency model for the National Occupational Licensing Authority. The States and Territories will retain responsibility for licensing services and for regulating licensee conduct. A key feature is the establishment of a national register so that consumers can confirm that an individual or business is appropriately licensed. Reviews and appeals of licensing decisions will continue to be made to the Administrative Decisions Tribunal of New South Wales and applications for injunctions against traders operating in contravention of the National Law will continue to be made to the New South Wales Supreme Court.

A number of putative benefits to the national licensing scheme include: removal of the need to hold multiple licences; the capacity for individuals to move across Australia with one licence, particularly to travel to where work is available; one consistent set of rules; a standard qualification requirement; and a consistent knowledge base for licensed occupations. The bill is not without its critics or issues. The Plumbing and Gasfitting Occupations Interim Advisory Committee expressed concerns about the lack of consistent quality of training delivery and assessment. This has been a common theme with a number of the interim advisory committees. The Refrigeration and Air Conditioning Contractors Association expressed concerns that in Victoria the minimum qualification to obtain a licence is equivalent to a New South Wales TAFE certificate II, but in New South Wales to obtain the same licence the minimum standard is a New South Wales TAFE certificate III. Such inconsistencies raise the question: Is the COAG agreement an instrument to send Australian consumers and employment protections backwards? Concerns have also been expressed about additional occupations that can be added at a State level by regulation without direct reference to Parliament.

In relation to the make-up of the interim advisory committees, on two of the four advisory committees the New South Wales Government—therefore, the people of New South Wales—had no representation, and none of the four interim advisory committees contained a single representative of TAFE, the public sector provider of vocational education and training. Given the implications for New South Wales TAFE of these changes, it seems inappropriate that TAFE and TAFE teachers were not represented on the advisory committees. The bill before us is part of a national process that is going ahead before a resolution is made about what seems to be the Federal Government's desire to take over all regulation of vocational education and training. The Federal Government's grab for power in this area could have long-lasting impacts.

The Hon. Catherine Cusack: It is not transferring to the Commonwealth.

Dr JOHN KAYE: I am talking about vocational education and training [VET] regulation.

The PRESIDENT: Order! Members should address their comments through the Chair and not have conversations across the Chamber.

Dr JOHN KAYE: I thank you, Madam President, for that timely reminder. I reiterate that the concern I raise is that these changes, which will have implications for both public and private providers of vocational education and training, are going ahead before the resolution of the Federal Government's grab for control of regulation of vocational education and training. We express grave concerns about the implications of a Federal takeover of regulation of vocational education and training, particularly in the context where licensing has become a nationally so-called consistent process. The Greens will not oppose the legislation.

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [3.15 p.m.], in reply: I thank all members for their contributions to the debate. I want to address some issues raised by Dr John Kaye. In relation to his concerns that the legislation will lower standards in New South Wales, I inform the House that the process for determining the appropriate qualification level for the new national licences is most certainly not one of finding the lowest common denominator. The process undertaken by the interim advisory committees is one of determining the risks inherent in undertaking the particular occupation under consideration and the appropriate skill level required to manage those risks. It is unlikely that the resulting eligibility criteria will be an exact match to any of the existing jurisdictional requirements. The current national process gives us the opportunity to examine whether historical approaches to occupational qualifications and other eligibility requirements remain relevant to the changing shape of many of our occupations. It also gives us the opportunity to select the most appropriate option to ensure that the safety of the licensed person and the consumers of their services is protected. There is every possibility that for some occupations the national qualification may be higher than the current New South Wales requirement. This is a matter that the industry experts appointed to the interim advisory committees will advise us on.

As to the comment that standards for New South Wales licences will be set by the Commonwealth, it is important to make clear that this reform does not involve a referral of powers to the Commonwealth. It is a national system established cooperatively by all States and Territories. Once the system is implemented the Commonwealth will have no direct involvement in the system other than through its membership of the Ministerial Council on Federal Financial Relations, which will have ongoing responsibility for the management of the system. The New South Wales member of that ministerial council is the Treasurer. I commend the bill to the House.

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

Motion agreed to.

Bill read a second time.

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

Third Reading

Motion by the Hon. Michael Veitch agreed to:

That this bill be now read a third time.

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

NATURE CONSERVATION TRUST AMENDMENT BILL 2010

Second Reading

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [3.18 p.m.], on behalf of the Hon. John Robertson: I move:

That this bill be now read a second time.

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

Leave granted.

The genesis of the Nature Conservation Trust lay with the community. It lay in a coalition of conservation groups and the NSW Farmers' Association. A coalition that saw the potential for an independent body that could work in tandem with Government to achieve stronger cross-tenure conservation gains in NSW.

The Government listened to that coalition and enacted the Nature Conservation Trust Act in 2001. It was a landmark achievement. Since then, the Trust has become a key player in cross-tenure conservation efforts across this State and has produced a strong record of conservation gains. Let me share some of these with you.

- The Trust operates a revolving fund program. It buys properties of high conservation value, places a conservation covenant over the land and resells to a supportive new owner. The proceeds of the sale are returned to the fund and are used for further purchases. Since 2003, the Trust has increased the quantum of its revolving fund program from \$2 million to \$25.1 million at June 2010.
- The Trust has purchased 16 properties, 6 of which have been on-sold with conservation covenants.
- The Trust has protected 21,581 hectares across 58 properties through conservation agreements between the Trust and private land owners. This includes:
 - 87 different regional ecosystems, 47 of which are under-represented in the formal NSW reserve system;
 - 3 nationally threatened ecological communities; and
 - 10 ecological communities threatened in NSW.
- The Trust has successfully delivered the Government's Farmer Exit Assistance Program, with funding of \$17.6 million from the NSW Environmental Trust.

This is an admirable record of achievement, and the Trust has built a strong support base as a result of this success. Nevertheless, it has become apparent over the past nine years that certain aspects of the Nature Conservation Trust Act 2001 are hampering the Trust's efforts in two key areas, namely:

- attracting donations and sponsorship; and
- holding and trading in water entitlements for the purpose of managing conservation values on land subject to a Trust Agreement.

A statutory review of the Nature Conservation Trust Act undertaken in 2006 highlighted these constraints on the Trust's operations, and recommended legislative amendment.

This Bill will:

- **Insert model clauses required for the Trust to achieve tax-deductible status.** This will make the Nature Conservation Trust more attractive to potential donors by removing the current obstacles to gaining tax deductibility in its own right. These changes will also reduce the current administrative burden on the Trust.
- **Give the Trust the power to buy and trade water allocations associated with Trust properties.** This is a right that other private landholders currently enjoy, but is not provided for under the Nature Conservation Trust Act. I assure the House that the use of this power by the Trust will only be to optimise conservation outcomes on properties subject to a Trust Agreement. This Bill does not allow the Trust to purchase or trade in water for any other purpose, including as a means of revenue raising.
- **Permit the Trust to sell land unsuitable for nature conservation without a covenant.** In some cases, the Trust may purchase properties with areas of both high and low conservation value. This Bill will allow the Trust to sell, without constraints, those parcels of land with little or no conservation value.
- **Provide that a Trust Agreement can restrict or prohibit the subdivision of land with high conservation value.** At times, the ability to restrict future subdivisions may be essential to protect high conservation values. This Bill clarifies a Trust Agreement can restrict subdivision.
- **Refine the skills and experience required by Trust Board members.** The very nature of the Trust's work requires its Board to have a specific set of skills and experience. Although the Act currently refers to certain capabilities required of Board members, the increasing complexity of the Trust's operating environment calls for a more rigorous set of eligibility requirements. The Bill codifies the specific skills and experience required of Board members.

Private land conservation is crucial to the protection of our natural heritage. The Nature Conservation Trust provides landholders with the conservation tools and support they need. It is our responsibility as legislators to give the Trust the statutory powers that it needs to continue operating effectively into the future.

I commend the Bill to the House.

The Hon. CATHERINE CUSACK [3.18 p.m.]: The purpose of the Nature Conservation Trust Amendment Bill 2010 is to enable the trust to obtain tax deductible gift status, to manage water associated with

trust properties, to enable the trust to subdivide and sell off parts of properties that do not have environmental significance, to allow the trust to prohibit subdivision of its land that does have environmental significance, and to require board members to have specified skills and attend meetings in person. The bill enables the National Parks and Wildlife Service to enter into agreements with private landholders to protect waters associated with high conservation value land. This will permit landholders who wish to develop their own covenants to negotiate their conservation agreements directly with the Minister—that is, without necessarily having to go through the conservation trust. The bill is not opposed by the Liberal Party and The Nationals.

The background to this matter is that the Nature Conservation Trust was established as a regionally based, non-government organisation by an Act of the New South Wales Parliament. For those farmers who wish to ensure ongoing protection for their own conservation work, or who have onerous restrictions on their property due to high conservation values, the trust can pay market price for the property and thus facilitate retirement from farming at a fair price that would not otherwise be obtainable. The performance of the scheme has been commendable as it is compassionate and fair to farmers, particularly those affected by changes to the Native Vegetation Act. It gave them an honourable way out. Under the model, it is possible for the farmer to continue to live on the property as a manager or to leave altogether, depending on negotiations that may be undertaken with the Nature Conservation Trust.

That contrasts with the situation when a national park is established and obviously everybody on the property has to leave. It highlights a good third method of conservation, which enables private land to be protected but also enables the working part of properties to continue. Ultimately the objective is to secure the high conservation value areas, to implement a covenant and to on-sell the property, usually to another farmer who is willing to accept the covenant or, on occasion, to a philanthropist, who would probably look at employing a manager of the property. Again, that is very positive for jobs in regional New South Wales. In this way funds allocated to the trust can be used many times over. Prices obtained through the sale of properties so far have averaged 80 per cent of the price paid for the property. The price difference represents the additional value paid to the exiting farmer in what I am sure would be very stressful circumstances for that farmer and his family.

The New South Wales Nature Conservation Trust provides invaluable assistance to some farmers who wish to retire and leave these special properties. The reforms reflect the recommendations of the independent review of the Act and finetuning that will enable the trust to carry out its duties more effectively. The provision allowing landholders to negotiate their own conservation agreements directly with the Minister gives farmers more options and greater flexibility. I note that in our consultations on the bill we sought the views of the NSW Farmers Association and the New South Wales Local Government and Shires Associations. Disappointingly, both organisations appear not to be enjoying the same positive relationship that marked the launch of the trust. We hope the situation can improve because we believe it is in the interests of local communities as well as of farmers to have a positive relationship so that the trust can benefit not only the environment but also the community in which the special properties are located.

I pay tribute to Tim Hughes, who is the chair of the New South Wales Nature Conservation Trust. I thank him for the briefings that he has provided and for his passion for the environment. Tim is providing inspirational leadership. It has been my privilege to visit three properties in northern New South Wales with him and his fantastically qualified, knowledgeable and dedicated staff. I have been most impressed with the effectiveness of the system. The people they are working with on these properties are to be truly admired by our communities. They are very experienced and passionate farmers. I visited one property on which a third-generation farmer is undertaking very valuable conservation work. All the properties I visited contained wetlands that would be of marginal value for farming purposes but have extremely high conservation value for environmental purposes. I believe the Nature Conservation Trust is a wonderful step forward. I look forward to continuing to work with the trust and supporting its valuable work in local communities.

The Hon. IAN COHEN [3.24 p.m.]: The Greens are generally supportive of the Nature Conservation Trust Amendment Bill 2010. However, we think the bill can be greatly improved by adopting all the recommendations of the statutory review. The Greens acknowledge the importance of expanding conservation on private land. We note the important contribution of private landholders in protecting high conservation value ecosystems, especially in circumstances where lack of government reservation means that we do not have comprehensive, adequate or representative national park estates within particular bioregions. The Greens pay our respects to the farmers, land managers, environmental conservation groups, Landcare and philanthropists for their environmental stewardship on private land and their protection of high conservation value ecosystems.

The Minister for Climate Change and the Environment in the other place indicated that the trust has protected 21,581 hectares across 58 properties. The work of the trust and the organisations that have supported its formation, including the NSW Farmers Association and conservation groups, should be applauded for the successes of the trust. The Victorian equivalent—Trust for Nature—has more than 950 conservation covenants, protecting nearly 40,000 hectares across Victoria. This outcome has been supported by Victorian catchment management authorities with the provision of additional assistance, and some local councils offered rate rebates and exemptions for covenant holders.

Landowners participating in trust agreements with the trust or in conservation agreements with the Department of Environment, Climate Change and Water are giving this State a considerable benefit. They are trying to maintain a conservation legacy through their own hard work and land stewardship. That is why the New South Wales Government, with the support of the Greens and the Shooters and Fishers Party, provided proportionate rate exemption for landholders who have entered into National Parks and Wildlife Act conservation agreements. The impetus for voluntary conservation agreement rate exemption was explained by the Hon. Verity Firth, the then Minister for Climate Change and the Environment, when she stated:

The Government is committed through its State Plan to encouraging private and other public landholders to be involved in protecting and conserving significant natural and cultural heritage on their land. Recognition of their voluntary commitment to dedicate their land under an in-perpetuity conservation agreement needs to be supported by the whole community. One important way to support private landholders in their management of these conservation areas is to give some rate relief.

Similarly, the independent review of the rural lands protection boards rating system in New South Wales conducted by Richard Bull in 2007 also recommended "reductions in rates for voluntary conservation agreements" in livestock health and pest authorities rates. In the context of this bill, the 2006 legislative review of the Nature Conservation Trust Act also recommended proportional rate exemption for land covered by trust agreements. Recommendation 12 states:

... that rate exemptions and tax concessions provided for in-perpetuity Conservation Agreements under the National Parks and Wildlife Act 1974 be sought for in-perpetuity Trust Agreements under the Nature Conservation Trust Act 2001 and vice versa to ensure a consistent approach.

I am disappointed that the bill does not extend the rate exemption to landholders who purchase covenanted land from the Nature Conservation Trust. I foreshadow that the Greens will move an amendment in Committee that provides a mechanism to allow proportional rate exemption for trust agreements to bring the Nature Conservation Trust into line with Department of Environment, Climate Change and Water conservation agreements. Turning to the substantive amendments in the bill that implement the recommendations of the statutory review, the bill establishes a new public fund to be operated alongside the revolving fund scheme. New section 27A establishes a not-for-profit fund that will achieve tax-deductible status through clauses inserted in the bill. New section 27A (1) states that a management committee must be established to manage the fund. This means that the trust will have the capacity to receive donations or gifts of money that will be tax deductible under Federal income tax legislation.

The proposed amendments to the functions of the trust now include a function covering the establishment and maintenance of the public fund and clarify that the functions cover only those gifts or contributions received by the trust. In noting the relevance of this change, it is important to understand how the revolving fund scheme works. The trust purchases properties of high conservation value, places a conservation covenant over the land and resells it to a new owner with a conservation covenant over the land. The proceeds of the sale are returned to the fund and are used for further purchases.

The amendments also make changes to the focus and use of covenants under the revolving fund scheme. The definition of "conservation priorities" in section 6 of the Act will be amended to focus the trust on natural heritage rather than on equally prioritising cultural and natural heritage. The amendment means that the trust will focus on natural heritage and any cultural heritage that has an association or connection with natural heritage. Schedule 1 items [3] and [4] specify that covenants on land are to be protective covenants rather than having the general wording of covenants as found in the Act, and allow the trust to sell or lease any part of the land under the scheme without placing a protective covenant on it if the trust determines that part of the land is of low or no conservation value. An amendment has also been made to trust agreements made under the Act to clarify that the trust has the power to restrict development as defined by the Environmental Planning and Assessment Act 1979 on managed land as opposed to restricting use of land. Development in this context covers use, subdivision, construction of buildings and carrying out of work on land.

Schedule 1 item [20] amends the trust formulation power by allowing the trust to prescribe actions that a landholder must refrain from carrying out and general actions that the landholder is obliged to undertake. In

other words, there can be both restrictive and positive obligations. A number of provisions authorise the trust to manage water rights related to the maintenance of natural heritage. New section 10 (2) states that the trust is to protect and enhance natural heritage through cooperative arrangements for the protection of any waters that affect the natural heritage of the land. This provision applies regardless of whether the water flows across the land or is in underground aquifers. The insertion of this provision is supported by the amendment to schedule 1—items [8] and [10]—which gives the trust the power to buy, sell or hold water access licences under the Water Management Act 2000 or the Water Act 1912.

The amendment in schedule 2 makes a similar change to conservation agreements under the National Parks and Wildlife Act to allow the protection of waters associated with land with significant conservation value under the conservation agreements under the Act. This will create consistency between the proposed changes to the Nature Conservation Trust Act and the National Parks and Wildlife Act in relation to the management of waters. The bill also makes some minor amendments to the ability of the Minister to appoint non-government members to the trust board and establishes a process for distributing outstanding property should the trust be wound up. This bill represents a sensible enhancement and modernisation of the Nature Conservation Trust Act and I look forward to taking up the issue of proportionate rate exemption in Committee. The Greens support the Nature Conservation Trust Amendment Bill 2010.

Reverend the Hon. FRED NILE [3.33 p.m.]: The Christian Democratic Party supports the Nature Conservation Trust Amendment Bill 2010, which will amend the Nature Conservation Trust Act 2001 and the National Parks and Wildlife Act 1974. In so doing it will address some deficiencies in the current legislation and will make the process even more successful. As members know, the trust is a highly successful initiative that is the product of a coalition of conservation groups and the NSW Farmers Association that was supported by the New South Wales Government.

The trust operates a revolving fund program; that is, it buys properties of high conservation value, places a conservation covenant over the land and resells it to a supportive new owner. The proceeds of the sale are returned to the fund and are used for further purchases. Since 2003, the trust has increased the amount held by the fund from \$2 million to \$25.1 million as at June 2010. That is a clear demonstration of its success in achieving its objectives. The trust has purchased 16 properties, six of which have been on-sold with conservation covenants. It has also protected 21,581 hectares across 56 properties. That includes 87 different regional ecosystems, 47 of which are underrepresented in the formal New South Wales reserve system. It also includes three nationally threatened ecological communities and 10 threatened ecological communities in New South Wales.

However, there have been some deficiencies in the trust. The Chief Executive Officer, Paul Toni, briefed members and indicated that one of the major concerns was tax deductibility. This bill will remove the obstacles to gaining tax deductibility in its own right, which will make the trust more attractive and hopefully will result in greater support from potential donors and a reduced administrative burden. The bill will also give the trust the power to buy and trade water allocations associated with trust properties. Other private landowners enjoy that right, but it is not included in the Nature Conservation Trust Act. Mr Toni indicated that if a proportional rate exemption were provided for land over which the trust agreements operate it would reduce local government revenue across New South Wales by only about \$90,000. Therefore, the Christian Democratic Party will support the Greens amendment to extend proportional local council rate exemptions to landowners who have a trust agreement linked with a conservation covenant over their land.

The Hon. HELEN WESTWOOD [3.36 p.m.]: I am pleased to support the Nature Conservation Trust Amendment Bill. The Nature Conservation Trust of New South Wales has been instrumental in achieving real environmental gains on private land in New South Wales. The trust is a not-for-profit conservation organisation operating with the mindset of an efficient private business. It fills an important conservation niche and is the only nature conservation organisation in New South Wales operating a revolving fund with conservation covenants attached to property titles.

I will provide a couple of examples of the trust's work. In northern New South Wales the recently acquired Estuary Creek property is an outstanding example of the conservation values that the trust protects. This remarkable 1,608-hectare property is home to two threatened native species: the squirrel glider and the rufous bettong. It bridges two national parks and forms part of a corridor that links the coast to the McPherson Ranges. In the south of the State, the trust secured the permanent protection of a small but significant area of remnant grassland vegetation through the purchase and sale under covenant of Parlour Grasslands, a 48-hectare

property near Braidwood. These and other significant conservation values are now protected in perpetuity thanks to the work of the trust. We want that work to continue into the future and that is why we need to ensure that its enabling legislation remains relevant and effective.

There have been significant changes to the trust's operating environment over the past nine years. Among the more significant reforms are those relating to the management and trading of water rights. This bill will allow the trust to enjoy the same rights as other private landholders to buy and trade water allocations for the benefit of the natural environment on trust properties. It is vital that the legislation that underpins the trust's activities reflects the realities of the day and enhances, not hinders, the work of this vital organisation. I am pleased to support the bill.

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [3.39 p.m.], in reply: A decade ago a community coalition foresaw the opportunity to assist landholders wishing to protect and improve the natural heritage on their land. The Government listened to the community coalition and established the Nature Conservation Trust. Nine years on, the foresight of the community representatives and this Government has resulted in real on-ground conservation outcomes. Let me remind the House of some of the trust's achievements: 21,581 hectares of high-conservation value land protected across 58 properties, protection for 87 different types of regional ecosystems, and protection for three nationally threatened ecological communities and 10 ecological communities threatened in New South Wales. Even with all the foresight in the world we could not have envisaged the operational intricacies that have come to bear on the trust's undertakings over the past nine years. The bill tightens the criteria for board appointments, requiring a more specific set of skills and experience than is currently the case. This amendment is vital to ensure that the governing board of this trust is equipped to deal with the increasingly complex fields of natural resource, and property and financial management.

The bill also removes the requirement that all parcels of land purchased as part of a revolving fund property must be sold subject to a conservation covenant. The trust can only buy land in the parcels in which it is offered. These will often contain areas unsuited to conservation. This amendment allows the best land to be protected and managed under covenant, and land without conservation value to be on-sold to agricultural or other uses. The bottom line is that the trust will be able to direct its limited resources to where it can achieve the best conservation outcomes at least cost. Likewise, the bill will insert the model clauses required for the trust to achieve tax-deductible status under Commonwealth law, something that is not possible under the current provisions of the Act. This is an important step in attracting donations and sponsorship to support the vital conservation work of the trust.

In debate in the other place, the member for Wakehurst raised a concern that private land protected for public benefit should be financially recognised. First, let me confirm, as the member assumed, that cash donations to the Nature Conservation Trust will be tax deductible as a result of these amendments. I am pleased to inform the House that gifts of land valued at more than \$5,000 are tax deductible under Commonwealth law. Deductions may be apportioned over up to five years so that tax benefits are not lost when a donor's income in a single year is less than the value of the gift—a particular advantage for donors who are asset rich but have a low income. I can also inform the House that Commonwealth tax law provides for an income tax deduction for any decrease in land value as a result of entering into a conservation covenant with an organisation that is part of an approved conservation covenant program.

One benefit of these amendments will be that the Nature Conservation Trust will be eligible to apply to the Commonwealth to recognise the trust's program as an approved conservation covenant program. This means that landholders who want to protect their land should consider entering into a conservation agreement and receive financial recognition through the tax system. I also note that where a landholder enters into a conservation covenant with the Nature Conservation Trust, the ongoing management responsibility for that land still rests with the landholder. Appropriate management of natural heritage on private land is critical if the unique biodiversity of the State is to survive. The bill will assist the Nature Conservation Trust to protect natural heritage and work in voluntary cooperation with those landholders who wish to make a difference. 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.

Suspension of Standing Orders: Instruction to Committee of the Whole**Motion by the Hon. Ian Cohen agreed to:**

That standing orders be suspended to allow the moving of a motion forthwith that it be an instruction to the Committee of the Whole that it has power to consider an amendment relating to the application of rate exemptions under the Local Government Act 1993.

Motion by the Hon. Ian Cohen agreed to:

That it be an instruction to the Committee of the Whole that it has the power to consider an amendment relating to the application of rate exemptions under the Local Government Act 1993.

In Committee**Clauses 1 and 2 agreed to.**

The Hon. IAN COHEN [3.45 p.m.]: I move Greens amendment No. 1:

No. 1 Page 9, schedule 1. Insert after line 15:

[21] Section 38B

Insert after section 38A:

38B Application of rate exemptions under Local Government Act 1993

- (1) A council may exempt from all rates under the Local Government Act 1993 land that is the subject of a Trust agreement.
- (2) In such a case, section 555 of the Local Government Act 1993 applies in respect of land the subject of the Trust agreement in the same way as it applies in respect of land the subject of a conservation agreement (within the meaning of the National Parks and Wildlife Act 1974).
- (3) However, a reference in section 555 (3) of the Local Government Act 1993 to a period on or after 1 July 2008 is to be read, in relation to the Trust agreement, as a reference to a period in respect of which the exemption is granted.

As I indicated in my speech on the second reading, the Greens are disappointed that this bill did not adopt the recommendation of the statutory review to extend proportionate local council rate exemptions to landowners who purchase covenanted land from the Nature Conservation Trust and enter into a trust agreement with the trust for conservation management. The Greens amendment will insert a new section 38B into the Nature Conservation Trust Act. The new section will enable a local council to exempt land subject to a trust agreement from rates in the same way conservation agreements are exempt under section 555 of the Local Government Act.

Although the amendment does not fully remedy the inconsistency between Nature Conservation Trust agreements and National Parks and Wildlife Act conservation agreements, it represents a step in the right direction. Some councils will have no problem consenting to providing proportional rate exemption to National Conservation Trust agreements whereas some will have issues that need to be resolved. The amendment reflects concerns that the impact of rate exemption on some small local councils may not be of insignificance. New section 38B (2) makes sure the provision is not representative and establishes the rate exemption from 1 July 2011. While the Greens would prefer to extend the same economic incentives available for Department of Environment, Climate Change and Water-managed conservation agreements to Nature Conservation Trust-managed trust agreements, we believe the amendment is a reasonable compromise.

I will reiterate a couple of points. Some landowners do not like the National Parks and Wildlife Service or the Department of Environment, Climate Change and Water. I accept that. They are seen by some landowners as the regulator and there is a reluctance on the part of some landowners to be involved with the Department of Environment, Climate Change and Water. Yet, these same landholders are deeply committed to conserving the natural heritage on their property for future generations. They are a fundamental component to conservation in New South Wales. It is in this situation that the Nature Conservation Trust offers an alternative. Some landowners may have had experience with the Nature Conservation Trust in the transition packages and programs. They are familiar with the trust and its people. They would prefer to undertake conservation on private land in conjunction with the Nature Conservation Trust. It is important that we strive for consistency.

I thank Minister Perry and her office, in particular, for listening to my concerns about the bill. They have taken my concerns to the Local Government and Shires Associations and have worked constructively with my office. I also thank Minister Sartor's office for its assistance. I commend the Greens amendment to the Committee.

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [3.48 p.m.]: The Greens amendment provides a further incentive for rural landholders to recognise their contributions to nature conservation. The amendment also brings trust agreements into line with agreements with the New South Wales Government, such as those under the National Parks and Wildlife Act. However, the Government takes issue with one omission. The Greens amendment states that a council may exempt land from all rates under the Local Government Act 1993. The Government's view is that that should be given in writing to the landholder. I move that the Greens amendment be amended as follows:

After the word "may" in proposed subsection 38B (1) insert ", by notice in writing to the landholder,".

The Hon. CATHERINE CUSACK [3.50 p.m.]: The Greens amendment comes as a surprise to the Liberal and National parties. The Greens, as usual, have given us no forewarning. They have negotiated the matter with the Government and left us out of the loop. I note that the amendment was circulated as the bill came up for debate. This continuing practice of dealing with only one side of politics without trying to be more inclusive is a great shame because we may well have engaged in positive discussion on the amendment. This issue was raised in the 2006 Statutory Review of the Nature Conservation Trust Act 2001 Review Group Report at page 22, which states:

4.2.7 Rate exemptions, tax concessions, and other incentives

Rate exemptions and tax concessions should be available to the Trust and to subsequent landholders with in-perpetuity Trust Agreements under the Act, just as they apply to in-perpetuity Conservation Agreements under the *National Parks and Wildlife Act 1974*. This includes rate exemptions under s555 of the *Local Government Act 1993*, land tax under the *Land Tax Management Act 1956*, stamp duty under the *Duties Act 1997* and rate concessions under the *Rural Lands Protection Act 1998*.

I understand that this amendment relates only to rates paid to local government.

Mr David Shoebridge: It is under the Local Government Act.

The Hon. CATHERINE CUSACK: It does not relate to other land tax and rural lands protection rates, is that correct? Can I clarify whether the amendment relates only to local government rates? You do not know.

Mr David Shoebridge: It is those rates under the Local Government Act.

The Hon. CATHERINE CUSACK: Land tax is not a local government tax in New South Wales; land tax is imposed under the Land Tax Management Act 1956. Have you simply looked at one tax and this amendment relates only to local government rates?

The Hon. Ian Cohen: It relates only to local government rates.

The Hon. CATHERINE CUSACK: Thank you. We looked at this issue at the request of the Nature Conservation Trust and I report to the Committee the views of Noel Baum, Director, Policy Division, of the Local Government and Shires Associations, who stated:

Here is the advice from my environmental colleagues—Voluntary Conservation Agreements

The Local Government and Shires Associations has longstanding opposition to the rate exemption status of voluntary conservation agreements. While we support the principles of private land conservation and actively promote local government's significant role in public land conservation, we see this process as a cost shift from the State to local government. The benefits to landowners are obvious, no requirement to pay rates; as are the benefits to State Government, meeting targets for private land conservation; yet there is very little benefit, if any, to the local council. The council has no say in the agreement between the landowner and the Government, yet it pays the price in lost rates. Councils are still required to provide services to that property, including roads access, yet the landowner is not required to contribute financially like all other ratepayers. Therefore, the Local Government and Shires Associations would have serious concerns about any proposal to extend this rate exemption to any other conservation agreement.

An important related issue in the context of this amendment is not only the applicability of rates to the land but also the rating classification. We also looked at this issue because rates imposed on these properties are at business rates. We considered whether it would be of benefit to have a differential rate rather than the full

business rate. We considered the matter in good faith and decided we would postpone our consideration of that issue. It was clear that further discussion is needed with the Local Government and Shires Associations. I add that the New South Wales Farmers Association is opposed to the provision. It is disappointing that the matter has arisen in this way at this point because we were looking at the matter in good faith and a lack of faith has been shown in the way the matter has come before the Parliament. Therefore, we oppose the amendment because of the unresolved issues with the Local Government and Shires Associations.

Those matters may have been resolved but, if so, the Local Government and Shires Associations has not informed us. The management of this legislation is a poor reflection on the Greens, particularly when people have goodwill and are genuine about negotiating beneficial changes to meet conservation objectives and safeguard local communities. Many properties in western New South Wales are in the same local government area and some councils will be disproportionately affected by the change. It is not clear whether only the covenanted area of a property will be exempt or whether potentially the entire property will be exempt from rates. The Opposition has sought clarification on the matter. I realise that the Nature Conservation Trust, which drafted the amendment, is of the view it applies only to the covenanted area. However, if we had been given time to consider the matter we could have clarified the situation with affected stakeholders.

The Hon. IAN COHEN [3.57 p.m.]: I am somewhat disappointed at the Opposition's accusations and innuendo because I believe there has been a degree of transparency in this process. My understanding is that it is just the covenanted area, not the whole property. That is stated clearly in the Act. The Greens amendment was actually sent to the office of the Hon. Catherine Cusack on Monday. I am assured by my staff that that is the case. As I stated earlier, there was an issue about the relevance of the amendment between the Local Government Act and the auspices of the Department of Environment, Climate Change and Water that we corrected with a later edition that I received from Parliamentary Counsel, and that was a difficulty. I refute the statement that we did not inform the Opposition.

The Hon. Matthew Mason-Cox: Just apologise.

The Hon. IAN COHEN: I do not appreciate being verbally by the Opposition by way of interjection from the Hon. Matthew Mason-Cox and by the Opposition spokesperson, the Hon. Catherine Cusack, because that is not the case. My understanding is that the rateable areas are those conservation areas—and the Act makes that quite clear. I do not know what else we have to say in dealing with that issue. I am disappointed in the Opposition's attitude, because I recognise that this legislation supports people who in many cases would be closely associated with the Opposition—that is, honest farmers who are doing the right thing on their land in the area of conservation and attempting to take appropriate conservation action. It is rather sad that this amendment is not agreed to by the Opposition. I stand by the fact that, to the best of our ability in the rush of the end-of-year dealing with this matter, we have held discussions on the matter with all relevant parties.

Pursuant to sessional orders consideration interrupted at 4.00 p.m. for questions. Progress reported from Committee and consideration set down as an order of the day for a later hour.

QUESTIONS WITHOUT NOTICE

POLICE BUDGET

The Hon. MICHAEL GALLACHER: My question without notice is directed to the Treasurer. In light of reports in the media last week concerning the state of the New South Wales Police Force budget, can the Treasurer confirm Police Minister Daley's commitment that the New South Wales Police Force budget will not be reduced or elements of it be the subject of global savings measures in advance of the 2011 State election? What role has Treasury had in implementing global savings measures in the New South Wales Police Force, in light of Police Minister Daley's denials that he or anyone in Government played a role in proposed cuts to overtime and higher duties allowances?

The Hon. ERIC ROOZENDAAL: I thank the Leader of the Opposition for his question and interest in this matter. In the last budget we announced an 8 per cent increase in the Police budget. We continue to support the New South Wales Police Force. It is appropriate that we look overall, through the Better Services and Value Taskforce, at the operating costs of all agencies of government. Indeed, we do that to improve front-line service delivery across the Government for the families of New South Wales.

The amount of money invested in the New South Wales Police Force is at a record level to ensure we have record numbers and a commitment to increasing the force's authorised strength to almost 16,000 by the end of 2011. This year's Police budget had an additional \$67.8 million set aside for funding the employment of additional officers, and of course we have had the success of the police wages negotiations.

The Hon. Michael Gallacher: What about the cuts?

The Hon. ERIC ROOZENDAAL: Certainly there have been some reviews across a number of agencies, and there is a process they go through for government. Any review of an agency goes to the Expenditure Review Committee for consideration. Then it may or may not go to the budget committee, and it may or may not go to Cabinet. I assure the House that I fully support what the Minister for Police said. We will continue to support our police force, and we will continue to ensure it has record funding because we believe the police in this State do a terrific job. That is why we are seeing a fall in the incidence of just about every crime, because we support our police in the important job they do every day in New South Wales.

STATE ECONOMY

The Hon. LUKE FOLEY: My question is addressed to the Treasurer. Will the Treasurer update the House on the latest economic data?

Reverend the Hon. Dr Gordon Moyes: More green shoots!

The Hon. ERIC ROOZENDAAL: Indeed, more green shoots of recovery for the New South Wales economy and more good economic news for New South Wales. I thank the Hon. Luke Foley for his question and his continuing interest in the economic future of this State. I am pleased to report to the House that job advertising in New South Wales continues to grow strongly. Yesterday we saw the release of the latest ANZ Job Ads series. It shows that on a trend basis job advertising in New South Wales increased by 0.6 per cent in October 2010. This compares with just a 0.1 per cent increase nationally. Victoria saw a fall, negative 0.9 per cent. Queensland also recorded a fall, negative 1.1 per cent.

Job ads have increased in New South Wales by 6.3 per cent since October 2009. This compares with a 3.5 per cent increase nationally. This is all good news for the New South Wales economy and New South Wales families. Today we saw the release of further good news for businesses. Dun and Bradstreet today released its Business Expectations Survey. The outlook of our business sector is overwhelmingly positive as we head towards the new year. The survey's profits index increased nine points, the highest level in more than seven years. And sales expectations have reached their highest level since the December quarter of 2003.

However, also today we saw the release of the Commonwealth's Mid Year Economic and Fiscal Outlook. Treasurer Swan released this data in Canberra. It shows good news on the national economic front. The Australian economy is forecast to grow by 3.25 per cent in 2010-11 and 3.75 per cent in 2011-12. Our national unemployment rate is expected to fall to 4.5 per cent by the June quarter of 2012. However, there is a downside to these figures—a forecast decline in GST revenue to the States. The impact on New South Wales this financial year will be quite severe.

According to a New South Wales Treasury analysis, I am advised the combined effect of a lower GST pool and a balancing adjustment will reduce New South Wales GST by \$437 million in 2010-11, compared with the budget estimate. This is a sobering reminder that even as Australia leads the global economic recovery, that recovery still remains fragile. The impact on the New South Wales budget will be significant—this means a significantly reduced New South Wales budget result. New South Wales Treasury will be analysing the latest Commonwealth data closely as we prepare for our own midyear budget update next month. I will keep the House updated.

KURRI KURRI SMELTER ELECTRICITY CONTRACT

The Hon. DUNCAN GAY: My question without notice is directed to the Treasurer. Is the Treasurer aware that the Kurri Kurri smelter electricity contract has not been signed, despite Hydro Aluminium having been in negotiations with Delta for three years? Is the Treasurer also aware of union concerns on this? I quote Australian Workers Union District Secretary Richard Downie who said:

We heard something had gone wrong ... when I spoke to the Kurri manager, he told me the government had ordered Delta not to sign the deal, apparently because of something to do with the Government's privatisation plans.

Have these contracts not been signed because of the Treasurer's gentrader sale plans, and what reassurance can the Treasurer give to the smelter and its hundreds of workers?

The Hon. ERIC ROOZENDAAL: I am aware of the news item to which the Deputy Leader of the Opposition refers. It was in today's Newcastle media. At this point I reassure the House that the energy reform transaction remains on track and that the timetable remains unchanged. On the issue of the reported contractual negotiations with Hydro Aluminium being rejected by the Government, I can say that this matter involves a contract which expires in seven years. It is the subject of ongoing deliberations. The New South Wales Government understands that, particularly where long-term investment decisions are being made, the parties may require certainty. I assure the House that the Government is at all times working to protect taxpayers' best interests, and it will continue to do so.

PARKLEA CORRECTIONAL FACILITY INMATE DEATHS

Reverend the Hon. Dr GORDON MOYES: I ask the Hon. Tony Kelly, on behalf of the Minister for Corrective Services whether he is aware that on 30 June 2010 a Parklea Correctional Facility inmate committed suicide by hanging himself and was not found until eight hours after the event? Is the Minister aware that on 23 July 2010 another inmate committed suicide by hanging himself in his cell? Is the Minister also aware that on 25 July 2010 another inmate attempted suicide by slashing his wrists? Is the Minister aware that there are 800 inmates in Parklea jail but that there are only 20 guards on day shift and five guards on night shift to oversee those 800 inmates? Can the Minister indicate why there are not sufficient staff at Parklea Correctional Facility to protect the 800 inmates, and why these deaths were covered up?

The Hon. TONY KELLY: I thank Reverend the Hon. Dr Gordon Moyes for his question. I undertake to pass the question on to the Minister concerned and to get the honourable member a speedy answer.

CHILD DEATH REVIEW TEAM

The Hon. CHRISTINE ROBERTSON: My question is addressed to the Minister for Youth. Will the Minister update the House on the important work of the New South Wales Child Death Review Team?

The Hon. PETER PRIMROSE: The Child Death Review Team is an independent committee established to prevent or reduce child deaths from all causes in New South Wales. The team has operated since 1996, and since 1999 it has been convened by the Commissioner for Children and Young People—an independent statutory body in its own right. The team maintains a register of all deaths of children and young people under 18 years of age, reports annually on trends in deaths to the New South Wales Parliament, and undertakes research into particular types or aspects of child deaths. This research informs policy and program developments to reduce child deaths. The team is made up of representatives from six government departments, independent experts in the fields of child and adolescent health and development, mortality and morbidity, and an Aboriginal person.

The Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009 provided for the team to be convened by the New South Wales Ombudsman and for the work supporting the team to be located in his office. The legislative amendments to transfer the team to the Ombudsman were intended to be proclaimed following tabling of the team's 2008 annual report to Parliament in October 2009. This was to avoid any difficulties associated with transferring the function midway through a reporting period. During this period the Ombudsman sought additional funding to support the work of the team. Additional funding has been provided to the Ombudsman in 2010-11, with the annual budget more than doubling from \$221,000 to \$539,000. The Ombudsman also recently sought a range of legislative amendments and operational changes, and a number of these were supported. Other changes sought, however, were not supported as they were inconsistent with Justice Wood's recommendation that the operations of the team should remain unchanged following its transfer to the Ombudsman. This is to safeguard the distinct nature of the team's work and its important advisory role to government.

The Government has agreed to a number of recommendations sought by the Ombudsman that do not fundamentally change the operations of the team. These include the convenor rather than the Minister determining the rates of remuneration for expert advisers, and improved information sharing provisions between the Commission for Children and Young People and the Ombudsman. The Government did not support legislative changes that would move the legislation into the Community Services (Complaints, Reviews and Monitoring) Act 1993 and remove parliamentary oversight from the Committee on Children and Young People.

It is appropriate that the team's continuous work be referenced as part of the key piece of legislation focusing on the wellbeing of all New South Wales children and that its oversight be through the Committee for Children and Young People, which was specifically established to undertake this as part of its role.

The team is an independent committee in its own right, and independent of the Ombudsman in its functions. The Ombudsman is to be the convenor of the team and his office would provide secretariat support to the team as the commission has done in the past. As such, the Ombudsman is one member of a team that comprises membership from a range of New South Wales government agencies, including the Department of Human Services, the Department of Health, the Department of Education and Training, the Department of Justice and Attorney General, the New South Wales Police Force, the New South Wales State Coroner, the Department of Ageing, Disability and Home Care, and the Commission for Children and Young People. Reports of the team are reports of the team, not of the Ombudsman. The team will continue to have the role of submitting reports to Ministers for comment. [*Time expired.*]

The Hon. CHRISTINE ROBERTSON: I ask a supplementary question. Will the Minister elucidate his answer on the New South Wales Child Death Review Team?

The Hon. PETER PRIMROSE: The team is not bound to amend any report in light of any comments made by the Minister. The reports will be submitted to Parliament in the form decided by the team. The 2009 annual report of the team shows the lowest number of child deaths since the team was established. The team is one of the most successful initiatives of the Government in protecting children, and we are proud of its achievements. The Government is committed to retaining the independence of the Ombudsman, but it is equally committed to retaining the independence of the Child Death Review Team. Maintaining the team's collaborative and advisory character is vital to its ongoing success. I commend the Ombudsman for his ongoing work. The Government will continue to meet with the Ombudsman to ensure that these objectives are achieved.

HIGH-LIMIT POKER MACHINES

Reverend the Hon. FRED NILE: I direct my question without notice to the Leader of the House, the Hon. John Hatzistergos, representing the Premier. Will the Minister confirm that the Star City Casino has installed 68 "high limit" poker machines, which allow bets of up to \$500 at a single push of a button? Will the Minister confirm that the New South Wales Casino, Liquor and Gaming Control Authority has approved the installation? Does the Keneally Government acknowledge that this situation makes a mockery of the Government's commitment to reduce problem gambling within the community? Will the Government follow the recommendations of the Productivity Commission and implement a \$1 betting limit on more poker machines in New South Wales? If not, why not?

The Hon. JOHN HATZISTERGOS: I will refer this matter to the responsible Minister.

KURRI KURRI SMELTER ELECTRICITY CONTRACT

The Hon. ROBYN PARKER: I direct my question without notice to the Treasurer. On the issue of the Kurri Kurri Hydro Aluminium smelter, why has the Treasurer increased the sovereign risk of doing business in New South Wales by refusing to honour a heads of agreement on its long-term electricity supply? Did the Treasurer suggest in a meeting with company executives in April that they should deal with Delta directly as it was a commercial matter for them? Will the Treasurer confirm that he will honour any legal processes and make sure details are not provided to bidders without legal consent?

The Hon. ERIC ROOZENDAAL: I reject the suggestion that there is any change at all in the issue of sovereign risk. It is a demonstration of the Opposition's lack of understanding to try to peddle that sort of misunderstanding; it is almost a deliberate distortion of the situation. We need to be very clear on this: the contract expires in 2017. There are negotiations in place between two parties. The Government will ensure that negotiations are done in the best interests of the taxpayers of New South Wales.

NATIONAL MULTICULTURAL MARKETING AWARDS

The Hon. SHAOQUETT MOSELMANE: I address my question without notice to the Minister for Citizenship. What is the latest information on the National Multicultural Marketing Awards?

The Hon. JOHN HATZISTERGOS: This is a timely question as on 1 November 2010 I joined Premier Kristina Keneally at the twenty-first annual National Multicultural Marketing Awards. As honourable

members would be aware, the awards recognise outstanding achievements in marketing to culturally diverse communities, and since 1989 they have been encouraging and rewarding businesses that promote the economic and social value of cultural diversity. According to Dr Stepan Kerkyasharian, chair of the Community Relations Commission, who is also the founder of the awards:

The success of the awards tells us that whatever our work, business or profession, we must be aware of the multicultural nature of the people we work with and deal with on a daily basis, because that is ultimately who we are.

The DVD of the Multicultural Communities Council of Illawarra entitled *It's not a disgrace ... It's dementia*, took out the 2010 Grand Award for promoting greater understanding of dementia in older people in the Portuguese, Serbian, Arabic and Ukrainian communities. The DVD is the product of impressive work on a sensitive issue helping us all to accept and understand dementia as something we can manage.

Many people who migrated here in the 1950s will already be at an advanced age and we need to know how to take care of them: people who undertook the hard work of building this nation's economy in the Snowy Mountain Scheme, in the steel works, and on the land growing sugar, tobacco and grapes. This DVD acknowledges that in understanding and dealing with dementia cultural factors do play a role. Each of the productions was filmed entirely in the community languages I mentioned earlier, and dementia sufferers are able to tell their own stories, and are supported by family carers, bilingual doctors, specialists, health and community workers and religious leaders. It is important that the cultural dimension of ageing not be neglected. Even taboo subjects such as curses and superstitions are discussed in an attempt to demystify the illness and bring greater understanding within communities. I understand that the Illawarra Multicultural Communities Council is already looking at export opportunities for its good work.

Some of the other awards in recognition of fantastic achievements in marketing to multicultural communities included the Commercial Big Business Award, which went to Western Union for its successful partnership with the inaugural Indian Film Festival and its work in assisting migrants and students to embrace their homeland heritage, reinforcing the Indian cultural connection with Australia. The Commonwealth Bank Commercial Small Business Award went to Sanford Legal for effectively harnessing the linguistic and cultural knowledge of its personnel to service the inner west community.

The Government award went to Moreland City Council for its creative use of story boards, which the council developed to meet the challenge of communicating with its residents who speak many different languages. The story boards cover important issues such as domestic violence, mental health, gambling and influenza awareness. The Advertising and Communication award went to the Special Broadcasting Service [SBS] for its presentation of the soccer World Cup. Naturally, SBS targeted those ethnic communities in Australia whose former home country teams were playing in the tournament and was able to broadcast those games in the languages of those teams. The Casella Wines Export award was won by Longwarry Food Park Pty Limited, which cleverly utilised the language and cultural skills of its staff to sell massive amounts of milk powder to Asia and the Middle East.

As this year's winners demonstrate, Australia is one of the most successful and vibrant multicultural communities in the world. The future success of organisations in every sector lies in their ability to reach out and engage with the widest possible audience. I congratulate all the finalists and the award winners of the twenty-first National Multicultural Marketing Awards on their fantastic achievements in marketing to multicultural communities.

CENSORSHIP

Mr DAVID SHOEBRIDGE: My question without notice is directed to the Attorney General. In the second reading speech on the Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2010, given on behalf of the Attorney General by the Hon. Michael Veitch, it was said:

The NSW Police Force consistently exhausts its annual quota of free applications. It made 161 applications to the Classification Board in 2008-09

Further, it was said:

This bill will help to alleviate this cost pressure by removing unnecessary evidentiary requirements

Given New South Wales lodged just 79 out of its available 100 free applications to the Commonwealth Classification Board in the 2009-10 financial year, all at no cost to the NSW Police Force, and, therefore, the

cost justification that was given to support giving police extra powers to become classifiers has no basis in fact, what justification does the Attorney General now give for these expansive censorship laws and the extra powers being handed to the police?

The Hon. JOHN HATZISTERGOS: Apart from the fact that the question is clearly argumentative, I should make the point that this matter was discussed comprehensively during debate on the bill and resolved adverse to the position taken by the member, and he should accept the outcome.

STATE BUDGET

The Hon. GREG PEARCE: I direct my question without notice to the Treasurer and refer him to the 2010 Total State Sector Accounts, which disclose that \$1.61 billion received from the Commonwealth for National Partnership or Specific Purpose Payments has been recognised as revenue in 2009-10 but not spent in that year. Have the obligations to fund these payments in future years been fully provided in the forward estimates, or will the Government have to borrow to fund these recurrent expenditures? Given the Auditor-General's comment in his 2010 Volume 3 report that the effect of properly quarantining these advance payments would have resulted in a deficit of \$861 million, instead of the Treasurer's reported surplus of \$994 million in 2009-10, what confidence can the people of New South Wales have that his budget is credible?

The Hon. ERIC ROOZENDAAL: I thank the Hon. Greg Pearce for his question and interest in this matter. The Government meets all appropriate accounting and reporting standards in the construction of its budget, as is acknowledged every year. The Opposition again attempts to try to talk down the very good result of the New South Wales budget. I just mentioned that we have seen a reduction in our GST numbers. That seems to have gone straight over the Opposition members' heads because they do not care about that. Of course, Commonwealth grants, in whatever form they come, are part of the revenue of this State and are reported as such.

CENTRAL COAST BUS SERVICES

The Hon. SOPHIE COTSIS: I address my question without notice to the Minister for Transport, and Minister for the Central Coast. Will the Minister inform the House about improvements to bus services on the Central Coast?

The Hon. JOHN ROBERTSON: It gave me great pleasure to be on the Central Coast yesterday to ride one of the first of 1,500 extra bus services a week delivered to the region by the New South Wales Government.

The Hon. Melinda Pavey: Why do you have to read that part? Wouldn't it just come naturally?

The PRESIDENT: Order! The Hon. Melinda Pavey will come to order and cease interjecting.

The Hon. JOHN ROBERTSON: The new bus timetable for the Central Coast is one of the most significant transport announcements for the region in years. To make this happen the New South Wales Government delivered an additional 41 new buses to Central Coast bus operators Busways and Red Bus to run the extra services. This is a total increase in the Central Coast bus fleet of 20 per cent and is in addition to the 16 new buses delivered last financial year to boost services on the Central Coast. The boost to services for Central Coast commuters includes new late-night buses, more frequent services during peak periods and better connections between towns and suburbs on the Central Coast and our major train stations and transport interchanges. The new network creates better links between key employment and residential centres across the region, including Gosford, Woy Woy, Wyong, Erina Fair, The Entrance and Tuggerah. It also increases services to areas outside these main centres, such as, Bateau Bay, Norah Head, Umina, Somersby, Wyoming, Berkeley Vale, Budgewoi, Wamberal and Forresters Beach.

It is not just Central Coast commuters who are benefiting. As a result of the extra buses delivered by the Government, Red Bus and Busways have employed an extra 37 drivers in the region. Yesterday I met Ben, a young bus driver from Umina who used to commute for work to Sydney's North Shore—the leafy suburbs that would be familiar to members opposite. As a result of the Government's investment in Central Coast public transport, Ben now has a job driving buses on the Central Coast, which means he is employed locally and spends more time with his family. He was thrilled about the opportunity to work in his local community.

The PRESIDENT: Order! I ask the owner of the mobile phone that is ringing to set it on silent mode. The Minister may proceed.

The Hon. JOHN ROBERTSON: The wholesale improvements that started this week on the Central Coast are exactly what the community has been asking for and the Government has delivered. Yesterday I caught a new bus from Gosford interchange to Erina Fair with some very happy passengers. It seems that everyone on the Central Coast is happy about these improvements. It is worth noting that the Opposition has been noticeably quiet, other than a bit of barking. These extra services are happening right across the region. In fact, one of the areas that has benefited the most from the improvements is the electorate of Terrigal. Unfortunately, the member for Terrigal is not particularly good at his job and has not been telling his constituents about the new bus services being delivered by the New South Wales Government. For the benefit of the people who live in Terrigal, I will go through some of them because they are not hearing about them from their local member.

The Hon. Michael Gallacher: They can't tell you two apart.

The Hon. JOHN ROBERTSON: I'm the one with the smarts. The benefits include improved off-peak and weekend services from Forresters Beach and Wamberal to Gosford with weekday services and Saturday and Sunday services increasing; improved services between Green Point and Erina and Gosford, including a new Sunday service and improved Saturday and weekday off-peak frequencies; a new seven-day service from Forresters Beach and Wamberal to Tuggerah with hourly daytime frequencies; and a new direct connection from Saratoga to Kincumber. It is this Government delivering these services.

LIVESTOCK HEALTH AND PEST AUTHORITIES STATE MANAGEMENT COUNCIL

The Hon. ROBERT BROWN: I direct my question without notice to the Minister for Planning, representing the Minister for Primary Industries. Is it true that the State Management Council of the Livestock Health and Pest Authorities has not prepared its annual report for 2009? If not, when will the annual report of the State Management Council for 2009 be available? What proportion of Livestock Health and Pest Authorities ratepayers' levies goes towards funding the State Management Council in addition to funding the local authority?

The Hon. TONY KELLY: I thank the Hon. Robert Brown for his question and continued interest in rural and regional New South Wales. I undertake to obtain an answer from the relevant Minister as speedily as possible.

PORT MACQUARIE FORESHORE PROTECTION

The Hon. MELINDA PAVEY: I direct my question without notice to the Minister for Planning, Minister for Infrastructure, and Minister for Lands. I refer to the Minister's comments made last week on ABC Mid North Coast where he said that although he had the statutory power to approve the controversial redevelopment plans for the Port Macquarie foreshore, he would not seek to do so. Will he repeat those assurances in this place? Has the Minister met with the Foreshore Protection Association since I last raised this matter in this place last September?

The Hon. TONY KELLY: I meet very regularly with the Hon. Peter Besseling on that matter.

The Hon. Duncan Gay: He is not honourable.

The Hon. TONY KELLY: He will be because he will be here for a long time. The member brings to me and to the Department of Lands and the council the concerns of the foreshore group and we will continue to have discussions with them and the council.

[Interruption]

The PRESIDENT: Order! I remind the Hon. Melinda Pavey that she should cease interjecting.

ROUSE HILL TOWN CENTRE

The Hon. HELEN WESTWOOD: My question is directed to the Minister for Planning, Minister for Infrastructure, and Minister for Lands. Will the Minister inform the House about the award recently won by the Rouse Hill Town Centre?

The Hon. TONY KELLY: I thank the honourable member for her question and commend her for her continued interest in western Sydney. The New South Wales Government is committed to ensuring that its development plans are implemented with the best of design and sustainability features. Through the Department of Planning the Government's land development agency, Landcom, and its partners have been able to develop a world-class town centre at Rouse Hill. I am also proud to inform the House that Rouse Hill Town Centre has been recognised as a winner in the 2010 Urban Land Institute Global Awards for Excellence, which recognise projects that provide the best lessons in land-use practices. Only five award recipients were selected from across the Americas, Europe and Asia-Pacific by a select jury of international members. The winners were recognised at the Urban Land Institute's quarterly meeting in Washington DC in early October.

This global award is the latest in a string of accolades received by Rouse Hill Town Centre since it was launched in March 2008 and follows a win in the Asia-Pacific category earlier this year. The reference provided by the Urban Land Institute as to why Rouse Hill Town Centre was selected as a winner states:

Rouse Hill Town Centre, an ecologically-conscious regional shopping centre, features more than 210 retailers, 104 apartments, 2,800 square metres of office space, ten restaurants and a cinema.

The development incorporates sustainable design, great architecture, retail, and active public spaces to deliver an authentic Australian town centre.

Rouse Hill Town Centre's foundation is built on environmental sustainability. That is a key strategy of the Government in all future development. Rouse Hill Town Centre has definitely set the benchmark for the rest of the industry.

The centre's target is to use approximately 60 per cent less water than the average retail centre in New South Wales. That is a staggering 70 million litres—equivalent to 70 Olympic size swimming pools. The centre has a 150,000-litre water tank on site, and that means it is expected to collect enough water for approximately 20 per cent of the Rouse Hill Town Centre's needs, including amenities, cooling towers, garden management and washing facilities. Rouse Hill Town Centre is targeting 40 per cent less energy use than the average New South Wales retail centre. More than 130,000 tonnes of recycled materials will be used in the construction of Rouse Hill Town Centre—that is the equivalent of 65,000 Toyota Land Cruisers.

All retailers at Rouse Hill Town Centre have completed an ecological footprint calculator to help them keep their energy and water consumption to an absolute minimum. There have been 130,000 indigenous seedlings planted at Rouse Hill Town Centre, with trees carefully selected to provide shade and protection from the sun in summer. An integrated network of foot and cycle paths weaves its way through the town centre, and parking for 300 bicycles will be available for staff, visitors and residents. Rouse Hill Town Centre has a zero waste to landfill plan, with an initial objective of recycling 60 per cent of all waste produced. This Government and the local community are extremely proud of Rouse Hill Town Centre. I commend all those who have been involved in the project—the Department of Planning, Landcom, the GPT Group and Lend Lease. Together they have delivered on the Government's vision and have created a world-class development.

FIREARMS REGISTRATION

The Hon. ROBERT BORSAK: My question without notice is directed to the Hon. Tony Kelly, representing the Minister for Police. Is the Minister aware that both the Queensland and Victorian firearms registries have far fewer staff than the New South Wales Firearms Registry to service equivalent numbers of licensed shooters? Given recent media reports of a need to cut costs in the New South Wales Police Force, will the Minister initiate a cost-benefit analysis of the New South Wales Firearms Registry, and will the Minister also initiate a cost-benefit analysis of the current requirements for firearms licence holders to obtain a permit to acquire prior to purchasing a firearm and to register longarms?

The Hon. TONY KELLY: I thank the honourable member for his question and for his continued interest in the safe registration and licensing of firearms in New South Wales. I undertake to pass his question on to the Minister concerned and to get a response.

CRONULLA RAIL DUPLICATION

The Hon. JOHN AJAKA: My question without notice is directed to the Minister for Transport. Does the Minister recall the completion this year of the Cronulla train line duplication, which was two years late and

\$238 million over budget? Despite its completion, why does the current train timetable for the Illawarra line allow 17 minutes for trains to travel from Cronulla to Sutherland when the 1989 train timetable allowed 15 minutes for the same route?

The Hon. JOHN ROBERTSON: As the Treasurer always says, those on the other side talk down the economy and public transport improvements. This Government is investing right across our rail network to improve services, but yet again the Hon. John Ajaka has asked a question that was probably not written by him—someone has asked him to ask it.

The Hon. John Ajaka: I wrote that question.

The Hon. JOHN ROBERTSON: I acknowledge the interjection of the Hon. John Ajaka that he wrote the question. The honourable member can do better, there is no doubt; I have heard him do better than this. The Government continues to invest in our rail network with the Western Express line, which members on the other side refuse to support; the South West rail link and the North West rail link, which we have committed to build under the Metropolitan Transport Plan; and additional bus services. Despite all this, members of the Opposition continue to talk down that investment.

We have seen service improvements for people on the Illawarra line, whether it is the Cronulla duplication work, the signalling that has been undertaken or the recently received first of the third tranche of outer suburban carriages [OSCars]. The Government continues to invest in rail and continues to improve rail services. The Government has a fully funded Metropolitan Transport Plan that will see benefits for commuters across the network, with \$7 billion alone invested on the Western Express and the Parramatta to Epping rail link. But all we get from those on the other side is more carping and more talking down.

WATERWAYS SAFETY

The Hon. LYNDA VOLTZ: My question is directed to the Minister for Ports and Waterways. Will the Minister update the House on what the Government has done to reform life jacket regulations and to improve safety on our waterways?

The Hon. ERIC ROOZENDAAL: I thank the honourable member for her question and for her interest in this matter. Wearing a life jacket can be the difference between life and death in a boating accident. In the past 18 years more than 500 people have drowned in boating incidents across Australia. Here in New South Wales there was 23 fatalities resulting from boating incidents in 2009-10.

The PRESIDENT: Order! Members will cease interjecting. I am having difficulty hearing the Minister because of the level of noise in the Chamber.

The Hon. ERIC ROOZENDAAL: Around 65 per cent of those incidents involved drowning. These statistics cannot be ignored. That number is simply too high, given that with some simple behavioural changes many of those deaths could have been prevented. In many cases there were life jackets on board the vessels at the time of an accident. However, a life jacket does not save a person unless he or she is wearing it. In the past, New South Wales boaters have been required to carry sufficient life jackets for everyone on board. Education has played a vital role in spreading the safe boating message, but, sadly, in too many cases it is not getting through to some people. That is why the New South Wales Government took the issue to the boating community and asked whether life jacket rules should be tightened, particularly for children and anyone in situations of heightened risk.

NSW Maritime has worked with major advisory and industry groups, including the Boat Owners' Association and the Boating Industry Association to come up with proposals that will save lives by targeting times of increased risk without affecting the fun of boating.

[Interruption]

This is a very important issue; I am talking about the use of life jackets to save lives. I am disappointed that members opposite, particularly the Hon. Catherine Cusack, think this is a game. People's lives are at stake and this is an important initiative that is designed to save lives. There is a time and place for interjections, but sometimes members opposite do not have their brains in gear when we are addressing important issues like this. Their behaviour is disgusting.

The PRESIDENT: Order! If members of the Opposition continue to interject, I will place them a call to order.

The Hon. ERIC ROOZENDAAL: Consultations were also held with the Maritime Ministerial Advisory Council and the Recreational Vessels Advisory Group before the matter was put to the wider boating public for feedback. We received an overwhelming 3,615 responses, and a clear majority of about 80 per cent supported most of the proposed changes to life jacket laws. That is why on 1 November the New South Wales Government introduced new life jacket laws for recreational boaters. Under the new laws, all people on boats less than 4.8 metres in length must wear life jackets when boating at night, on ocean waters, on alpine waters and when boating alone. Stronger protections apply to children under the age of 12: they must wear life jackets at all times on boats less than 4.8 metres in length or when they are in an open area or underway on a boat less than 8 metres in length. There will be a 12-month advisory period while boaters get used to the new rules during which only repeat offenders will be penalised. Comprehensive information, including easy-to-use tables on the new rules will be available at NSW Maritime service centres across the State, from NSW Maritime boating safety officers on the water and on the web at www.maritime.nsw.gov.au. I encourage all boaters to familiarise themselves with the new life jacket rules, which will help to promote safe, responsible and enjoyable boating on the State's many waterways.

TENANCY RIGHTS

The Hon. IAN COHEN: I direct my question to the Minister for Disability Services and Ageing. Can the Minister advise whether the Interdepartmental Committee on Reform of the Shared Private Residential Services Sector will be undertaking consultation on the proposed reforms to tenancy rights for boarders and lodgers? If so, when will the consultation process start, and did any members of the committee have any concerns or issues with Youth and Community Services Regulation 2010?

The Hon. PETER PRIMROSE: Boarding and lodging houses generally provide long-term furnished accommodation with shared facilities and are a source of low-cost private rental accommodation for people on limited incomes. As the member indicated, under the Youth and Community Services Act 1973, the Department of Ageing, Disability and Home Care is responsible for the licensing and monitoring of boarding houses that accommodate two or more people with a disability who also require supervision and social habitation.

Boarding house accommodation plays an important role in the provision of low-cost and flexible housing. The decline in the availability of that type of accommodation in New South Wales and the administration of the multiple regulations that apply to the boarding house industry are being addressed by the Keneally Government as part of a whole-of-government approach to ensure the provision of suitable low-cost accommodation. The Interdepartmental Committee on Reform of the Shared Private Residential Services Sector was established in 2008 and is considering options for addressing the housing and support needs of people with a disability residing in boarding houses and the issues confronting proprietors that arise from the complex regulatory environment in which they operate. It is envisaged that the work of the interdepartmental committee will be finalised in the coming months. The Department of Ageing, Disability and Home Care will commence final consultations with key organisations in the sector within the next week. Following that, the interdepartmental committee will make recommendations about changes required to the current legislation and regulations and suggest other initiatives to support people who live in boarding houses.

I note that in advance of the final report from the interdepartmental committee the department has already responded to the need to better support people living in boarding houses by streamlining, clarifying and modernising licence conditions to provide certainty for owners and residents. I believe that the member is referring to these recent changes. Under the Subordinate Legislation Act 1989, the Youth and Community Services Regulation 2005 was remade on 1 September this year as part of the Government's five-year regulatory review cycle. Consultation was undertaken by way of a regulatory impact statement, which was publicly advertised and circulated to key stakeholders. That statement incorporated additional provisions in the Youth and Community Services Regulation 2010, namely in regard to first aid qualification requirements and the administration of prescribed medication. The member may have seen a press release I issued earlier today announcing the provision of \$25,000 to assist boarding houses to ensure that staff have first aid qualifications. The regulation also covers the provision of Webster-paks. I note that Reverend the Hon. Gordon Moyes is nodding in acknowledgement of this initiative. Webster-paks ensure that people receive the right medication at the right time. I am advised that the interdepartmental committee and the sector supported these changes.

TAMWORTH REGIONAL CANCER CENTRE

The Hon. TREVOR KHAN: My question is directed to the Attorney General, representing the Minister for Health. Can the Attorney tell the House whether the service procurement plan and the project

definition plan for the regional cancer centre at Tamworth Base Hospital and Health Service have been completed and endorsed by the Government? Can the Attorney advise the House when tenders for the centre will open and close? Can the Attorney further advise when construction will begin and be completed and the centre opened? If these plans and schedules have not been completed and determined, why have they not given that seven months has elapsed since the announcement?

The Hon. JOHN HATZISTERGOS: I will refer the member's question to the Minister for Health.

SAFER BY DESIGN BINS

The Hon. PENNY SHARPE: I direct my question to the Minister for Transport. Can the Minister update the House on the installation of the new Safer by Design bins on major stations across the CityRail network?

The Hon. JOHN ROBERTSON: Delivering safe, clean and comfortable public transport are key priorities for this Government and RailCorp. Those goals are supported by CityRail's customer charter, which publicly outlines commitments to improve services by providing secure and safe travel and clean trains and stations. I have previously spoken about the positive impacts that initiatives such as transit officers, closed circuit television and Guardian trains are having on passenger safety on the rail network. The latest available full financial year data from the Bureau of Crime Statistics and Research shows that the incidence of all 17 major crime categories on rail property has either declined, remained stable or could not be calculated because the numbers were so small. In fact, since 2002 when transit officers were introduced, there has a 30 per cent decline in recorded offences against the person on rail premises. This shows that the security strategies being employed by RailCorp are having an impact and are improving safety on the rail network.

One of the things that customers have been keen to see is the return of bins at some of our busiest railway stations. The 2010 customer charter included a commitment to undertake a trial of Safer by Design bins this year and, if successful, to rollout the bins at some of our busiest stations by the end of this year. That rollout started last week. Safer by Design bins were installed at Wynyard station last Monday and they will be installed at Town Hall, Circular Quay, Central, Museum, St James, Epping, Blacktown, Strathfield, Liverpool, Parramatta and Chatswood stations by the end of the month. Almost 200 of the new Safer by Design bins will be installed across 28 of the largest stations on the CityRail network by the middle of next year.

These bins are called "Safer by Design" for a reason. They were developed in consultation with New South Wales Police Force and the Designing Out Crime Research Centre. They have a range of safety features, including a transparent exterior so that police officers can quickly and easily identify the contents. The new bins are sleek, safe and convenient for commuters who use our major stations. They will initially be installed in station concourse areas, but we are looking at reintroducing bins on platforms further down the track. Safety is the number one priority, and these bins will enable us to improve the experience for customers without compromising on safety.

Regular recycling bins were reintroduced on 107 smaller train stations earlier this year but due to security concerns CityRail's largest stations will have Safer by Design bins only. The bins will complement other cleaning initiatives that have already been introduced by CityRail, including the use of roving cleaners across the network and the spring clean of stations, which targets hotspots that need cleaning up. RailCorp works hard to keep our trains and stations as clean as possible, including deploying teams of roving cleaners across the network who clean litter from carriages and stations. The roving cleaners also report any vandalism, graffiti and interior damage that need to be repaired.

Cleaning staff are located at maintenance centres and yards where they clean stabled trains and remove graffiti seven days a week. I am advised that around 1,650 train carriages are cleaned each night. These efforts are working. Last financial year RailCorp recorded the lowest number of complaints about cleanliness on trains and stations in five years. This represented a 30 per cent drop over the past four years. RailCorp will continue to work hard to keep our trains and stations clean, and the new Safer by Design bins being installed at major train stations will help this happen.

HUNTER VALLEY COALMINING

Ms CATE FAEHRMANN: My question without notice is directed to the Minister for Planning. How many meetings have been held of the Government's Cabinet subcommittee, a subcommittee the Minister chairs,

that was tasked with developing a coalmining strategy for New South Wales, with a particular emphasis on minimising the cumulative impacts of mining in the Hunter Valley? Given that the Government's response to the Camberwell cumulative impacts review was that the strategy will be outlined by October 2010, when will the strategy be outlined and when—or indeed if it is released—will it be open for public submissions?

The Hon. TONY KELLY: The subcommittee has met on a number of occasions and we are working our way through this difficult issue. People may be cynical about this but they must realise that this is a difficult issue. There are a number of competing interests. Coalmining provides something like 13,500 direct jobs in this State and probably four or five times that number of indirect jobs. Other considerations relate to its correlation with the thoroughbred horse racing industry, which is a significant employer in the Hunter region, as well as with the vineyard industry and the dairy industry. So there are many competing interests.

This is the first time that a government has ever looked at the cumulative impacts of a particular set of developments. The Department of Planning required three mining companies to resubmit some of their development applications for mines around the Camberwell area in order that they would obtain cumulative impact studies before the applications would be considered. The Government is doing an excellent job in trying to balance the competing interests of the various industries in the Hunter Valley to ensure that that the environment is not damaged whilst maintaining jobs in the region.

VALLEY HEIGHTS RAIL FIRE

The Hon. DAVID CLARKE: My question without notice is directed to the Minister for Transport. What action has the Minister taken to ensure public safety since receiving the report into the fire on a commuter train at Valley Heights, given that the report reveals that on at least three separate occasions staff were unable to understand instructions relayed through the communications system during the height of the emergency?

The Hon. JOHN ROBERTSON: I am advised that an investigation into the cause of a fire in the traction motor on a Lithgow-bound intercity service on 16 July 2010 has been completed. I am also advised that the outcome of the RailCorp investigation into the incident determined that the train crew acted appropriately in its management of the event. Fire, police and ambulance services were promptly contacted to attend the train that had stopped a short distance past Valley Heights station. The driver and the guard quickly relocated between 100 and 150 passengers from the front two cars to the rear of the train while emergency crews extinguished the fire. The rear four cars were detached and all passengers were safely taken back to Valley Heights station, where they were able to continue their travel on the following Mount Victoria service. There was no damage to the interiors of the affected cars.

The train was initially taken to Flemington maintenance centre, where the traction motor was examined. However, the cause of the fire could not be directly determined. As the traction motor had been recently overhauled by the CityRail maintenance provider and reintroduced into service five days prior to the fire, it was sent for further investigation. After a thorough analysis, the investigation concluded that the most likely cause was a manufacturing defect in the bearings of the traction motor. The investigation report concludes that this was a low-probability event. The investigation shows that the train crew acted professionally at all times throughout the incident. It is the actions of trained crew in incidents such as that referred to, and right across our network, that ensure the safety of commuters.

The Hon. Michael Gallacher: That is why we all support them.

The Hon. JOHN ROBERTSON: I note the interjection from the Leader of the Opposition, but the Hon. David Clarke was having a go at the workers involved in this incident for their inability to properly communicate. Those workers ensured the safe removal and relocation of commuters on that service.

GOSFORD REVITALISATION PLAN

The Hon. TONY CATANZARITI: My question is addressed to the Minister for Lands. Will the Minister update the House on plans to reinvigorate the Gosford central business district and surrounding areas?

The Hon. TONY KELLY: I am pleased to respond to the question and to let the House know that five submissions have been received from developers in response to the New South Wales Government's request for proposals for the Landing at Gosford. I am delighted with the level of interest shown by the number of responses received. It is clear that there is interest from the developer community to partner the Government and

Gosford City Council in this major waterfront redevelopment. The response shows there is growing market confidence in the revitalisation of Gosford. The Landing, which is a key component in the revitalisation of Gosford, is aimed at developing growth and investment on the Central Coast and will ultimately translate into real jobs. The proposals are now going through an evaluation process and will be reviewed by a panel appointed by the Central Coast Regional Development Corporation. The evaluation and selection process for a development partner is expected to be completed next month. This demonstrates the level of cooperation between the New South Wales Government and Gosford City Council.

I am also happy to announce that five new board members have been appointed to the Central Coast Regional Development Corporation board. I was joined by Central Coast members of Parliament David Harris, Marie Andrews, Robert Coombs and Grant McBride for the announcement last week. The new board has been expanded to provide a new skill set and a new focus. The Central Coast Regional Development Corporation was expanded to take on the larger, more complex regional development projects such as Gosford Landing, and the new board is expected to contribute substantially in the development of the region on behalf of the State Government.

The new board members are John Taylor, Ken Jolly, Steve Brahams, Peter Wilson and Michael Whittaker. I am sure all members of the House will agree with me that they will be very good members. John Taylor is a local resident who has more than 35 years experience serving both the private and public sectors. He is chair of the Central Coast Grammar School, a member of the Health Infrastructure Board and chairman of the international projects company Confluence PM. Peter Wilson and Michael Whittaker are the general managers of Gosford City Council and Wyong Shire Council respectively. The commitment of local government to this new regional focus highlights the importance of regional development being a partnership. The new members will join existing members Jan McClelland and Phil Bickerstaff to work with the management of the Central Coast Regional Development Corporation to deliver the best outcomes for Central Coast growth and regional economic development.

The Central Coast Regional Development Board came out of the Festival Development Corporation, and two of its members, Jan McClelland and Phil Bickerstaff, have come over from that board. They now have an expanded role to push development in the Central Coast regional area. The new board, in conjunction with the councils, is working closely with the Government as a result of the great work done by the community over the past two years. This is the first of many projects that will be conducted in Gosford and Wyong. *[Time expired.]*

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

Questions without notice concluded.

NATURE CONSERVATION TRUST AMENDMENT BILL 2010

In Committee

Consideration resumed from an earlier hour.

The Hon. CATHERINE CUSACK [5.01 p.m.]: The Hon. Ian Cohen claimed that the Liberal Party and The Nationals were forewarned and consulted about the amendment. He said that a staff member forwarded to my staff an undated media release, with some graphs attached, that was obviously given to the Greens by the Nature Conservation Trust. That was sent at around 3.00 p.m. yesterday, not in the morning. The amendment was not attached, and I did not see it until a couple of hours ago. There was no communication with me directly and no efforts to confirm the email advice, let alone ascertain the Opposition's views and position. Yet the Hon. Ian Cohen seeks to pass this off as consultation.

More important are my questions to the Government, on which the Greens consulted and had the opportunity to consider the amendment. My questions to the Government are as follows. What are the views of the Local Government and Shires Associations, because when we spoke to them they were opposed to the amendment on principle? What are the cost implications of the amendment for individual councils that will be affected and how are those costs to be funded? Are small groups of ratepayers in often remote and not well-off communities expected to fully fund the costs of this new policy? I seek clarification as to what land will be exempt from the rates. The amendment appears to refer to land that is subject to a conservation agreement. The

issue referred to in the report related only to those parts of a property that are subject to a covenant agreement. Will the amendment apply to all land covered by the conservation agreement or just to the portion that has a covenant placed over it?

The Hon. IAN COHEN [5.03 p.m.]: I will address the substantive points raised by the Hon. Catherine Cusack both before question time and now. First, the Greens amendment gives local councils the discretion as to whether they provide an equivalent proportional rate exemption to landholders with trust agreements with the Nature Conservation Trust. I clearly stated that small councils that might have financial difficulty extending the exemption may choose not to exercise the discretion to extend it. Second, New South Wales has a system of rate pegging. No council is left with less money or funding by extending a proportional rate exemption; other ratepayers just pay more. In some cases, these would be nominal rate increases. In very small local government areas it might be noticeable. Again, the amendment acknowledges this and allows for flexibility.

The amendment relates only to rates payable under the Local Government Act; it does not relate to Livestock Health and Protection Authority rates. Dealing with the allegation that the Hon. Catherine Cusack was not informed about the amendment, she is correct: the email was sent at 2.54 p.m. on Monday. I was mistaken when I said that it was sent in the morning. It was sent by my staffer Scott Hickie, who is without comparison as an effective, efficient and diligent staffer. The email was sent to the office of the Hon. Catherine Cusack at 2.54 p.m. on Monday and was also provided to crossbench staffers, who opened the email and received advice on the matter. Attached to the email—and I have it here—is not a press release but a briefing note. It is the same briefing note that I gave to crossbenchers via the email and at the crossbench meeting today.

Attached to the email was an extensive briefing note explaining in considerable detail the intention of the then undrafted amendment. I could not give members a copy of the drafted amendment as Parliamentary Counsel had not prepared it. As members know, in these circumstances there is a great deal of pressure on Parliamentary Counsel. One amendment, on sheet c2010-122A, was available and the further amendment, on sheet c2010-122B, was provided to the Committee at the earliest possible opportunity. My office and I have a reputation in crossbench meetings of providing quite a bit of detail on amendments that I intend move in Committee. I do not know whether it is the case across the board, but I often circulate papers to make my position extremely clear.

I could not provide members with a copy of the drafted amendment as Parliamentary Counsel had not provided it at that point. My office made an effort to get the material to the Hon. Catherine Cusack as we are generally aware that shadow Cabinet meets on Tuesday morning and we wanted her to have the material for its consideration. Perhaps she can tell the Committee whether shadow Cabinet considered the briefing note. It was a comprehensive briefing note, with graphs and details attached, explaining the different circumstances facing affected councils. The Opposition has made an unfair attack on my staff, who are extremely effective and efficient and who do a great job in support of my role as a member of Parliament.

Reverend the Hon. FRED NILE [5.08 p.m.]: As I stated during the second reading debate, the Christian Democratic Party supports the Greens amendment. The amendment merely gives councils the opportunity to make an exemption; it does not say that they must make an exemption from all rates under the Local Government Act land that is subject to a trust agreement. That is repeated in new subsection (2), which states "in respect of land the subject of a conservation agreement". Those areas are not productive and it is therefore reasonable for a council to forgo charging rates on the land.

The Hon. CATHERINE CUSACK [5.09 p.m.]: I understand the Government is not in a position to answer the questions that have been asked. Therefore, I direct my questions to the mover of the amendment, the Hon. Ian Cohen, and seek his advice on the following matters. What are the views of the Local Government and Shires Associations with regard to the Greens amendment? What are the cost implications for individual councils? In particular, why do the Greens support small groups of ratepayers meeting the costs, rather than the State Government? This is perceived as a cost shift from the State onto councils that just happen to have the properties in their areas. I am not clear what the logic is for asking those small groups of ratepayers to meet these costs. I again seek clarification as to whether it is only the land that is subject to covenant that is to be exempted, or all the conservation land.

The Hon. Ian Cohen: I have made that very clear.

The Hon. CATHERINE CUSACK: You have not, in particular, made clear the views of the Local Government and Shires Associations. What you have said seems to contrast with the advice we have received.

The Hon. IAN COHEN [5.11 p.m.]: As Reverend the Hon. Fred Nile said, the total cost we are dealing with here is some \$90,000. Also, I have explained it in my answers before, in terms of rate pegging and also the flexibility that we have built in. It is unfortunate that I missed my opportunity to become a Minister of the House, but I do not think I need to answer any further.

The Hon. CATHERINE CUSACK [5.11 p.m.]: I ask the Hon. Ian Cohen, as the mover of the amendment, whether he has consulted the Local Government and Shires Associations.

The Hon. IAN COHEN [5.12 p.m.]: On my understanding, my office has done so. I will get back to the member on that; I would hate to mislead the House. But that is my understanding. I will certainly correct that if it is incorrect. I say again that the consultation has been happening out of my office. I personally have not spoken to these organisations about the matter; I have left it in the very capable hands of my staffer. But if that is of consequence, I will certainly get back to the member about it.

Reverend the Hon. Fred Nile: We haven't had any objections sent to us.

The Hon. IAN COHEN: No, certainly not. I acknowledge the comment by Reverend the Hon. Fred Nile: there certainly have not been any objections. My understanding is that there is general agreement about the Greens amendment across the board. Indeed, it is seen by various participants as a viable way of moving forward in terms of conservation initiatives, and it would suit landowners who would not be as comfortable dealing with other government instrumentalities, as I said in my contribution to the second reading debate. It is an alternative, it is something that the farming community feels comfortable with, it is something that I would like to see as a Green, working where I can with people in rural areas, and it is something that we can all share in as a significant step forward for conservation in New South Wales. I would be interested to know whether these concerns and this reactionary position are shared by the entire Coalition, including the Leader of the Opposition, or whether they are simply the views of the person who sees herself as being a future environment Minister in this Parliament. We need clarity from the Opposition as to where it stands in terms of what is a modest step forward in conservation in New South Wales—which is supported, it would seem, by all parties other than the Opposition.

The Hon. CATHERINE CUSACK [5.15 p.m.]: I clarify for the benefit of Reverend the Hon. Fred Nile that we consulted the Local Government and Shires Associations when we considered this matter. The associations expressed strong opposition, on principle, on the basis that they believe this is a cost shift. When the Hon. Ian Cohen thanked the Minister for Local Government for facilitating his consultation or advice—I cannot recall the word he used—from the Local Government and Shires Associations, I was curious as to what that meant. If the associations supported the Greens amendment, that would signal a significant shift in their position from the advice we received earlier and as a result of which we decided to postpone the matter.

I have sought to make it clear to the House that we are very appreciative of the work that farmers are doing, and that we want to support their work. However, we are concerned that, because we have not had the opportunity to discuss the amendment with the Greens, our position could now be open to misrepresentation—as if we are somehow opposed to these farmers and opposed to assisting them. That is precisely why I wish a more successful effort had been made in terms of consultation, so that we would not now find ourselves in this situation. However, the matter is out of our hands. We continue to wish that there could have been more positive and cooperative discussion about this matter prior to its reaching this stage in Parliament. It is obvious that the Greens and the Government have reached an agreement. Our position at this point is that we will not support the Greens amendment. However, that is not to be taken as a reflection of our position in relation to the landholders, who we believe are doing a wonderful job.

The Hon. IAN COHEN [5.18 p.m.]: To clarify the situation a little further, I am reliably informed that the Local Government and Shires Associations are happy with the Greens amendment, as long as it is a discretionary situation. That is the advice I have received.

Question—That amendment of the Hon. Michael Veitch of Greens amendment No. 1 be agreed to—put and resolved in the affirmative.

Amendment of the Hon. Michael Veitch of Greens amendment No. 1 agreed to.

Question—That Greens amendment No. 1 as amended be agreed to—put and resolved in the affirmative.

Greens amendment No. 1 as amended agreed to.

Schedule 1 as amended agreed to.

Schedule 2 agreed to.

Title agreed to.

Bill reported from Committee with an amendment.

Adoption of Report

Motion by the Hon. Michael Veitch agreed to:

That the report be adopted.

Report adopted.

Third Reading

Motion by the Hon. Michael Veitch agreed to:

That this bill be now read a third time.

Bill read a third time and returned to the Legislative Assembly with a message requesting its concurrence in the amendment.

MOTOR ACCIDENTS COMPENSATION AMENDMENT BILL 2010

Second Reading

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [5.20 p.m.], on behalf of the Hon. Eric Roozendaal: I move:

That this bill be now read a second time.

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

Leave granted.

The purpose of this bill is to firstly, implement changes to the administration of the Motor Accidents Authority and the Lifetime Care and Support Authority; and secondly to address a decision of the New South Wales Court of Appeal in the matter of *Zotti v Australian Associated Motor Insurers Limited* [2009] New South Wales CA 323.

The bill amends the *Motor Accidents Compensation Act 1999* to provide for the appointment of an additional member to the Board of Directors of the Motor Accidents Authority and additional members to the Motor Accidents Council.

As well, the bill amends the *Motor Accidents (Lifetime Care and Support) Act 2006* for the appointment of an additional member to the Board of Directors of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council.

The bill also provides for the appointment of private legal practitioners as claims assessors in the Motor Accidents Authority's Claims Assessment and Resolution Service.

Lastly, the bill seeks to close a potential insurance gap which could leave motorists personally liable to pay compensation to injured persons.

As Honourable Members may recall, last year the Parliament enacted the *Public Sector (Miscellaneous Amendments) Act 2009*, which, among other things, amalgamated the administrative functions of a number of agencies concerned with the administration of compensation schemes for personal injury.

These agencies were brought together under the Compensation Authorities Staff Division, led by one Chief Executive Officer. The Motor Accidents Authority and Lifetime Care and Support Authority are two of those agencies, together with the WorkCover Authority of NSW, the Dust Diseases Board and the Long Service Payments Corporation.

The *Public Sector Restructure (Miscellaneous Amendments) Act 2009* made amendments to the *Motor Accidents Compensation Act* and the *Motor Accidents (Lifetime Care and Support) Act* to give effect to the new structural arrangements.

Under these changes the Chief Executive Officer of the Compensation Authorities Staff Division of the Government Service is now the Chief Executive Officer of the Motor Accidents Authority and the Lifetime Care and Support Authority.

The Chief Executive Officer of the Compensation Authorities Staff Division is also a director of the Boards of the Motor Accidents Authority and the Lifetime Care and Support Authority and a member of the Motor Accidents Council and the Lifetime Care and Support Advisory Council.

Prior to the creation of the Compensation Authorities Staff Division, the General Manager of the Motor Accidents Authority and Executive Director of the Lifetime Care and Support Authority had been a member of their respective Board and Advisory Council.

The bill makes minor amendments to the respective governing legislation of each Authority to ensure that the chief administrative officer with day-to-day management responsibility for each agency and who has extensive knowledge on operational issues, will be in a position to directly contribute to decisions of the agency's Board and advisory Council.

The Government has recently agreed to the appointment of a representative of the Motorcycle Council of New South Wales to the Motor Accidents Council.

The Motor Accidents Council is a statutory advisory body that provides an important forum for facilitating input to Government from the various stakeholders who have an interest in the operation of the motor accidents scheme.

It is appropriate the a representative of the peak body advocating on behalf of motor bike riders in this State should be included in the Government's advisory forum.

The bill therefore proposes an amendment to the Motor Accidents Compensation Act to provide for the appointment of additional members to Motor Accidents Council.

The bill also provides for the appointment of suitably qualified persons as a claims assessor in the Claims Assessment and Resolution Service.

The Claims Assessment and Resolution Service is an alternative dispute resolution body established under the *Motor Accidents Compensation Act*. The Claims Assessment and Resolution Service is designed to provide a non-adversarial forum for resolving motor accident claims outside of the court system.

The majority of persons appointed as claims assessors since the inception of the Service are senior legal practitioners with an extensive knowledge of the assessment of compensation for motor accident claims.

At present only a member of staff of the Compensation Authorities Staff Division can be appointed as a claims assessor. Recent advice indicates that private legal practitioners who have been appointed as claims assessors may not be considered as members of staff.

To remove any doubt about the status of the private legal practitioners previously appointed as claims assessors and the assessment decisions they have made, it is proposed to make amendments to the *Motor Accidents Compensation Act*.

These amendments will enable the appointment of any suitably qualified person as a claims assessor and will validate appointments, acts or omissions of claims assessors who may not have been members of staff or officers of the Motor Accidents Authority when they were appointed.

I now turn to the amendments concerning a 2009 decision of the Court of Appeal in *Zotti v Australian Associated Motor Insurers Limited*.

The Zotti case involved a person who was injured when the bicycle he was riding slipped on an oil slick that was left on the road after an earlier motor vehicle accident. The Court was, in that case, required to interpret the definition of "injury" in the Act as it existed at the date of Mr Zotti's accident in December 2005.

While that definition has since been changed, the Act currently defines a "motor accident" in the same terms as the definition considered by the Court in the Zotti case.

The Court of Appeal found that because Mr Zotti's injury was not caused at the time of the motor accident crash, the compulsory third party insurer of the vehicle at fault in the earlier accident was not required to indemnify the vehicle driver for any damages to which Mr Zotti may later become entitled.

This left open the possibility that Mr Zotti could seek to recover damages directly from the vehicle driver.

An important object of the *Motor Accidents Compensation Act* is "to provide compensation for compensable injuries sustained in motor vehicle accidents" and to set up a scheme whereby all motor vehicles are covered by insurance for any injury caused.

The decision in the Zotti case results in two unsatisfactory outcomes. Firstly, the injured cyclist was not entitled to recover compensation from the compulsory third party scheme for his injuries. Secondly, the motor vehicle driver was not covered by his Green Slip insurance policy and could face the possibility of being personally liable to pay compensation.

Indeed the Court of Appeal also thought that this was an unsatisfactory situation deserving of consideration by the legislature.

The Government has heeded the Court's call and proposes to amend the definition of 'motor accident' in the *Motor Accident Compensation Act* to extend the cover provided by the compulsory third party policy to explicitly include coverage of incidents and accidents that occur as a result of a dangerous situation caused by the driving of a motor vehicle, a collision, action taken to avoid a collision or any vehicle running out of control.

Common sense would dictate that any situation caused by a road accident that then results in an injury to another road user must be a dangerous situation and should be included in the definition of a motor accident for the purpose of the motor accidents scheme.

This is an important amendment. While the number of such cases is anticipated to be extremely few, the change to the definition of 'motor accident' proposed by the bill will make sure that the cover (or indemnity) provided to the vehicle driver by their compulsory third party policy is always consistent with the driver's liability.

It will remove any possibility of a motorist having to meet, from their own pocket, the cost of defending an action by an injured person seeking compensation.

In making this change to the motor accidents scheme the Government is also concerned to ensure that the affordability of the Green Slip scheme is not jeopardised. Advice from the Motor Accidents Authority indicates that any effect on Green Slip premium cost should be minimal.

It is important to clarify that the proposed extension of the definition of 'motor accident' will expand the coverage provided by the compulsory third party policy to dangerous situations resulting from motor accidents but only in circumstances where the driver is liable for that dangerous situation.

Accordingly, this change will not make a compulsory third party insurer responsible for situations that currently some other party, such as a road authority or property owner, has responsibility for.

I commend the bill to the House.

The Hon. GREG PEARCE [5.20 p.m.]: The Motor Accidents Compensation Amendment Bill 2010 amends the motor accidents legislation providing for additional appointments to the boards and advisory boards to allow the appointment of private legal practitioners as claims assessors and to close a gap in compensation arising from a recent Supreme Court decision. The New South Wales Liberal Party and The Nationals do not oppose the bill. The bill allows the Minister to appoint additional members and ex officio members to the board of directors of the Motor Accidents Authority and the Motor Accidents Council, and of the Lifetime Care and Support Authority, and the Lifetime Care and Support Advisory Council. The ex officio members are the former chief executive officer positions abolished as part of the rationalisation of management of the authorities that took place last year. In addition, the amendments allow for a representative of the Motorcycle Council of New South Wales to be appointed to the Motor Accidents Council, which was agreed to after the recent green slip issues with motorcycle owners. The Minister may also appoint up to four extra members of the Motor Accidents Council, which is a statutory advisory body.

Further amendments authorise the appointment of legal practitioners as claims assessors, which has occurred since the inception of the service but doubt has been raised as to the validity of these appointments as claims assessors have to be staff of the Compensation Authorities Staff Division. The third set of amendments arises from a decision of the New South Wales Court of Appeal in *Zotti v Australian Motor Insurers Limited* [2009] NSWCA 323. That case left open the possibility that a person injured on a road but not as a direct result of an accident might not be covered under the scheme and, further, that the person could sue a driver outside the scheme. The intention of the scheme is to ensure that it covers all persons injured in motor vehicle accidents. The amendments generally make for better administration of the scheme and close the loophole revealed in the Zotti case, although the addition of the extra executives to the boards of the various authorities might be considered by some to diminish the independence of those boards in reporting by those executives.

The Coalition has consulted a large number of organisations with an interest in the motor accidents scheme. Generally they are in favour of most of the amendments. The Insurance Council had a number of concerns about potential unintended consequences that could arise through this interpretation as a result of the amendments. Whilst I do not wish to go through all the potential unintended consequences, I am sure the Government has considered those concerns. One concern in particular goes to the definition of "dangerous situation", and whether it is to be tested objectively or subjectively. The Australian Lawyers Alliance also held a similar reservation as to definitions, particularly the definition of "dangerous situation", which I draw to the attention of the Minister and the Motor Accidents Authority. The Coalition does not oppose the bill.

Reverend the Hon. FRED NILE [5.23 p.m.]: The Christian Democratic Party supports the Motor Accidents Compensation Amendment Bill 2010. The legislation that originally established the Motor Accidents Authority and the Lifetime Care and Support Authority provided that the chief executive officers of these bodies would be ex officio a full member of the board and a member of the advisory council for each authority. However, when the public sector restructure took place last year and the positions were merged a simple administrative oversight meant that the administrative heads were no longer on the boards and councils of those authorities. The bill will permit the administrative head of the Motor Accidents Authority, currently the general manager, and the administrative head of the Lifetime Care and Support Authority, currently the executive

director, to be ex officio members of the respective boards and advisory councils of the authorities in addition to the chief executive of the Compensation Authorities Staff Division. The inclusion of these senior administrative officers, who will be able to provide advice and participate in discussions, will help the more efficient operation of the Motor Accidents Authority and the Lifetime Care and Support Authority.

The bill also proposes an amendment to enable the future engagement of suitably qualified independent contractors as claims assessors. This amendment validates the past engagement of independent contractors as claims assessors. Finally, the bill will provide an extension of the compulsory third party scheme to overcome the decision of the New South Wales Court of Appeal in *Zotti v Australian Motor Insurers Limited* [2009] NSWCA 323. In that case the Court of Appeal held that for the indemnity provisions of the Motor Accidents Compensation Act 1999 to apply the injury must occur during the accident. This meant that there could be situations when a motor vehicle driver may not be covered if sued by a person injured following an accident. In the Zotti case, a person was injured when his bicycle slipped in an oil slick that remained on the road following an earlier accident. It is important to protect drivers, but the situation should be carefully monitored by the insurance companies as it could lend itself to abuse by persons claiming to be injured as a result of an earlier accident. In this case it was an oil slick, but it could relate to anything left on the road. Intensive investigations will need to be conducted to ensure that any injury can be linked back to the original accident. The Christian Democratic Party supports the bill.

The Hon. CHRISTINE ROBERTSON [5.27 p.m.]: I am pleased to support the Motor Accidents Compensation Amendment Bill 2010. The bill introduces amendments to the Motor Accidents Compensation Act 1999 and the Motor Accidents (Lifetime Care and Support) Act 2006. First, the bill deals with governance arrangements for the Motor Accidents Authority and the Lifetime Care and Support Authority. The bill provides for an additional ex officio member to be appointed as a director of the board of directors of the Motor Accidents Authority and of the Motor Accidents Council. The bill provides also for an additional ex officio member to be appointed as a director of the board of directors of the Lifetime Care and Support Authority and of the Lifetime Care and Support Advisory Council.

Following the passage of the Public Sector Restructure (Miscellaneous Amendments) Bill in November last year—which Reverend the Hon. Fred Nile was just talking about—the chief executive of the Compensation Authorities Staff Division appropriately became a member of each of these boards and councils. Historically, it always has been the case that the person holding the office of General Manager of the Motor Accidents Authority and Executive Director of the Lifetime Care and Support Authority were members of the relevant board and advisory council. The amendments proposed by the bill will ensure that the general manager and executive director, who are in the position to provide advice on the daily activities of the respective authorities as well as the operation of the relevant compensation schemes, will continue to contribute directly to decisions of each agency's board and advisory council. The Standing Committee on Law and Justice has for many years recognised the incredible value of the integral role of these processes in the two organisations.

The bill also proposes an amendment to the Motor Accidents Compensation Act to provide for the appointment of additional members to the Motor Accidents Council. The Motor Accidents Council is the stakeholder advisory group set up by the Act to provide advice to the Minister for Finance on issues relating to the green slip scheme. As members may recall, the Premier recently announced that the Government would appoint a representative of the Motorcycle Council of New South Wales to the Motor Accidents Council. It is most appropriate that a representative of this peak body, which advocates on behalf of motorbike riders in this State, should have a voice in the Government's advisory forum for the green slip scheme. In the period between June 2008 and September 2009 the Motor Accidents Authority worked closely with the Motorcycle Council of New South Wales to review the guidelines that insurers must follow in setting green slip prices for motorcyclists. This review identified that the guidelines based on three motorcycle categories grouped too many different-sized motorcycles together, with the result that around half of all motorcycle owners were paying too much for their green slip and subsidising the cost of green slips for around one-third of other riders.

Consequently, from July this year the Motor Accidents Authority approved the introduction of five new motorcycle classes, based on engine size, for the compulsory third party insurance scheme. These recent changes mean that motorcycle owners are now paying a green slip price that better reflects the actual cost of injuries and compensation for claims against green slip policies held by riders in each of the motorcycle groups. The Minister for Finance recently met with representatives of the Motorcycle Council of New South Wales and has agreed that the Motor Accidents Authority will work with the Motorcycle Council to identify an independent actuary to review motorcycle green slip pricing. The Standing Committee on Law and Justice is very grateful for the work done by the Motorcycle Council to ensure that the Parliament has a good handle on the issues it faces.

The bill also provides for flexibility in the appointment of claims assessors to the Claims Assessment and Resolution Service [CARS]. The Claims Assessment and Resolution Service is an alternative dispute resolution process providing a non-adversarial forum for resolving motor accident claims outside the court system. The bill will permit suitably qualified persons who are not members of the government service to be appointed as claims assessors in the Claims Assessment and Resolution Service. The Claims Assessment and Resolution Service can determine disputes about claims, including procedural disputes and eligibility for exemptions, as well as general assessment of claims for damages. Applications are assessed by assessors who are expert legal practitioners with significant experience in the area of personal injury law and the assessment of damages.

The Claims Assessment and Resolution Service was established as part of the Government's major reform of the compulsory third party compensation scheme in 1999. Prior to the Government's changes, the only option for resolving disputes between insurers and injured persons in motor vehicle accident matters was litigation in court. The Government established CARS to provide an accessible and inexpensive forum for resolving disputes between insurers and injured persons in finalising a claim without the need to go to court. The amendments will ensure that persons appointed as claims assessors have the necessary qualifications and experience in assessing damages in motor accident personal injury claims. The majority of persons appointed as claims assessors since the inception of the service are senior legal practitioners in private practice with an extensive knowledge of the assessment of compensation for motor accident claims.

Advice recently received by the Motor Accidents Authority suggests that the Motor Accidents Compensation Act requirement that CARS assessors be members of staff may call into question the appointment of private legal practitioners as claims assessors. This could also potentially lead to challenges against the validity of decisions made by many claims assessors. This, of course, is not in the interests of injured persons or the Motor Accidents Scheme. In its review of the Motor Accidents Authority on the CARS assessment process two years ago, the Standing Committee on Law and Justice was impressed with the way the service was structured and the quality control mechanisms that were put in place. An amendment to ensure the protection of this process is an important measure.

In relation to the Motor Accidents Authority and the Lifetime Care and Support Authority boards, the committee recommended that a process be put in place to retain Advisory Council members until replacements are available. For many years the expiry of council membership has been an ongoing problem. The councils of the Motor Accidents Authority and the Lifetime Care and Support Authority are made up of stakeholder groups. The representation of these groups at board level is an important component of the process. I urge members to ensure that in future these councils are maintained continuously for 12 months of the year and that council membership does not expire prior to the appointment of replacement members. This process must be amended. The bill will preclude the possibility of challenges to the validity of decisions made by CARS assessors by validating the status of those claims assessors who are private legal practitioners, as well as their decisions. I commend this very important bill to the House.

Mr DAVID SHOEBRIDGE [5.34 p.m.]: On behalf of the Greens I support the Motor Accidents Compensation Amendment Bill 2010. I will address the three principal elements of the bill. The bill makes amendments to the make-up of the boards of the Motor Accidents Authority, the Motor Accidents Council, the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council. The amendments to the membership of those boards are practical and reflect structural changes to the authorities. They are entirely sensible and the Greens support them. In addition, the amendments provide the Motorcycle Council of New South Wales with a seat at the table and a stake in negotiations on the development of policy, particularly as it relates to the cost of motorcycle insurance. Some instances of inequality in insurance costs have occurred. It is hoped that having a seat at the table where Motorcycle Council members can speak freely and openly will reduce the level of inequality in costs associated with operating various classes of motorcycles in New South Wales. The Greens support this aspect of the bill.

In addition, the bill introduces changes that address the outcome of the 2009 Court of Appeal decision in the case of *Zotti v Australian Associated Motor Insurers Limited*. The Zotti case involved a person who was injured when the bicycle he was riding slipped on an oil slick that was left on the road following an earlier motor vehicle accident. Therefore, the injury was not occasioned at the time of the motor vehicle accident. The court found that even though Mr Zotti's injury resulted from the negligence of the driver in the earlier accident and the driver was therefore liable for Mr Zotti's damages, the driver's insurance policy was not coextensive with Mr Zotti's incident. That resulted in two difficult outcomes. First, the driver faced an uninsured claim. One would hope that compulsory third party insurance covers the full extent of any liability when operating a motor

vehicle in New South Wales. As we all know from our personal and practical experience, there is always a risk when operating a motor vehicle of driver negligence causing injury and damage to others. That is why we have a compulsory insurance system. The only comfort that drivers can have that they will not face potentially crippling legal and damages bills is if the compulsory insurance levy they pay at the behest of the State is coextensive with any potential liability they may face.

Therefore, extending the insurance to cover not only incidences at the time of the accident but also losses that result from any dangerous situation caused by the accident is an extremely sensible measure. Indeed, it is necessary to ensure that drivers have protection whilst travelling around the State in their motor vehicles. It protects drivers and it also protects people such as Mr Zotti. Under current law, which this bill seeks to address, if a person is injured in circumstances arising from a breach of duty of a driver but the injury is not directly but causally related to the accident, the injured person can only recover against the personal assets of the driver and does not have the protection of being able to recover against an insurance company as to the costs of the claim and the damages suffered. The Greens welcome the Government bringing this amendment in a timely fashion to address this hole in the law. The Greens support this amendment.

The third aspect of the bill is the provision that extends the definition of who can be a claims assessor in the Motor Accidents Authority. It would appear that the complexity of the law and the multiplicity of Acts, authorities and separate statutory organisations that deal with compensation injury in New South Wales have got the better of the drafters of this bill on a prior occasion. In fact, to date the practice of the Motor Accidents Authority has been in large part to employ private solicitors and private legal practitioners to be claims assessors and to undertake the role of claims assessors. That has practical consequences. Often competent legal practitioners can be very competent claims assessors and they can deal in a timely and proper fashion with the claims that come before them. Unfortunately, the law did not provide for private practitioners to be claims assessors. The law only allowed employees of the Motor Accidents Authority to be claims assessors. Therefore, for a number of years now assessments have been made by persons who have not been validly appointed as claims assessors. Obviously, that could potentially prejudice many thousands of prior claims that have been determined by claims assessors where both parties to the assessment thought the matter had been finalised.

The bill does two things: it says that, going forward, assessors can be private practitioners and do not have to be employees of the Motor Accidents Authority, but it is also fixing up what has obviously been a mistake in the past by retrospectively validating all those assessments that were done by private practitioners who were not employees of the authority. It is a timely lesson in the undue complexity of compensation law in New South Wales and how if we had a more rational and less legally complex system of compensation law that did not have different systems for motor accidents, for coalminers, for workplace injuries, for injuries in a hospital, for injuries in a prison and for injuries on the street, we would have fewer lacunas in the law and we would not have this retrospective legislation. Nevertheless, for the reasons I stated previously, the Greens support the bill.

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [5.42 p.m.], in reply: I thank all honourable members for their contributions to the Motor Accidents Compensation Amendment Bill 2010. In answer to a question from the Hon. Greg Pearce, I have been advised that in relation to the interpretation of dangerous situations the Government has sought advice and the intention is that it will protect people as a result of a motor vehicle accident. The legislation will capture relevant situations and provide an important insurance coverage. I commend the bill to the House.

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

Motion agreed to.

Bill read a second time.

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

Third Reading

Motion by the Hon. Michael Veitch agreed to:

That this bill be now read a third time.

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

WORKERS COMPENSATION LEGISLATION AMENDMENT BILL 2010**Second Reading**

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [5.44 p.m.], on behalf of the Hon. Eric Roozendaal: I move

That this bill be now read a second time.

I am pleased to introduce the Workers Compensation Legislation Amendment Bill 2010. The bill underscores the Government's commitment to ensuring that the State's workers compensation system and associated dispute resolution services remain efficient and effective in meeting the needs of New South Wales workers and employers. The Government has consulted widely with stakeholders on the bill on an ongoing basis. Through the consultation process the Government has been mindful of ongoing concerns particularly regarding the level of the monetary threshold for appeals in the Workers Compensation Commission. In consideration of those continuing concerns, the Government moved a motion in the other place that makes amendments to the bill that address these concerns.

The first Government amendment was to remove proposed changes to appeal thresholds and the second amendment was to ensure that arrangements for admitting fresh evidence in appeals against a medical assessment apply to all parties to the appeal. The removal of the changes to appeal thresholds does not diminish or erode the intent of the package of changes, which is to ensure the efficient and prompt consideration of appeal matters and to allow the Workers Compensation Commission to assist injured workers by making determinations in relation to future medical treatment. The motion to make a further minor amendment to the provisions regarding admission of fresh evidence for appeals to medical assessment will ensure the arrangements apply to all parties and not just to the appellant, which is currently the case.

I will now deal with the remainder of the bill. First, I will outline the other provisions in the bill that will assist the Workers Compensation Commission to improve dispute resolution processes. The Workers Compensation Commission provides an independent and impartial statutory tribunal for disputed workers compensation claims in New South Wales. The commission's non-adversarial processes are at the leading edge of dispute resolution in Australia. However, it is necessary to address a number of issues that could impact the ability of the commission to deliver prompt and effective dispute resolution services. First, a presidential decision determined that the commission does not have jurisdiction to make determinations with regard to prospective medical treatment. This lack of jurisdiction has the potential to delay treatment and cause hardship for workers. The bill includes an amendment to give the commission power to make determinations with regard to expenses for treatment not yet incurred.

The bill also addresses recent case law, which has extended the grounds of appeals against the decisions of arbiters and approved medical specialists. This has resulted in delays and increased costs without generating any benefit for injured workers or employers. The bill includes an amendment to make it clear that an appeal against a decision of an arbiter is not a full review of the arbiter's decision and is limited to a determination as to whether the decision appealed against was affected by error. The bill also includes an amendment to make it clear that an appeal against a medical assessment by an approved medical specialist is limited to the ground on which the appeal is made and is not a review of any other aspect of the medical assessment.

The bill also clarifies the operation of provisions that enable certain matters in the Workers Compensation Commission to be reconsidered as an alternative to formal legal appeals or challenges. The reconsideration provisions, as currently drafted, have led to unintended outcomes, in particular, the use of reconsideration powers to hear matters that have not satisfied any grounds of appeal. In the last of the changes relevant to the operation of the commission, the bill provides the appointment of one or more senior approved medical specialists to assist with the professional development, mentoring and appraisal of approved medical specialists. I will elaborate further on these changes before moving on to the amendments proposed in the bill to improve the operation of the workers compensation system.

Workers compensation legislation provides for the commission to approve the payment of expenses for reasonably necessary medical treatment. The intention of the legislation is to ensure that in the case of a dispute the commission can order that scheme agents and insurers meet the costs of reasonably necessary medical or other treatment for workers. However, a presidential decision has determined that the commission only has

jurisdiction to make determinations for medical or other treatment when the expense has already been incurred. This means that in some instances where there is a dispute between the scheme agent or insurer and a worker with regard to whether treatment is reasonably necessary, workers are unable to have their dispute heard at the commission unless they first pay for the treatment themselves. Many injured workers do not have the financial capacity to pay for treatment and then seek reimbursement from the insurer. The amendment would ensure that the commission has the power to make a decision about whether treatment requested but not yet received is reasonably necessary, medically appropriate and in the best interests of the injured worker. This will be achieved by ensuring that an approved medical specialist gives an opinion with regard to the treatment and the opinion of the approved medical specialist is taken into account in the decision.

The Workers Compensation Commission is committed to providing a transparent and independent forum for the fair, timely and cost-effective resolution of workers compensation disputes in New South Wales. Processes used in the commission are designed to support its objective of providing a fair and cost-effective resolution service for disputed workers compensation claims. However, recent court decisions have impacted the way appeal mechanisms in the commission operate. In *Sapina v Coles Myer Limited* [2009] NSWCA 71 the Court of Appeal extended the scope of appeal rights by determining that an appeal is to proceed by way of a full review of the arbitrator's decision, irrespective of the identification of any error by the arbitrator. The Sapina decision has the potential to lead to delays and increased costs in the commission without achieving any benefit to workers or employers. To overcome this, the bill will restrict appeals under section 352 of the Workplace Injury Management and Workers Compensation Act 1998 to cases in which there is "legal, factual or discretionary error". The amendment reverses the effects of the court's decision and reflects the original intent of the relevant appeal provisions.

Decisions by higher courts have also broadened the scope of appeals to the commission's medical appeal panel and have the potential to undermine the registrar's role in determining whether grounds for appeal exist. The case of *Siddik v WorkCover Authority of New South Wales* [2008] NSWCA 116 decided that a medical appeal panel is not confined to considering the grounds of review under which the appeal was permitted to proceed or the grounds stated by the appealing party. It is proposed to amend section 328 of the 1998 Act to ensure that the issues considered by a medical appeal panel are limited to only those issues in the grounds of appeal. This amendment will also clarify that additional evidence will be admitted only where it was not available before the medical assessment and the evidence could not reasonably have been obtained before that medical assessment.

The bill will also clarify provisions that enable certain matters in the Workers Compensation Commission to be reconsidered as an alternative to formal legal appeals or challenges. Section 378 of the 1998 Act provides for reconsideration of an assessment made by the registrar, an approved medical specialist or a medical appeal panel. The objective of section 378 is to lessen the need for formal appeal or review and to expedite resolution of matters by an approved medical specialist where relevant information was inadvertently overlooked or not passed on to the approved medical specialist by the registrar of the commission. The intention is that requests for reconsideration satisfy the same requirements as the grounds of appeal against a medical assessment. The reconsideration power would then allow review and correction of the matter where an obvious error had occurred in the decision-making process.

However, the provisions as drafted have led to difficulties resulting in the expansion of the reconsideration provision in practice. In particular, the reconsideration powers have been used to hear matters that have not satisfied any grounds of appeal. Some practitioners are making requests for reconsideration for matters that were not intended by the legislation to be reconsidered. This has resulted in unnecessary delays in the resolution of disputes by practitioners filing inappropriate applications. The bill proposes amendments to ensure that the powers of reconsideration assist in streamlining appeal and review procedures at the commission.

The bill also contains an amendment to give the commission discretion to hear appeals of an interlocutory nature and makes clear that appeals made within the required time frame that meet the monetary threshold will be automatically referred by the registrar to a presidential member. Further, the bill contains a provision to index the maximum amount for an interim payment direction for medical expenses to ensure this threshold continues to remain relative to the amount in dispute and the cost of medical treatment over time. These worthy amendments to the appeal provisions at the commission will build upon the already streamlined appeal process and are consistent with its policy objectives of a speedy and efficient dispute resolution service that meets the needs of workers and employers.

The final measure aimed at improving the efficiency of the Workers Compensation Commission relates to the engagement of senior approved medical specialists by the president of the commission. These positions

will come from the pool of existing approved medical specialists. Senior approved medical specialists will have responsibilities in addition to their existing role as an approved medical specialist, including assisting with the professional development, mentoring and appraising of approved medical specialists. These positions will play a key role in improving quality and consistency in decision-making by approved medical specialists. They will also assist in enhancing the interface between commission staff and approved medical specialists to improve overall management and timeliness of dispute resolution in the commission.

I turn now to other amendments in the bill that will benefit injured workers. Once a worker has settled a work injury damages claim, the worker is precluded from making any other claim with respect to that injury. The bill includes an amendment that will ensure that injured workers are not encouraged to settle a work injury damages claim without knowing they had an entitlement to other statutory lump sum amounts. The amendment provides that an injured worker who reaches the threshold level of 15 per cent whole person impairment must have been paid their lump sum statutory entitlements before they are able to settle a work injury damages claim. This amendment protects workers by ensuring that they know about and are paid a statutory entitlement to a lump sum for which they are eligible and that any amount for work injury damages is paid separately. The amendment will promote transparency in the settlement of workers compensation and work injury damages claims between workers and scheme agents and insurers. Importantly, the amendment does not prevent a work injury damages claim being made before the worker's statutory lump sum entitlement has been paid.

Another amendment in the bill will ensure that injured workers will continue to be paid weekly benefits by scheme agents and insurers pending an appeal. Where an arbitrator has determined that weekly benefits should be paid to a worker, a scheme agent or insurer can appeal that decision. In some instances, the scheme agent or insurer has refused to pay the worker until the outcome of the appeal in spite of the arbitrator's decision that benefits should be paid. At present there are inadequate enforcement mechanisms to ensure that injured workers receive their weekly benefits until the appeal is heard and determined. The bill provides for scheme agents and insurers to pay injured workers once they have received a determination from an arbitrator, whether or not that decision is being appealed. This amendment reflects the general law, where an appeal does not automatically stay the original decision, and this proposal will clarify that this is the case in relation to weekly workers compensation payments. However, the bill also makes it clear that decisions regarding medical expenses and permanent impairment are stayed pending an appeal. This approach protects injured workers from potential recoveries for treatment not found to be reasonably necessary or lump sum payments found not to be compensable.

The bill includes an amendment that provides partially incapacitated workers with greater incentive to take up suitable duties in the workplace. A partially incapacitated worker potentially receives two payments—the first being wages or salary from their employer. The second payment is a weekly benefit paid by their scheme agent or insurer, which is calculated on their capacity for work, within the medical restrictions placed on them as a result of their injury. The bill makes it clear that for partially incapacitated workers who are seeking employment or who return to work, the maximum weekly compensation amount is a limit on the compensation payable and not a limit on the combined total of compensation and earnings. The amendment allows a worker to be paid up to the maximum weekly compensation amount in addition to the earnings from their employer. The current limit on maximum weekly payments for workers who unreasonably reject suitable employment is not changed.

I now turn to measures in the bill to assist WorkCover to more efficiently administer the workers compensation system. The first measure makes clear that only the workers compensation nominal insurer has the discretion under section 145 of the Workers Compensation Act 1987 to waive reimbursement by an uninsured employer for amounts paid out of the Workers Compensation Insurance Fund to an injured worker of that employer. The amendment restricts the jurisdiction of the Workers Compensation Commission to review the nominal insurer's discretion to waive rights of recovery against uninsured employers. This amendment is necessary to overcome a court decision that found that under the current legislation the Workers Compensation Commission had the jurisdiction to override the nominal insurer's discretion with regard to waiving liability of an uninsured employer to reimburse the Workers Compensation Insurance Fund. The nominal insurer is responsible for the management of the Workers Compensation Insurance Fund and any payment made for an uninsured liability claim comes out of the fund. The decision to waive liability for reimbursement to the Workers Compensation Insurance Fund is essentially a commercial one that rests properly with the nominal insurer, as the body responsible for the management of the fund.

Nevertheless, I draw attention to existing controls in the workers compensation legislation and the general law that ensure that the nominal insurer's discretion is exercised fairly. The Workers Compensation Act

1987 sets out procedures that give protection to uninsured employers. These procedures include giving notice to uninsured employers and providing an opportunity for them to dispute liability and to address the matters set out in subsection 145 (2), including their capacity to meet the liability. The nominal insurer carefully considers submissions made by employers in the course of determining whether recoveries should be pursued. In addition, an employer can take proceedings in the Supreme Court challenging decisions of the nominal insurer to issue a recovery notice where it is considered that there is no legal basis for a notice to be issued, such as where it is contended that there was no employment relationship.

The second of these measures is to allow self and specialised insurers and retro-paid loss employers to give security to WorkCover by way of insurance bonds. I remind members of the significant reforms made in 2008 to the way premiums are calculated for large employers who choose to access the retro-paid loss premium calculation method. Currently, there are around 158 individual employer entities participating in this premium calculation method, demonstrating it to be a popular and significant workers compensation premium reform. The amendment proposed in this bill will build on this reform making it even more attractive for large employers operating within New South Wales.

Self and specialised insurers and employers participating in the retro-paid loss premium calculation method are required to give security to WorkCover to cover the cost of their claims liabilities should they become unable to meet them for any reason. Security is normally to be given by way of a direct deposit. However, the legislation does allow for two alternative forms of security—Commonwealth and State bonds or bank guarantees. Bank guarantees have been the most commonly used alternative form of giving security. However, retro-paid loss employers have advised that the cost of a bank guarantee has increased significantly since the onset of the global financial crisis, and their availability is limited. Some employers have reported that banks providing guarantees have required a deposit to the same value as the guarantee. This ties up capital in the same way as a direct deposit, leaving a bank guarantee of no value as an alternative form of giving security.

Some large employers and self and specialised insurers have expressed an interest in insurance bonds as another alternative form of giving security, and the bill contains a proposal to allow this to happen. Making this amendment ensures that the workers compensation system in New South Wales remains flexible and responsive to the needs of employers. The use of insurance bonds will free up capital for these businesses and allow them to manage their day-to-day operations more efficiently. However, I can assure honourable members that the level of security provided by insurance bonds is equal to that provided by the bank guarantees and Commonwealth and State bonds. Insurance bonds and bank guarantees have the same obligations at law when being called upon for payment; some insurance bonds are worded in the same way as bank guarantees.

The Commonwealth and some State governments accept insurance bonds as security as long as the issuer meets certain regulatory and credit worthiness requirements. For example, New South Wales Treasury allows agencies to accept insurance bonds if the provider is either regulated by the Australian Prudential Regulatory Authority or meets appropriate credit rating thresholds. As part of this current proposal WorkCover will require that insurance bonds given as security are issued by providers who are both regulated by the Australian Prudential Regulatory Authority and meet appropriate credit-rating thresholds. This additional level of security will protect the interests of all New South Wales employers and employees and is the same level of security required for self-insurance under the Commonwealth Comcare scheme.

Finally, I note that the bill also includes miscellaneous amendments. The first of these amendments provides for a worker's entitlement to reimbursement for the cost of obtaining a permanent impairment medical certificate to be part of the claim for permanent impairment. The workers compensation legislation provides for insurers to meet the costs of permanent impairment medical certificates within 21 days of notification of the costs of the certificate. A minority of permanent impairment certificates do not meet the criteria set by WorkCover guidelines for determining permanent impairment, making it difficult for scheme agents and insurers to make decisions about applications for lump sum permanent impairment compensation. The bill provides for the costs of permanent impairment medical certificates to be met by insurers as part of the final resolution of the claim for lump sum permanent impairment. The amendment will ensure that scheme agents and insurers meet the cost of those reports that form the basis of a determination for lump sum permanent impairment.

The second miscellaneous amendment aligns the maximum age for determining future economic loss due to deprivation or impairment of earning capacity under work injury damages to reflect the age of retirement under the Commonwealth Social Security Act 1991. The Commonwealth Social Security and Other Legislation Amendment (Pension Reform and Other Budget Measures) Act 2009 increases the age of entitlement for the age

pension from 65 to 67 on a staged basis between 1 July 2017 and 1 July 2023. Currently, the work injury damages entitlement to economic loss compensation ceases at the age of 65, which when drafted was the age of retirement. This needs to be amended to ensure that workers retain their entitlement to economic loss up to the retiring age. The bill will amend section 151IA of the Workers Compensation Act 1987 to ensure that the change to the retiring age is appropriately recognised and accounted for in any decision or settlement of a claim for damages under part 5 of the Workers Compensation Act 1987.

The third miscellaneous amendment provides that an applicant for a specialised insurer licence is not required to obtain an authority under section 12 of the Commonwealth Insurance Act 1973 if the applicant is exempt from the operation of the Commonwealth Act. Section 12 of the Commonwealth Act deals with the power of the Australian Prudential Regulatory Authority to issue licences to insurers, but it does not apply to some entities established by State laws. Racing NSW, which is a specialised insurer, is established under State law and therefore exempt from the operation of the Commonwealth Act. This amendment will allow Racing NSW to renew its specialised insurer licence.

The bill contains administrative amendments to reflect the implementation by WorkCover of the nationally consistent approval framework for workplace rehabilitation providers. All references to "occupational rehabilitation service" are replaced with references to "workplace rehabilitation service", and all providers of workplace rehabilitation services will be approved rather than accredited. Further, the list of rehabilitation services will be removed from the legislation to reflect the model of workplace rehabilitation that has been adopted by the nationally consistent approval framework for workplace rehabilitation providers. This model more accurately reflects the full range of services required to assist an injured worker back to work and is currently being adopted across the Commonwealth, States, Territories and New Zealand.

The final amendment is the removal of the monetary review point for workplace rehabilitation services. Currently, there is a monetary cap for these services beyond which WorkCover is required to review the necessity of the service. The amendment removes this cap as, in practice, the insurer reviews all these services to ensure they are reasonably necessary, regardless of the amount. Honourable members will see from a close reading of the bill that it contains important measures for the benefit of workers and employers. It also contains measures that will assist the Workers Compensation Commission to deliver a more effective, efficient and streamlined workers compensation dispute resolution system that meets the need of New South Wales workers and businesses. I commend the bill to the House.

The Hon. GREG PEARCE [6.05 p.m.]: The bill amends workers compensation legislation to make provisions in relation to the determination of compensation and work injury damages, workplace rehabilitation, medical assessment, appeals and other matters. The New South Wales Liberals and Nationals do not oppose the bill, which makes a number of amendments to the Workers Compensation Act and the Workplace Injury Management and Workers Compensation Act to reflect various decisions of the Compensation Court and the Supreme Court—issues that have arisen in relation to assessing injuries and paying compensation, the entitlements to and consequence of certain appeals, some provisions in relation to self-insurers, and a number of provisions in relation to rehabilitation that arise from the move to national standards.

The Government claims the measures will improve dispute resolution processes at the Workers Compensation Commission and assist WorkCover to more efficiently administer the workers compensation system, thereby delivering a more effective, efficient and streamlined workers compensation dispute resolution system that meets the needs of New South Wales workers and businesses. That is the claim. The bill reverses a decision that prevented the award of expenses in relation to prospective—that is, future—medical treatment, and also reverses a recent case that extended the grounds of appeal against decisions of arbitrators and approved medical specialists. Initially, the bill also included a provision to lift the monetary threshold for appeals from \$5,000 to \$7,500 as well as indexing of this to ensure further restrictions on the appeal system were incorporated. As a result of submissions by various stakeholders and interested parties the Government amended this in the lower House, as the Parliamentary Secretary pointed out.

I refer to comments I received from the workers compensation law reform subcommittee of the Bar Association. It stated that the proposed amendments, which would have increased the threshold from \$5,000 to \$7,500, would mean that many workers would lose their right of appeal. It pointed out that workers on compensation are in receipt of "paltry sums" and that a \$5,000 to \$7,500 rise in the threshold would be a lot of money to injured workers. It went on to say that there appeared to be no justification for raising the threshold. It is good that the Government has taken heed of those concerns.

Further, the bill provides that insurers may continue to pay workers where an arbitrator's decision is being appealed and provided that such an appeal does not operate as a stay on the determination to pay the workers. The bill provides for the appointment of approved medical specialists to assist the professional development mentoring and appraisal of approved medical specialists. There are provisions that ensure that an injured worker does not lose the right to certain payments where a common law claim is settled without knowledge of entitlement to statutory lump-sum amounts.

There are provisions to assist in providing incentives to partially incapacitated workers to take up limited employment by ensuring that the amount earned under any such employment does not reduce the total entitlements the injured worker would otherwise have. There are provisions to allow self-insurers to now provide for security by way of Commonwealth and State bonds or bank guarantees instead of having to provide a cash deposit. This is a useful amendment given that self-insurers account for about 25 per cent of the workforce covered under the scheme.

There are amendments to align the maximum wage for determining future economic loss for the amended age for entitlement of pensions, which is being increased by the Federal Government from 65 years to 67 years. There is an amendment that allows specialised insurers to continue operating notwithstanding that they are not regulated by the Australian Prudential Regulatory Authority. This in particular applies to Racing NSW. Finally, other provisions in relation to workplace rehabilitation basically arise from the adoption of a nationally consistent approval framework for workplace rehabilitation providers. As part of the process of the New South Wales Liberals and Nationals considering this bill, as usual we consulted widely with stakeholders and their representatives. The only major concerns were those expressed by the Bar Association, self-insurers and Australian Lawyers Alliance about the amendments limiting appeals against medical assessments, among others. As I indicated earlier, the New South Wales Liberals and Nationals do not oppose the bill.

Mr DAVID SHOEBRIDGE [6.10 p.m.]: The Greens, by and large, support the Workers Compensation Legislation Amendment Bill 2010 to the extent that it improves the rights of working people in New South Wales to receive some modicum of fair and just workers compensation. In speaking to a prior bill on motor accidents I stated that the law in relation to compensation in New South Wales is extraordinarily complex, and the law relating to workers compensation is a case study of the extraordinary complexity of law in relation to compensation here in New South Wales. We are dealing in this bill with amendments to two pieces of legislation—two Acts that are to be read together—that injured workers must comprehend before they can begin to adequately assess their rights to compensation: the Workers Compensation Act 1987, which is read in conjunction with the Workplace Injury Management and Workers Compensation Act 1998. Even though they are two separate Acts, they should be read as one.

Not only are there two Acts, the last time I looked there were at least two sets of regulations covering entitlements to workers compensation, including the rules of the relatively newly established Workers Compensation Commission. There are at least two sets of guidelines issued by the authority. Amongst other things those guidelines deal with complicated systems for working out a worker's entitlement to some form of general damages under the statutory scheme for lump sum payments. Reference is then made to a series of further medical guidelines—the Australian Medical Association guidelines. In addition, there is an array of case law in the specialist tribunal, together with case law at first instance and on appeal in the Court of Appeal. The practice book in relation to workers compensation is itself a health hazard for practitioners: it is a weighty tome of enormous complexity. This area of the law should be relatively straightforward, providing relatively easy to understand and accessible benefits to injured workers. One of the reasons it is so complex is that it contains many restrictions on the rights of injured workers to receive not only fair compensation under the statutory scheme but also fair compensation at common law.

I turn to the key provisions of the bill to the extent that it deals with workers entitlements. We support the provisions that extend the jurisdiction of the Workers Compensation Commission to approve the payment of expenses for reasonably necessary medical treatment before the worker incurs the cost. An array of case law exists under section 60 of the Workers Compensation Act stating that medical expenses can only be recovered by an injured worker once the worker has actually made the payment. It is referred to as an indemnity provision. I give the instance of an injured worker with a very substantial back injury who is struggling to survive on very modest workers compensation benefits and who has the insurance company disputing his or her entitlement to have substantial back surgery. Workers in those circumstances have a choice: they can incur the cost of the back surgery themselves and hope at a later point to recover it against the insurance company in the Workers Compensation Commission, or simply not incur the expense and continue to suffer often debilitating pain

because the law says that section 60 is only an indemnity provision. These provisions are a step forward and the Greens support measures that allow the Workers Compensation Commission to determine liability prior to the incurring of an expense. Therefore, the Greens support the provisions.

The second substantive element of the bill is the reversal of the decision in *Sapina v Coles Myer Ltd*, a 2009 Court of Appeal decision that provided that an appeal in the Workers Compensation Commission to the presidential member was essentially a second go on the merits of the matter and was not limited to the grounds of appeal raised in the appeal. That has been the cause of a number of practical difficulties in terms of the practice of workers compensation in New South Wales. Examples have been cited of insurance company lawyers who, whenever they lose a first instance decision, have a reflex response of appealing to a presidential member to have a "second go", and that can be irrespective of the relative merits of the assessment at first instance because there is this broad second chance on appeal. That creates a great deal of uncertainty and anxiety for workers whose decision is the subject of appeal. In many cases it causes unnecessary and inappropriate litigation. A system should be in place that has sufficient checks and balances to ensure that the first instance decision can be decided with some security, and only in circumstances in which error has been established can the matter succeed on appeal. The effect of that will be that workers' entitlements to appeal will be restricted, but on the whole it will provide for greater certainty, fewer appeals and less legal costs on appeal. Therefore, on balance, the Greens support those provisions.

However, the Greens do not support the proposal to reverse the effect of a 2008 Court of Appeal decision in *Siddik v The WorkCover Authority of New South Wales*. The decision provided that a medical appeal panel—and again, dealing with this enormously complex area of law, this is an entirely separate appeal process outside the commission—can have a thorough and proper review of a decision that is appealed to it. In practice, it is a sensible protective provision to provide that general review power to the medical appeal panel.

A medical appeal panel is a three-member panel comprising two medical specialists approved by WorkCover as well as a legal member. Currently they review decisions made by a single approved medical specialist under the WorkCover system. As the law currently stands, a worker or an insurer may appeal a decision of an approved medical specialist on certain limited grounds. But when the matter comes before the three-member appeal panel, which obviously carries more expertise than the single first instance doctor, and the panel finds an error outside the grounds of appeal relied upon—it finds that original approved medical specialist [AMS] to have made an error not included in the grounds of appeal—it can put both parties on notice and say, "We have noticed this potential other error; we are intending to correct it and we would like to have your submissions on it." The parties then provide submissions and the three-member appeal panel can provide a more correct and preferable decision on appeal. That is a safeguard for injured workers because the medical appeals process involves very modest legal costs, and often it is impossible for an injured worker to obtain adequate legal advice to present an appeal to a three-member appeal panel. Workers often do the appeals themselves, drafting quite often inadequate grounds of appeal that do not address the real error.

Why would we change a system that allows for a three-member appeal panel with that greater level of expertise to correct an error—and it can only be used to correct error? Why would we seek to limit that, as the bill proposes, to only the error that is identified in the appeal documents raised by either the worker or the insurer? It makes no sense; it is a backward step and the Greens do not support it. The Greens welcome the amendments that ensure that the monetary thresholds for appeals will not be changed. The Hon. Greg Pearce referred to that matter. Changing the threshold from \$5,000 to \$7,500 before an appeal can be lodged, by either a worker or an insurer, may seem a modest change to members of this House but when considered in the context of an injured worker surviving on \$400 a week of workers compensation, an amount of \$7,500 can be life changing. Injured workers should have the right to appeal. The current threshold of \$5,000 causes some injustice, and I am pleased that the Government responded to stakeholder input and is not proceeding with those provisions.

Another positive aspect of the bill is that it provides, when an appeal is lodged by an insurer in the Workers Compensation Commission and weekly compensation is ordered at first instance, that the appeal does not operate as a stay. Clearly, if an appeal operated as a stay, the injured worker—as I said before, surviving on very modest payments—would suffer substantial injustice while he or she waited for the appeal to be determined. Often the injured worker already is surviving hand-to-mouth on workers compensation benefits that he or she receives from the scheme. Withdrawing those benefits for potentially two or three months while the injured worker awaits an appeal potentially would create economic catastrophe in some workers' households. I am pleased that the Government is moving to ensure that that does not happen.

Another provision of the bill that has the support of the Greens is the increase in the retirement age for calculating economic loss with regard to common law damages for workers. The period for which an injured worker can recover economic loss is increased from age 65 to age 67 where that worker's retirement age under Commonwealth legislation would increase to the age of 67. It is a common sense change to the current common law entitlements and will increase—very modestly—entitlements that workers have to future economic loss. However, I make the point that it is but a tiny part of the true loss that injured workers suffer when they get injured at work. It is a shameful situation that in this State employers—who should have the highest duty of care in relation to their employees, higher than they have to strangers—can effectively do cut-price injury to workers under the current New South Wales Workers Compensation Scheme. The only entitlement workers have to recover economic loss and future damages from their employer is their bare wages. They cannot recover the true loss and the true damage they suffer when they get injured at work, and that includes the need for future domestic assistance. For a person suffering a substantial injury, the need for future domestic assistance not only to help them personally but to help look after their household and their garden can be very substantial. Under the current provisions they have no entitlement to recover moneys for such assistance, and that is a shameful situation.

Another important matter is future medical expenses of injured workers. For some reason, some years ago this House thought it was entirely proper that people who get injured at work do not have an entitlement to recover future medical expenses at common law against their employer. Those medical expenses often can be substantial. Not only does the current system discourage badly injured workers from seeking common law entitlements; it means in practice that those badly injured workers simply receive fewer damages that do not properly compensate them for the true loss they have suffered when they have been injured at work. How can it be that we have a system that provides fewer benefits for a worker who gets injured by their employer—where one would expect a higher duty of care and real protection—than for a person who gets injured by a stranger on the street? It makes no sense; it is entirely unfair. That aspect has not been remedied in this bill. I will speak to the Greens proposed amendments in relation to medical appeal panels in Committee.

Reverend the Hon. FRED NILE [6.23 p.m.]: The Christian Democratic Party supports the Workers Compensation Legislation Amendment Bill 2010. In particular, we support the bill because it will improve dispute resolution processes at the Workers Compensation Commission and will assist WorkCover to more efficiently administer the workers compensation system. The bill provides for a number of practical administrative measures, which we support. A presidential decision determined that the commission does not have jurisdiction to make determinations with regard to prospective medical treatment. This lack of jurisdiction has the potential to delay treatment and cause hardship for workers. The bill includes an amendment to give the commission power to make determinations with regard to expenses for treatment not yet incurred. We support that provision. The bill increases the monetary threshold for appeals from \$5,000 to \$7,500, and makes other changes to ensure that the appeal threshold remains current and appropriate to workers compensation disputes.

We are pleased that the bill includes an amendment that will ensure that injured workers are not encouraged to settle a common law claim without knowing they had an entitlement to other statutory lump sum amounts. The amendment provides that injured workers who reach a threshold level of 15 per cent whole person impairment must have been paid their lump sum statutory entitlements before they are able to settle a work injury damages claim. This amendment protects workers by ensuring that they know about and are paid a statutory entitlement to a lump sum for which they are eligible and that any amount for work injury damages is paid separately.

The bill provides for insurers to pay injured workers once they have received a determination from an arbitrator, whether or not that decision is being appealed. The bill also includes an amendment that provides partially incapacitated workers with greater incentive to take up suitable duties in the workplace. We believe this is a very important improvement to the legislation. The bill makes it clear that for partially incapacitated workers who are seeking employment or who return to work, the maximum weekly compensation amount is a limit on the compensation payable and not a limit on the combined total of compensation and earnings. The amendment allows workers to be paid up to the maximum weekly compensation amount in addition to the earnings from their employer.

Finally, the bill deals with the situation whereby the Commonwealth Social Security Act 1991 has been amended to bring in a change to the age of entitlement for the age pension from 65 years to 67 years on a staged basis between 1 July 2017 and 1 July 2023. Currently, the work injury damages entitlement to economic loss compensation ceases at age 65. This is being amended to ensure that workers retain their entitlement to economic loss up to the retiring age, which by the staged increases will be up to age 67 as the retirement age for the age pension. Because of those practical improvements we support the bill.

The Hon. PENNY SHARPE (Parliamentary Secretary) [6.28 p.m.], in reply: I thank members for their contributions to this debate. I note that there is general support for the bill. I flag to the House that in Committee the Government will not support the Greens amendment, and I will outline the reasons for that at that time. I commend the bill to the House.

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

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 and 2 agreed to.

Schedule 1 agreed to.

Mr DAVID SHOEBRIDGE [6.30 p.m.]: I move Greens amendment No. 1:

No. 1 Page 11, schedule 2 [14], lines 11–22. Omit all words on those lines. Insert instead:

14 Section 328 Procedure on appeal

Omit section 328 (3). Insert instead:

- (3) Evidence that is fresh evidence or evidence in addition to or in substitution for the evidence received in relation to the medical assessment appealed against may not be given on an appeal by a party to the appeal unless the evidence was not available to the party before that medical assessment and could not reasonably have been obtained by the party before that medical assessment.

I spoke about this modest amendment in passing during discussion on the substantive legislation. Greens amendment No. 1 does not support the changes that have been proposed for section 328 (2) of the Workplace Injury Management and Workers Compensation Act 1988, which seeks to limit the capacity of the appeal panel only to correct errors identified in the grounds of appeal in the matter before it. The Government's rationale is that parties should be limited to the grounds of appeal in pleadings before any particular tribunal. As I said previously, that ignores the reality of the proceedings brought before medical appeal panels. The legal costs payable for a successful medical appeal panel are de minimis—next to nothing. Therefore, the capacity for workers to receive extensive legal advice or legal opinion in relation to appeals is very small. Parties are often self-represented or have very modest legal assistance and put together quite scant appeals to the panel. Consider the process involved: an individual WorkCover doctor's opinion is appealed to a three-member panel, consisting of two medical specialists and a legal specialist. Why would we put in place a system that restricts the capacity of an appeal panel to correct an error when it has formed the view that a single doctor has made an error?

An approved medical specialist certificate can have overwhelming effects not only on the entitlements of a worker to recover lump sum compensation under the statutory scheme but also on the determination as to the whole person impairment. It can decide whether a worker has an entitlement to any common law damages, which can mean hundreds of thousands of dollars difference to an injured worker. Why would one not allow the more comprehensive appeal panel, consisting of three members, to correct errors where it finds them? Why limit the appeal panel's capacity to correct an identified error, particularly in circumstances where the law says that the appeal panel has to give the parties notice about an error it has identified? It makes no sense. It makes an already imperfect system far less perfect by not allowing the appeal panel to correct an obvious or identified error. It will produce the unjust outcomes that I identified in relation to individual workers. I commend the amendment to the Committee.

The Hon. PENNY SHARPE (Parliamentary Secretary) [6.33 p.m.]: The Government does not support Greens amendment No. 1. The Workers Compensation Legislation Amendment Bill 2010 underscores the Government's commitment to ensuring that the New South Wales workers compensation system and associated dispute resolution services remain efficient and effective in meeting the needs of New South Wales workers and employees. The Greens amendment conflicts with this aim by effectively allowing a badly prepared party to run their case in the Workers Compensation Commission, generating unnecessary costs and delays. The Government has consulted widely with stakeholders about the bill on an ongoing basis.

This amendment comes before the Committee as a consequence of the case, correctly defined, of *Siddik v The WorkCover Authority of NSW*. The New South Wales Court of Appeal decided that a medical appeal panel is not confined to considering the grounds of review under which the appeal was permitted to proceed or the

grounds stated by the appealing party. It is proposed to amend section 328 of the Workplace Injury Management and Workers Compensation Act 1988 to ensure that the issues considered by a medical appeal panel are limited only to those issues in the grounds of appeal. The amendment also will clarify that additional evidence will be admitted only when it was not available before the medical assessment and the evidence could not reasonably have been obtained before that medical assessment. Making further minor amendments to the provisions regarding admission of fresh evidence for appeals to medical assessments also ensures that the arrangements apply to all parties of the appeal and not just the appellant, which is the currently the case.

The Government believes the workers compensation system is built on upfront exchanges of information by both parties. This ensures that there are no surprises or ambushes by any one party. The amendment by the Government to section 328 restates the original intent of the legislation to ensure that all available evidence and information is exchanged at the point of decision—that is, by the insurer—and that no new evidence is introduced during the dispute resolution process. The Government does not support the Greens amendment.

Mr DAVID SHOEBRIDGE [6.35 p.m.]: Much of what the Hon. Penny Sharpe said does not relate to the Greens amendment. Greens amendment No. 1 does not challenge issues in relation to evidence on appeal. The Hon. Penny Sharpe failed to address the fact that workers ordinarily are poorly represented on appeal because of the very modest legal fees payable to support a worker in an appeal. To criticise a worker for having a badly prepared case, when often the worker has had to prepare the appeal themselves or with scant assistance from a legal practitioner because of the unfair legal costs payable for what is often a complex matter, is to penalise workers simply for being injured. Why one would allow that system has not been explained. The Government also has not addressed the fact that the scheme allowing for open review on appeal already exists in the motor accidents scheme.

The body that hears medical assessment appeals under the motor accidents scheme has an open review, but in the stand-aside workers compensation scheme it is different. The unnecessary complexity that injured workers face—and that even the Government faces in dealing with its own legislation—proves that the law is enormously complicated. The Government cannot seem to get its head around the complexities of this legislation. It is no wonder workers get it wrong when they have to address not only statutory criteria but WorkCover guidelines on appeal, as well as the Australian Medical Association guidelines in relation to whole person assessment. Workers are expected to bring all those things together and prepare a cogent argument in their grounds of appeal. It is no wonder they cannot specify with clarity what the error in the assessment is. Surely in those circumstances it is common sense to allow the appeal panel, which comprises three specialists, to correct any error that it identifies. To rely upon only the error identified by the parties will do nothing other than produce further injustice and perpetuate errors. I commend the Greens amendment to the Committee.

Question—That Greens amendment No. 1 be agreed to—put and resolved in the negative.

Greens amendment No. 1 negatived.

Schedule 2 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.

[Deputy-President (The Hon. Helen Westwood) left the chair at 6.40 p.m. The House resumed at 8.15 p.m.]

HEALTH LEGISLATION FURTHER AMENDMENT BILL 2010**Second Reading**

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [8.15 p.m.], on behalf of the Hon. John Hatzistergos: I move:

That this bill be now read a second time.

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

Leave granted.

I am pleased to bring before the House the Health Legislation Further Amendment Bill 2010.

This bill makes a number of changes to:

- the Health Records and Information Privacy Act 2002,
- the Mental Health Act 2007, and
- the Mental Health (Forensic Provisions) Act 1990.

The amendments to the Health Records and Information Privacy Act are set out in Schedule 3 to the bill and are designed to respond to the establishment of healthcare identifiers by the Commonwealth Healthcare Identifier Act 2010.

The Healthcare Identifier Act, which commenced on 1 July 2010, establishes the healthcare identifier service and authorises the assignment of healthcare identifiers to individuals and healthcare providers. The Act will assist in improving the management and communication of health information and is a key component of the development of electronic health records.

Privacy is a key concern in the Commonwealth Healthcare Identifier Act, which sets out limits on authorised uses and disclosures of healthcare identifiers. It also creates offences and penalties for the misuse of healthcare identifiers.

The establishment of the healthcare identifier service was agreed to by the Council of Australian Governments, which also agreed that the Commonwealth provisions would apply to the States and Territories on an interim basis until the States and Territories enacted appropriate laws to regulate the use and disclosure of healthcare identifiers.

As such, the Commonwealth Healthcare Identifier Act enables the Commonwealth Minister to declare that specified provisions of the Commonwealth Act do not apply to the public bodies of a specified State or Territory provided that the Commonwealth Minister is satisfied that there are appropriate laws, as determined by the Ministerial Council, in force in the State or Territory.

The ability of the Commonwealth Minister to make a declaration recognises that some State and Territories already have robust privacy laws that apply to their public sectors, and that it is appropriate to utilise those laws in regulating the use and disclosure of healthcare identifiers by the public sector within a particular State or Territory.

It is the New South Wales Government's intention to seek a declaration from the Commonwealth Minister that the Commonwealth Healthcare Identifier Act does not apply to the New South Wales public sector and apply New South Wales law instead.

If such a declaration is made, the use and disclosure of healthcare identifiers by the New South Wales public sector will be regulated by one law, the New South Wales Health Records and Information Privacy Act, and the NSW Privacy Commissioner will have the power to investigate complaints against the misuse of healthcare identifiers by the New South Wales public sector, as is currently the case with all health information. New South Wales law will also be able to adopt the strict penalties applying to the Commonwealth offence provisions.

Schedule 3 of the bill before the House is an integral part of this process. Schedule 3 amends sections 4 and 6 of the Health Records and Information Privacy Act to ensure that the Commonwealth healthcare identifiers are considered health information under New South Wales law.

The bill will also insert a new section 75A into the Health Records and Information Privacy Act to allow regulations to be made with respect to healthcare identifiers, including regulations relating to the use and disclosure of healthcare identifiers.

Section 75A also makes it clear that any use or disclosure of a healthcare identifier in contravention of the regulations is an offence with a maximum penalty of 120 penalty units and/or 2 years imprisonment for individuals and 600 penalty units for corporations. This is consistent with the Commonwealth Healthcare Identifier Act.

To ensure that the Ministerial Council established under the Commonwealth Healthcare Identifier Act is satisfied that the regulations provide appropriate directives regarding the use and disclosure of healthcare identifiers, NSW Health will consult with the Commonwealth and other States and Territories before making regulations under the new section 75A of the Health Records and Information Privacy Act.

This will in turn ensure that, once appropriate regulations are in place, a declaration can be sought from the Commonwealth Minister under section 37 of the Commonwealth Healthcare Identifier Act.

I turn now to Schedules 1 and 2 of the bill which make a number of amendments to the Mental Health Act 2007 and the Mental Health (Forensic Provisions) Act 1990. These amendments are intended to clarify matters relating to the operation of both Acts.

The bill makes a number of amendments to the power of the Mental Health Review Tribunal in reviewing patients under the Mental Health Act. The bill amends section 37 to make it clear that the tribunal is empowered to review an involuntary patient at any time it sees fit, in addition to the mandatory reviews conducted at least every 3 months in the first 12 months of detention and at least every 6 months thereafter.

Consequential amendments have also been made to section 37 to ensure that it is the duty of the authorised medical officer to bring a patient before the tribunal at any review.

The bill also amends section 40 of the Mental Health Act to give the tribunal the power to reclassify an involuntary patient as a voluntary patient when conducting a review of the patient. Currently, this power only resides with the authorised medical officer and the amendment will ensure that the tribunal also has this power.

The review by the tribunal of involuntary patients is an important safeguard of patients' rights and the amendments in the bill will assist in ensuring the tribunal is properly empowered to conduct reviews of patients where appropriate.

The bill also makes a number of minor changes to the provisions in the Mental Health Act relating to community treatment orders (CTOs).

Under the Mental Health Act, the tribunal may make a CTO which authorises the compulsory treatment of a person in the community. A number of requirements must be met before a CTO can be made.

These requirements include, at section 53 (2) (c), if the affected person has previously been diagnosed with a mental illness, that the affected person has a previous history of refusing to accept appropriate treatment.

Under section 53 (5) of the Act, a person who has a "*previous history of refusing to accept appropriate treatment*" must not only have refused treatment in the past, but the refusal must have led to a relapse into an active phase of a mental illness requiring involuntary admission into a mental health facility.

The Mental Health Review Tribunal has emphasised that this is a high threshold that will often not be met where there has been continual monitoring and supervision of a person with a mental illness. For example, this threshold may not be met for a person who has recently been on a CTO or a person who has previously been a forensic patient.

Currently, section 53 (3A) provides that this threshold does not have to be met where the person has, within the last 12 months, been the subject of a CTO. In such circumstances, the Mental Health Act allows a CTO to be made if the tribunal is satisfied that the person is likely to continue in or to relapse into an active phase of mental illness if the order is not granted.

The bill proposes an amendment that would recognise that persons who were previously forensic patients are a further class of persons for whom this threshold requirement at section 53 (2) (c) should not apply.

The bill will amend section 53 (3A) to ensure that the tribunal, when considering an application for a CTO, has to be satisfied that a former forensic patient is likely to continue in or to relapse into an active phase of mental illness if the order is not granted. This will replace the existing requirement of having to consider whether the former forensic patient has a history of refusing to accept appropriate treatment.

The bill also clarifies the CTO breach provisions in the Mental Health Act. Section 58 will be amended to ensure that, after the director of community treatment has formed the view that a breach has occurred and a breach notice is required, the director can send a copy of the breach notice to the affected person's residential address only if it is not reasonably practicable to hand the notice directly to the affected person.

The forensic CTO provisions in the Mental Health (Forensic Provisions) Act 1990 are also amended in the bill in order to clarify that the tribunal can make a forensic CTO in respect of all forensic patients, rather than only those in a correctional facility. This will ensure that a forensic CTO may be made for forensic patients who are in, for example, a hospital or an aged care facility.

The bill also includes minor amendments to Division 2 of Part 3 of the Mental Health Act, which relates to the regulation of the administration of electro-convulsive therapy (ECT) to involuntary patients.

This amendment is proposed to correct a discrepancy in the current requirements whereby two medical practitioners must certify that ECT for an involuntary patient is "*necessary or desirable for the safety or welfare of the patient*", but the tribunal, when making a determination, must be satisfied that the ECT is "*necessary and desirable*",

Whilst the difference is minor it does nonetheless import different tests in relation to the administration of ECT. Given that the equivalent provision of section 96 (3) in the previous Mental Health Act 1990 contained the words "*necessary or desirable*", the replacement of the word "or" with "and" in the current Act appears to be a typographical error. Accordingly, the bill amends section 96 to replace the words "*necessary and desirable*" with "*necessary or desirable*".

The final amendments to the Mental Health Act relate to section 150 which deals with the composition of the tribunal. When exercising its functions under the Mental Health Act, the tribunal must consist of at least 1 member who is to be the President, a Deputy President or a member who is an Australian legal practitioner. In addition, section 151 (3) allows the President of the tribunal to nominate:

- a) a member who is a psychiatrist, and
- b) a member who (not being an Australian lawyer) has other suitable qualifications or experience.

The requirement that the member not be an Australian lawyer is intended to ensure that the tribunal allows representatives from the medical and community sector to sit as members.

The general intent of this requirement is supported. However, the requirement that the member who has other suitable qualifications or experience not be an Australian lawyer has the effect of precluding members, who are appointed on the basis of their other suitable qualifications or experience, who are also Australian lawyers.

This can happen with persons who qualified as Australian lawyers early in their career and then later obtained other qualifications, such as in psychology. If such a person is appointed on the basis of their qualifications in psychology, section 151 (3) (b) prevents the person from sitting as a member who has other suitable experience or qualifications.

To rectify this situation, the bill amends section 151 (3) (b) to ensure that members appointed as having other suitable qualifications or experience are not prevented from sitting on a tribunal hearing merely because the member also happens to be an Australian lawyer.

I commend this bill to the House.

The Hon. JENNIFER GARDINER [8.15 p.m.]: The Health Legislation Further Amendment Bill 2010 is a housekeeping bill that comes before the House to clarify a number of provisions in several health statutes. The bill is in three parts. The first two parts relate to the Mental Health Act 2007 and Mental Health (Forensic Provisions) Act 1990, and the third part amends the Health Records and Information Privacy Act 2002. In relation to the Mental Health Act 2007 the bill enables the Mental Health Tribunal to review the case of an involuntary patient at any time; requires an authorised medical officer to cause an involuntary patient to be brought before the tribunal at such times as may be required by the tribunal for the purposes of any such review; enables the tribunal to classify an involuntary patient as a voluntary patient when it is conducting a review of the patient; and provides that the tribunal, when determining whether to make a community treatment order in respect of a forensic patient, is not required to consider if the person has a previous history of refusing to accept appropriate treatment. Instead, the bill provides that the tribunal must be satisfied that the person is likely to continue in, or to relapse into, an active phase of mental illness if the order is not granted.

The bill clarifies the steps that must be taken when notifying a person that he or she is in breach of a community treatment order; provides for notification to be given by post in circumstances when it is not reasonably practicable to hand the notice directly to the person; corrects what is described by the Government as a typographical error in the formulation of a test to be applied by the tribunal in making an electroconvulsive therapy determination so that it is consistent with the formulation of the test in related provisions of the Mental Health Act to bring the wording into line with the Mental Health Act 1990; and makes changes to the composition of the Mental Health Tribunal.

In relation to the Mental Health (Forensic Provisions) Act 1990, the bill provides that the tribunal may make community treatment orders in relation to all forensic patients rather than certain classes of forensic patients, as is now the case. In relation to the Health Records and Information Privacy Act 2002, the bill activates the New South Wales part of the health care identifiers within the meaning of the Commonwealth's Healthcare Identifiers Act 2010 in preparing the nation for the rollout of electronic health records. In effect, the New South Wales Privacy Act will be the legislation under which the privacy provisions of the health records legislation will operate. There is scope for that under the Commonwealth legislation. The bill seeks to ensure that New South Wales privacy legislation is the relevant legislation that will apply. I think that is pretty straightforward.

With respect to the two mental health statutes to be amended, it is fair to say that the amendments are reasonably minor in nature. They seek to clarify a number of issues relating to the operation of both Acts. The capacity of the Mental Health Tribunal to review an involuntary patient at any time is in addition to the current requirement that the tribunal must review a patient at least every three months in the first 12 months of detention and every six months thereafter. It also provides that the authorised medical officer is to bring the patient before the tribunal at any review. The amendment seeks to codify what is currently the normal practice.

In relation to community treatment orders, the bill amends the Mental Health Act to clarify that a written breach notice can be served by post—concern has been expressed about this—to the last residential address of the affected person if it is not reasonably practicable to serve the notice personally and to require the tribunal, when considering an application for a community treatment order for a person who has been a forensic patient within the last 12 months to be satisfied that the person is likely to continue in or to relapse into an active phase of mental illness if the order is not granted. The bill also amends the Mental Health (Forensic Provisions) Act to clarify that the Mental Health Review Tribunal can make a forensic community treatment order in respect of all forensic patients, not just some of them.

With respect to the amendments that deal with electroconvulsive therapy [ECT] administered to involuntary patients, the Act provides that ECT can be administered to an involuntary patient only if the tribunal makes a determination allowing ECT to be administered. Any application for an ECT determination must include a certificate by at least two medical practitioners that the practitioners are, among other matters, of the opinion that ECT is necessary and desirable for the safety or welfare of the patient. However, in making a determination the tribunal must be satisfied, among other things, that the administration of ECT is necessary and desirable for the safety or welfare of the patient. So there is a language inconsistency, and the bill aims to eliminate the current necessity that there be different tests in relation to the administration of ECT.

As I said, the bill changes some of the requirements regarding the composition of the Mental Health Review Tribunal. An issue has arisen with respect to seeking to ensure in the existing legislation that the Mental Health Review Tribunal is not overwhelmed, as it were, by lawyers. But in seeking to ensure that that is the case, the way the Act is currently worded means that a person who might be a lawyer but who also has gained qualifications later in life as a psychologist or a psychiatrist might be negated from being eligible to be on the tribunal. That is clearly an absurdity, and the bill aims to address that matter.

The Opposition does not oppose the bill, which, as I said, amends three statutes, but we express concern that in a number of respects there has not been adequate stakeholder consultation. In contrast, the New South Wales Liberals and Nationals consulted extensively on the bill. We obviously have some proposals to improve mental health care in a future Parliament and government—if the people of New South Wales desire to chuck out the existing lot, who have, sadly, not given mental health care the priority it should have been given. The Coalition aims to address that matter in the life of the next Parliament. With those comments I advise the House that the Opposition does not oppose the bill.

The Hon. KAYEE GRIFFIN [8.25 p.m.]: I am pleased to speak in support of the Health Legislation Further Amendment Bill 2010. The bill makes a number of changes to the Health Records and Information Privacy Act 2002, the Mental Health Act 2007, and the Mental Health (Forensic Provisions) Act 1990. The bulk of the amendments in the bill relate to the Mental Health Act and the Mental Health (Forensic Provisions) Act. These amendments are generally minor in nature and were requested by the President of the Mental Health Review Tribunal to clarify a range of matters relating to the operation of both Acts.

For example, the bill makes some changes to the powers of the Mental Health Review Tribunal, which plays an important role in the field of mental health by, among other things, conducting independent reviews into the care and treatment of involuntary patients. Currently section 37 of the Mental Health Act requires the tribunal to conduct a review of an involuntary patient at least every three months in the first 12 months of detention and at least every six months thereafter. This requirement can be seen as permitting the tribunal to review an involuntary patient at any time when the tribunal considers that a review is necessary. However, to put the matter beyond doubt, the bill amends section 37 to expressly allow the tribunal to conduct a review of an involuntary patient at any time the tribunal sees fit.

The bill does not affect the mandatory requirement on the tribunal to review an involuntary patient at least every three months in the first 12 months of detention and at least every six months thereafter. Consequential amendments also have been made to section 37 to ensure that it is the duty of the authorised medical officer to bring an involuntary patient before the tribunal at any review. This amendment will codify current practice. The proposed amendments will assist in protecting the rights of involuntary patients by ensuring that whenever the tribunal considers it necessary to conduct a review of an involuntary patient, the tribunal will have the express power to do so.

A further amendment relates to the power of the tribunal to reclassify an involuntary patient as a voluntary patient. The focus of the Mental Health Act is to ensure that a patient in need of mental health treatment and care is given the least restrictive form of care and treatment that is appropriate to the patient. Involuntary care and treatment should only be provided as a last resort. In recognition of this, section 40 of the Mental Health Act allows the authorised medical officer of a mental health facility to reclassify an involuntary patient as a voluntary patient at any time if the authorised medical officer is of the opinion that the patient is likely to benefit from care or treatment as a voluntary patient, and the patient agrees to be so classified or, if the patient is a person under guardianship, the patient is admitted in accordance with the procedures under this Act applicable to admitting such persons as voluntary patients.

Despite these provisions of the Mental Health Act, there is currently no ability of the Mental Health Review Tribunal to reclassify an involuntary patient as a voluntary patient when the tribunal is reviewing a

patient. In order to rectify this situation, the bill amends section 40 to give the tribunal the same power to reclassify an involuntary patient as a voluntary patient when conducting a review of the patient. This amendment will ensure that the tribunal can make orders authorising the reclassification of an involuntary patient as a voluntary patient when the reclassification represents the least restrictive form of care and treatment appropriate to the patient.

The bill also makes a number of changes in relation to community treatment orders, or CTOs. The Mental Health Act enables the Mental Health Review Tribunal to make a CTO, which is an order authorising the compulsory treatment of a person in the community. Such orders are an effective way of ensuring that mental health patients receive the treatment they need whilst being able to lead relatively normal lives supported in the community by their families and friends. Under the Mental Health Act a number of requirements must be met before a community treatment order can be made, including the provisions of section 53 (2) (c), if the affected person has previously been diagnosed with a mental illness, that the affected person has a previous history of refusing to accept appropriate treatment.

In order for a person to have a previous history of refusing to accept appropriate treatment the person must have refused treatment in the past, and the refusal must also have led to a relapse into an active phase of a mental illness requiring involuntary admission into a mental health facility. This is a high threshold that often will not be met where there has been a continual monitoring and supervision of a person with a mental illness, such as a person who has recently been on a community treatment order. To overcome this limitation and ensure that patients who have recently been on a community treatment order can receive continuity of care, the requirement in section 53 (2) (c) does not apply to persons who have been the subject of a community treatment order within the past 12 months. Instead, the tribunal must be satisfied that the person is likely to continue in or to relapse into an active phase of mental illness if the order is not granted before a community treatment order can be made.

Forensic patients represent another group in the community who may have been subject to continual monitoring and supervision such that the test of a previous history of refusing to accept appropriate treatment is unlikely to be met due to their particular circumstances. While former forensic patients may not meet this test, there may be circumstances in which it would be appropriate for a former forensic patient to be subject to a community treatment order. In order to ensure that a community treatment order can be made in respect of a former forensic patient, where appropriate, an amendment to section 53 (3A) will ensure that the test of having a previous history of refusing to accept appropriate treatment does not apply to persons who have been forensic patients within the past 12 months. Instead, before making a community treatment order, the tribunal will have to be satisfied that the person is likely to continue in or to relapse into an active phase of mental illness if the order is not granted. This amendment will assist in ensuring that former forensic patients can obtain necessary treatment for their mental illness where appropriate.

A further amendment to the Mental Health Act relates to the procedures to be followed when an affected person breaches a community treatment order. Under section 58 of the Act, if an affected person breaches a community treatment order and the director of community treatment is of the opinion that there is a significant risk of deterioration in the condition of the affected person, the director must follow a number of steps, including issuing the person with a breach notice requiring the person to accompany a member of NSW Health to a mental health facility for treatment, and warning that police assistance may be sought to ensure compliance with the order. Currently, a breach notice can be personally delivered to the affected person or sent by post to the last residential address of the person. While postal service may be appropriate in certain circumstances, as a matter of best practice personal service should be attempted before postal service is relied on. In order to make this clear, the bill proposes to amend section 58 to provide that there should first be an attempt to hand a breach notice directly to the relevant person and that only if it is not reasonably practicable to hand the notice directly to the person should postal service be relied on.

Finally, the bill also amends the Mental Health (Forensic Provisions) Act 1990 in relation to forensic community treatment orders. Currently, the Act allows the Mental Health Review Tribunal to make forensic community treatment orders in respect of inmates in correctional centres, correctional patients and certain forensic patients. The current wording of section 67 (1) (a) does not capture certain forensic patients, notably forensic patients detained in a correctional centre or other place. In order to ensure that the tribunal can make a forensic community treatment order in respect of all forensic patients who require a community treatment order, the bill proposes to amend section 67 (1) (a) to refer simply to "forensic patients" without any further qualifications. The amendments in this bill will clarify a number of aspects of the New South Wales

Government's mental health legislation to ensure that this legislation can continue to operate effectively, particularly in relation to the important role played by the Mental Health Review Tribunal. I commend the bill to the House.

Reverend the Hon. FRED NILE [8.33 p.m.]: The Christian Democratic Party supports the Health Legislation Further Amendment Bill 2010. This bill amends the Mental Health Act 2007, the Mental Health (Forensic Provisions) Act 1990 and the Health Records and the Information Privacy Act 2002. The changes incorporated in this bill are very important. The amendments to the Health Records and Information Privacy Act are set out in schedule 3 to the bill and are designed to respond to the establishment of healthcare identifiers by the Commonwealth Healthcare Identifier Act 2010. The Healthcare Identifier Act, which commenced on 1 July 2010, establishes the healthcare identifier service and authorises the assignment of healthcare identifiers to individuals and healthcare providers. The Act will assist in improving the management and communication of health information and is a key component of the development of electronic health records. Privacy is a key concern in the Commonwealth Healthcare Identifier Act, which sets out limits on authorised uses and disclosures of healthcare identifiers. It also creates offences and penalties for the misuse of healthcare identifiers.

When the plan to introduce electronic health records was announced the community was concerned as to whether this would lead to breaches of privacy protection. This bill seeks to ensure those protections are maintained. As part of that arrangement the New South Wales Government will seek a declaration from the Commonwealth Minister that the Commonwealth Healthcare Identifier Act does not apply to the New South Wales public sector and that the New South Wales law will apply instead. If such a declaration is made, the use and disclosure of healthcare identifiers by the New South Wales public sector will be regulated by one law, the New South Wales Health Records and Information Privacy Act, and the New South Wales Privacy Commissioner will have the power to investigate complaints about the misuse of healthcare identifiers by the New South Wales public sector, as is currently the case with all health information. New South Wales law will be able to adopt the strict penalties applying to the Commonwealth offence provisions.

The Commonwealth and State governments will undertake further consultation, and regulations will be prepared in due course. This will ensure that, once appropriate regulations are in place, a declaration can be sought from the Commonwealth Minister under section 37 of the Commonwealth Healthcare Identifier Act to enable those regulations to proceed. The bill also makes a number of amendments to the power of the Mental Health Review Tribunal in reviewing patients under the Mental Health Act. The bill amends section 37 to make it clear that the tribunal is empowered to review an involuntary patient at any time it sees fit, in addition to the mandatory reviews conducted at least every three months in the first 12 months of detention and at least every six months thereafter. That appears to be a positive amendment. It is very important that people who are involuntary patients still have their rights recognised and that the tribunal ensures those rights are protected.

The bill also amends section 40 of the Mental Health Act to give the tribunal the power to reclassify an involuntary patient as a voluntary patient when conducting a review of the patient. The bill also makes a number of minor changes to the provisions in the Mental Health Act relating to community treatment orders. Under the Mental Health Act, the tribunal may make a community treatment order that authorises the compulsory treatment of a person in the community. Any provision for compulsory treatment must include care and respect for the rights of that person. In my time in this place I have received complaints, particularly in recent times, from people receiving compulsory treatment who strongly object to the way in which they are being treated during this process. In other words, there is a lack of respect for the dignity of the individual. It is very important for a person's dignity to be respected by all staff involved in any compulsory treatment. Even an individual suffering from mental health problems should be treated with respect and their rights recognised in this very difficult situation.

The bill also includes minor amendments to division 2 of part 3 of the Mental Health Act that relate to the regulation of the administration of electroconvulsive therapy to involuntary patients. Since learning many years ago how this procedure was performed on patients, I have had a natural revulsion to its use. Although it is claimed to be successful in some cases, I believe the procedure should be carefully regulated and used only as a last resort. Certainly when it is applied to involuntary patients I still have a natural revulsion to its use. I accept that the treatment is recognised by law but it must be carried out with great care and respect for the individual patient. I support the bill.

Dr JOHN KAYE [8.40 p.m.]: I speak on behalf of the Greens on the Health Legislation Further Amendment Bill 2010. I echo the remarks made by the previous speaker about the importance of respecting the

rights, dignity and essential humanity of people who are suffering from mental illness. The Greens welcome the modern understanding of mental illness as a state of ill health. In most cases mental illness can be cured and in almost all cases the symptoms can be alleviated, just as other illnesses are dealt with. This legislation contains two major sets of provisions. The first set of provisions relates to the Health Records and Information Privacy Act 2002. These provisions facilitate the integration of healthcare identifiers into the New South Wales healthcare system by identifying healthcare identifiers within the existing privacy provisions of the Act, thereby allowing New South Wales to use its own legislation to protect privacy around healthcare identifiers rather than rely on Commonwealth legislation. In many areas our legislation will be stronger. The Greens raise no objection to these provisions.

The other set of provisions relates to technical matters in the Mental Health Act. In particular, the amendments permit the Mental Health Review Tribunal to review cases of involuntary patients at any time and to classify an involuntary patient as a voluntary patient when conducting a review of the patient. Further, the tribunal when making a determination for a community treatment order is not required to consider whether a person has had a previous history of refusing to accept appropriate treatment. The amendments allow persons who have been found to be in breach of a community treatment order to be notified by post in circumstances where it is not reasonably practicable to hand the notice directly to the person. They also include a technical amendment in relation to electroconvulsive therapy by amending the wording in the legislation from "necessary and desirable" to "necessary or desirable". I understand that this amendment fixes a typographical error—one which I have made on many occasions.

Although the Greens raise no objections to the provisions within the bill, we will move two amendments in Committee. The first amendment relates to mental health inquiries that are now conducted by the Mental Health Review Tribunal. This issue has been reported in the media. I acknowledge the work of a number of psychiatrists, the Public Interest Advocacy Centre and a number of lawyers who have agitated to fix what is clearly an untenable situation. As members would be aware, in 2008 the passage of the Courts and Crimes Legislation Further Amendment Bill provided that reviews undertaken by magistrates of involuntary patients, known as mental health inquiries, were to be replaced by reviews by the Mental Health Review Tribunal. This amendment made no other changes to the legislation. Apart from allowing for audiovisual links for hearings, which is a matter to be discussed another day, the legislation purely substituted a system of reviews by magistrates that had been in place since 1958, with reviews by the Mental Health Review Tribunal. I emphasise that no other legislative changes were made to the time frame for mental health inquiries or to the wording of the Act.

Since 1958 the Act has referred to mental health inquiries being conducted as soon as practicable after a patient has been admitted to a mental health institution or hospital. Since 1958 the words "as soon as practicable" had been understood uniformly by magistrates to mean within seven days. The meaning was never questioned. The legislation was amended on a number of occasions, including in 2008, and on all occasions it was clear that "as soon as practicable" meant about one week. In June this year the Mental Health Review Tribunal unilaterally decided that "as soon as practicable" meant within four weeks. Previously patients were visited by an external reviewer, a judicial or semi-judicial officer—that is, a magistrate or an officer of the Mental Health Review Tribunal—within one week. Now patients wait four weeks. This situation has adverse implications for patients' human rights and therapy and for the psychiatrists administering the therapy. No-one wins from this unilateral change made by the Mental Health Review Tribunal. I will move amendments in Committee on behalf of the Greens to revert to what we understand to be the intention of Parliament, that is, within seven or eight days in almost all cases and within 10 days when that is not possible.

I also will move an amendment relating to electroconvulsive therapy. Reverend the Hon. Fred Nile made remarks about electroconvulsive therapy [ECT]. Our amendment is not hostile to electroconvulsive therapy. It is not designed in any way to impinge on the therapeutic use of electroconvulsive therapy. It is designed to provide a review of the register of electroconvulsive therapy applications to secure the knowledge that electroconvulsive therapy applications are within the guidelines specified by the Department of Health. I will talk more about this issue in Committee. The Greens do not oppose the legislation as it is drafted. However, we believe it is deficient in these two key mental health areas, which we will address in Committee.

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [8.48 p.m.], in reply: I thank all honourable members for their contributions to the debate. The Government will address the issues raised by Dr John Kaye in Committee. I commend the bill to the House.

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

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 and 2 agreed to.

Dr JOHN KAYE [8.49 p.m.]: I move Greens amendment No. 1:

No. 1 Page 3, schedule 1. Insert after line 2:

[1] Section 27 Steps for medical examination requirements for ongoing detention in mental health facility

Insert "(but not later than 8 days or, in exceptional circumstances, 10 days)" after "as soon as practicable" in section 27 (d).

This amendment is designed specifically to implement what is understood to have been the will of Parliament since 1958. When the 1958 legislation was passed it was very clear that for good human rights and therapeutic reasons Parliament's intention was that a patient who was involuntarily detained for mental health reasons would have access to an independent umpire—until 2008 that umpire was understood to be a magistrate—who would overview his or her case. The umpire would come in and make the determination as to whether the detention of the patient was justified. Let us be clear: We are talking about taking away somebody's liberty. In the case of mental health patients it is overwhelmingly true that it is in their best interests and in the best interests of society that that liberty be taken away. But it is a fundamental right that people can exercise their liberty and when we suspend that right we need to do so with good cause and with good process. It is simply appallingly bad process to hold somebody potentially against his or her will for up to four weeks without access to an independent judicial process via an independent judicial officer.

The amending Act in 2008 that changed the independent reviewer from a magistrate to the Mental Health Review Tribunal made no amendment to the clause that referred to the visit as being "as soon as practicable". It was extremely clear that nothing else changed. When a patient is admitted and is to be detained involuntarily in a hospital he or she is scheduled under schedule 1 and then seen by a doctor upon admission and is given his or her first form 1. Then within 24 hours, "as soon as practicable"—interpreted to be the next working day—a second doctor, usually a qualified psychiatrist, will complete the second form 1 and the patient is then scheduled. Under the current situation since the Mental Health Review Tribunal unilaterally changed the meaning of the term "as soon as practicable" to a period of up to four weeks from the date of admission, the patient is seen by nobody other than those treating him or her. The patient has no access to an outside review of his or her detention.

The problem that confronts doctors and their patients is that without the outside review the detention is purely a relationship between the doctor and the patient. We are informed by a number of psychiatrists that that situation interferes with the patient getting well again because instead of the doctor and the patient concentrating on addressing the patient's ill health, another factor is created—that of animosity and hostility because of the detention. When a patient had access to a magistrate within the first seven days of his or her detention that matter was resolved; it became an issue for the independent umpire. Once the patient has seen the independent umpire and the independent umpire has decided that the patient is to stay in detention, it is then not a matter between the doctor and the patient. The relationship is freed up to focus on therapy.

The second problem with the current situation is that we are detaining people for up to four weeks without access to an independent review, without access to an independent process and without access to a judicial officer. Reverend the Hon. Fred Nile spoke quite passionately about the rights of people who are mentally ill. They are entitled to the same rights as everyone else, and those rights have to be respected. We would not dream of detaining somebody, even if we had an assumption that that person had committed a criminal offence—and most people who are detained for mental health reasons have not committed a criminal offence—for four weeks without access to a magistrate yet we see fit to do so for a patient who has a mental health issue.

The third problem with this current situation is that we have taken away from doctors the security of being able to refer their treatment back to an outside independent individual. Without access to the tribunal, doctors make decisions—always, one presumes, in the best interests of their patients—according to their

understanding of what the best interests are. They have no exterior body on which to reference their decision when that decision involves detention and, in some cases, the delivery of drug therapy, which may have dramatic impacts on the patient—hopefully, one of those dramatic impacts is that of making the patient well again. When that happens the doctor does not have the security of access to an independent body to allow the doctor to continue with treatment because the Mental Health Review Tribunal has decided unilaterally that "as soon as practicable" means within about a month.

The drastic changes also take away from the patient the security of being able to see somebody other than a doctor. It takes away from the patient the capacity to be visited by an outside person to give them some security that what is happening is in their best interests. As I said before, when that outside view is taken away there is a risk of adversarial relationship being created between doctor and patient, and that is not in the best interests of improving the health of the patient.

Some of the arguments advanced by the Mental Health Review Tribunal to support this unilateral change simply do not stand up. One such argument that has been often repeated is that within the first week an increasing number of mental health inquiries were being adjourned. I understand that about 58 per cent of mental health inquiries were being adjourned within the first week. The argument was that this was wasteful and that we should wait until more information is available so that we do not have to adjourn the case. Let us be clear: An adjournment is a judicial decision. It is a decision by the tribunal to either continue the detention or terminate the detention. It is a conscious decision made by the Mental Health Review Tribunal or, prior to that, the magistrate, that it need not intervene at that stage or that it cannot intervene at that stage. However, it is still an intervention; it is still an opportunity for the tribunal to see what is going on.

In a situation in which things were going badly astray, in which someone was being kept against his or her best interests, the tribunal would not decide to adjourn the case. A decision to adjourn a case means that on the evidence presented intervention at that stage is either not appropriate or premature. But if we deny a patient the right to be seen by the tribunal within the first week, we are taking away the capacity for that intervention to be made. The adjournment argument simply does not stack up.

Another argument I have heard presented is that an adjournment is traumatic for the patient. The anecdotal evidence that has been presented to us has been that, on the contrary, a visit from the Mental Health Review Tribunal—and previous to that a magistrate—is in the best interests of the patient. Indeed, the patient looks forward to the visit; the patient sees this as someone looking at their case and his or her state of mind is secured rather than disturbed. The other argument that has not been put forward is that this is all about cost. That is the elephant in the room. It has not been suggested that having the Mental Health Review Tribunal visit each patient within the first week of his or her detention will be too expensive. That is nonsense. I understand that in the last year about 60 patients were released during the first week of detention. If that is true, having patients seen early and released will reduce costs. It costs about \$500,000 a year to keep a patient in a hospital facility; that is, roughly \$1,000 a day. The early release of 60 patients a year will free up about \$60,000. Overall, the system gains if we get patients out of hospital earlier. However, that simple calculation does not address the fact that helping a patient to recover will massively reduce costs. The more quickly patients recover the more rapidly they will be released, and that will reduce the cost. Therefore, the cost argument does not stack up.

The argument that patients are too unwell to take part in a mental health review also does not make sense. No matter how unwell a patient may be, his or her rights remain valid. It is important that those rights are protected and that patients can access the mental health review process. If patients are too unwell to be seen by the tribunal, they can avail themselves of section 33 of the Act, which states:

... an authorised medical officer is not required: ...

- (b) to bring a person before the Tribunal for a mental health inquiry, while the person is suffering from a condition or illness other than a mental illness or other mental condition and is not, in the officer's opinion, fit to be the subject of the proposed action due to the seriousness of the person's condition or illness.

That is, if somebody is seriously ill, they are not required to be brought before the tribunal if because of that illness they are not well enough. This amendment simply enacts that which has been the will of Parliament since 1958. It restores to patients their basic human rights and to the patient-psychiatrist relationship the security of having an outside umpire. It also restores to the Mental Health Review Tribunal an instruction from Parliament that human rights must be respected and that the tribunal should visit within the first week of detention. I commend the amendment to the Committee.

Reverend the Hon. FRED NILE [9.03 p.m.]: The Christian Democratic Party supports this amendment. A senior psychiatrist from Westmead Hospital provided a briefing on the bill and particularly on this issue. As Dr John Kaye has pointed out previously, in the past patients have been assessed by a magistrate—it will now be a lawyer from the tribunal—during the first week in which they have been detained in a facility. Apparently that now happens nearly three weeks later. That waiting creates a great deal of tension in patients. More importantly, it creates tension between patients and the medical staff because they believe the staff are treating them unfairly. If a third party conducts a review, that is more likely to encourage cooperation with the treating staff. That is vital if the patient's condition is to improve, particularly when it involves an involuntary patient.

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [9.04 p.m.]: The Government opposes this amendment, which seeks to ensure that all persons who are detained in a mental health facility are in general reviewed by the Mental Health Review Tribunal within eight days of admission, or in exceptional circumstances within 10 days of admission. On the surface this seems like an appropriate amendment and I have no doubt that Dr John Kaye has moved it with the best of intentions. All members would of course support any amendment to the Mental Health Act that ensured that those who are detained in mental health facilities for treatment are reviewed and released at the earliest possible opportunity. However, I am advised that this amendment would not have the laudable effect of improving the review process and of ensuring that people are not inappropriately detained in mental health facilities. I am advised that the amendment would in fact be likely to have exactly the opposite effect.

Members are aware that people may be detained in mental health facilities only if they are mentally ill or mentally disordered and detention is required to protect that person or another person from serious physical harm. Once a person is no longer mentally ill or mentally disordered, he or she must be released. Accordingly, patients can be discharged from a mental health facility at any time. In fact, many patients are discharged before a member of the tribunal sees them. Members are also aware that patients have the right to request discharge at any time and can appeal immediately to the tribunal if their request is refused or not considered within a reasonable time. Patients readily avail themselves of these appeal rights with the number of such appeals almost tripling over the past 12 months—from 72 for July to October 2009 to 200 for July to October 2010.

I am also advised that under the previous mental health hearings system involving magistrates the initial hearing was by and large held within seven to 10 days of the patient's admission. However, in excess of 50 per cent of matters were adjourned to a later date because the patient was too unwell to be able to participate or there had been insufficient time for the patient to be fully assessed and an appropriate treatment plan developed. That is in stark contrast to the current situation in which the tribunal sees patients as soon as practicable with only 6 per cent of inquiries being adjourned. The current system therefore imposes fewer burdens on patients, treating teams and consultant psychiatrists. Furthermore, this approach respects patients' dignity and their medical condition by not routinely subjecting them to an inquiry in which they are too unwell to participate. The most likely outcome of subjecting patients to mental health inquiries at this early stage is that significantly more will be made involuntary patients because the tribunal will be seeing them at a time when their illness is in its most acute phase. That is likely to result in more people being detained for longer periods. It is important to note that the tribunal does not have a capacity to adjourn its hearings to avoid making an involuntary patient determination.

Dr John Kaye referred to costs. I am advised that the increased administrative burden that the proposed amendment would have on the tribunal and mental health facilities is likely to have a substantial financial impact that will divert resources from clinical treatment. The Mental Health Review Tribunal has estimated that under the current arrangements it will conduct 4,500 inquiries this financial year. The tribunal estimates that the proposed amendment would double the number of inquiries to 9,000 and cost an additional \$470,000 in operating costs. No assessment has been made of capital costs associated with additional hearing rooms or video conferencing facilities, but there is likely to be an impact. Furthermore, the burden on treating practitioners in preparing for and attending double the number of inquiries will have a financial impact on mental health services and will substantially reduce the time that they have available to provide treatment to their patients. For those reasons, and whilst acknowledging that the amendment has been proposed with the best of intentions, the Government does not support it.

The Hon. JENNIFER GARDINER [9.08 p.m.]: The processes for dealing with people who are detained under the Mental Health Act are very important. The Mental Health Review Tribunal has been undertaking inquiries under the current provisions only since June this year and the Opposition has not been

advised of any significant issues that have arisen. There is no reason to believe that we can make an evidence-based judgement about this amendment because this system has been in operation for only six months in its current form.

The Opposition would be interested in looking at the results of a proper evidence-based review after a period of, say, one year so that we can make a proper assessment of how it is working. We make the point that once a person has been scheduled they can appeal that determination under section 44 of the Act at any time. There is a case for saying that, if you look at the statistics on mental health inquiry timetables and the rate at which detainees are assessed or inquired into, New South Wales is probably processing them faster than any other State. I understand that in Victoria the current processing time is eight weeks. The Australian Capital Territory is the fastest of all the jurisdictions but it does not do person-to-person inquiries, it does paper-based inquiries.

The Mental Health Review Tribunal has informed the Opposition and my colleague the member for Barwon, Mr Kevin Humphries, that in the period July to October 2010 two-thirds of detainees had inquiries commenced within 21 days or less. As I think the Parliamentary Secretary has properly mentioned, changing the process at this stage without evidence for doing so could be deleterious to the position of those detained. So the Opposition takes an open mind to looking at the statistics in another six months or so when they are properly compiled, but at this point it does not see its way clear to support the amendment.

Dr JOHN KAYE [9.11 p.m.]: I thank the Hon. Michael Veitch and the Hon. Jennifer Gardiner for their comments on Greens amendment No. 1, and I thank the Parliamentary Secretary for his acknowledgement that we have acted in goodwill. I appreciate that. However, I cannot accept the arguments of either the Opposition spokesperson or the Parliamentary Secretary. One of the arguments I find most difficult to get my head around is the concept that there is a lack of evidence to support returning to the situation that obtained from 1958 to June 2010 but it would seem that there is plenty of evidence that it is okay to continue what we are doing now. Surely the onus of proof should be on the Mental Health Review Tribunal and those who support the tribunal to show that the change from a seven-day cycle to a one-month cycle is in the best interests of the patient. No such evidence has been adduced.

A number of assertions have been made about the benefits of a four-week visiting cycle rather than a one-week review cycle but no statistical evidence has been produced. Surely what we should be saying is that the Greens amendment takes us back to where we were before we embarked on a huge experiment involving the tens of thousands of patients who are detained each year. We are conducting a huge experiment on those people. Surely we should step back from that experiment, consider where we were at before it commenced and ask what evidence we have that the status quo from 1958 was not in the patients' best interests? I was fascinated to hear the Parliamentary Secretary let the cat out of the bag on the issue of administrative burden. We now know there is an underlying cost issue. I understand it has been denied, but there is a cost issue. Did the Parliamentary Secretary refer to 9,000 patients and a figure of \$450,000?

The Hon. Michael Veitch: Based on your amendment going through?

Dr JOHN KAYE: Yes. What was the cost of that?

The Hon. Michael Veitch: About \$470,000, I think.

Dr JOHN KAYE: I understand that that does not count the additional room, space for rooms and other capital items. To deal with the last part first, it is understood that mental health inquiries take about half an hour. So in a day a reviewer can get through about a dozen cases. It is not like a court hearing; we are not talking about a huge amount of money or resources. When we consider the time, the investment and the benefits that can accrue from a change, surely there is a huge cost benefit. Let us look beyond that. If the Parliamentary Secretary is seriously suggesting that returning to the situation that obtained before June this year is too expensive, he is effectively saying that the reason for proceeding to the four-week cycle was to cut costs. So, Parliament is effectively turning its back on the fact that human rights and therapeutic benefits are being undermined because we want to cut costs. Half a million dollars a year is not a lot of money. In the context of the cost of the health system and the amounts that Parliament spends on other things, it is not a lot of money to secure human rights.

Another issue raised in debate was that a patient can always appeal under section 44. They can lodge an appeal and it will be great. There are two fundamental problems with lodging an appeal against detention. The

first is that it automatically sets up a relationship of conflict between the psychiatrist and the patient. Instead of the Mental Health Review Tribunal saying, "We will adjudicate here and whatever happens then is what the doctor and the patient work with" and there is no conflict, suddenly the patient has to say, "I am going to challenge my psychiatrist, challenge the treatment and challenge my detention and put myself in conflict by seeking a review under section 44". The first problem is that it inherently undermines the relationship between the patient and the psychiatrist.

The second problem is that many of the people affected are not in a position to seek a review. It is all very well to say that they can appeal those determinations. People who understand how these things operate, people who are of a mind to do it, may seek a review but others simply may not be of that mind. We are detaining people, taking away their liberty, and saying, "That's okay because you can appeal it." Many of these people simply will not be in a position to appeal the outcome. It was also suggested that more people will be detained for longer. I fail to understand the logic of saying that a review of treatment and of detention could result in a longer detention. What it will result in is more security around the decision regarding detention; it will not lengthen the period of detention in any substantial way.

Another argument involved the burden placed on treatment. The Parliamentary Secretary made that claim. Of all the psychiatrists I have spoken to, not one has referred to preparing for a visit from the Mental Health Review Tribunal or a magistrate as a burden. All of them see it as part of their function as a treating doctor and looking after the best interests of their patients. It is simply not appropriate to say that a review is viewed as a burden on treatment. It is perhaps true to say that some patients are too unwell to present to the inquiry and advocate for themselves when there is a settled understanding of what their treatment will be. But surely that of itself is evidence for the tribunals to take into account. If the tribunal says that it cannot make a determination now and will have to adjourn the matter at least it involves a visit from the tribunal that gives security to the detention and to the relationship. For those reasons, the Greens do not accept the arguments against our amendment, which I commend to the Committee.

Reverend the Hon. FRED NILE [9.19 p.m.]: The Parliamentary Secretary said that the medical tribunal would do the assessment within eight days.

The Hon. Michael Veitch: I didn't say that.

Reverend the Hon. FRED NILE: I thought you did. I thought you quoted a number of days within which the tribunal would do the assessment. I know the amendment mentions eight days.

The Hon. Michael Veitch: No.

Mr David Shoebridge: I think he said they would do it within 21 days.

Reverend the Hon. FRED NILE: The bill does not state a number of days.

The Hon. Michael Veitch: The amendment provides that.

Reverend the Hon. FRED NILE: Yes, the amendment does that. When does the Parliamentary Secretary believe the review will take place? How many days will pass before the review takes place if we do not accept this amendment? Will it be three weeks or four weeks?

Dr JOHN KAYE [9.20 p.m.]: Perhaps I can assist Reverend the Hon. Fred Nile. In February this year the President of the New South Wales Mental Health Review Tribunal, the Hon. Greg James, QC, wrote to the State's area directors of mental health advising that when the amendment came into effect, which was in June this year, mental health inquiries could be expected to take place "during the third or fourth week of a patient's detention". So the president of the tribunal is saying, "We will visit sometime in the third or fourth week". So the time frame is up to four weeks.

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [9.21 p.m.]: I will address the matters raised by Dr Kaye and then clarify the matter for Reverend the Hon. Fred Nile. The system that applied prior to the Mental Health Review Tribunal undertaking reviews resulted in more than 50 per cent of hearings being adjourned because patients were unable to participate. The tribunal advises that this has now been reduced to approximately 6 per cent. Those statistics show that the previous system was not effective, and that is the principal reason for supporting the current situation rather than winding the clock back. I emphasise also that, while the costs associated with the amendment are important and cannot be ignored, they are not the primary

reason, and if the amendment were likely to improve the patients' position the Government would support it. However, the negative consequences are such that the Government cannot ignore them, and hence the Government does not support the amendment. I advise Reverend the Hon. Fred Nile that the review will occur as soon as practicable, and this is determined by the tribunal.

Reverend the Hon. Fred Nile: I understand that. That is what the bill says. How many days?

Mr David Shoebridge: No guarantee.

The Hon. MICHAEL VEITCH: There is no guarantee.

Reverend the Hon. Fred Nile: It is open ended. It could be three weeks; it could be six months.

Reverend the Hon. Dr Gordon Moyes: You'll have to call in habeas corpus.

Dr JOHN KAYE [9.23 p.m.]: In response to the interjection by Reverend the Hon. Dr Gordon Moyes about calling a habeas corpus, in fact you cannot. Anyone in that situation has lost their right to habeas corpus. That is one of the reasons that, from a human rights perspective, it is so important to specify a time. I emphasise that the Parliamentary Secretary just acknowledged that the detention was open ended. What we are talking about now is even worse than what the president of the tribunal said, which was three or four weeks. Now we have on record the Government saying that its understanding of "as soon as practicable" is open ended, which means that people could be held indefinitely without access to the tribunal. I want to make one other comment on the Parliamentary Secretary's remarks about how the number of adjourned cases had risen to the level of 50 per cent and it is terrific that now the number has fallen to 6 per cent.

Mr David Shoebridge: Like an on-time train.

Dr JOHN KAYE: Mr Shoebridge makes the appropriate analogy—it is like an on-time train. The Parliamentary Secretary is effectively saying, "This is terrific; we are not going to visit so we don't have to adjourn." We are effectively denying 42 per cent of patients the right to be seen by a tribunal, which will say, "We can't make a determination now but we have seen you and we have enough evidence not to panic and say that we have to do something urgently". On those grounds I do not think the figures that the Parliamentary Secretary has presented make a case against our amendment.

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [9.25 p.m.]: The tribunal advises that more than 98 per cent of matters are dealt with within 28 days, and over two-thirds are dealt with within 21 days. I am further advised that under the previous arrangements the magistrate would determine that seven days was within a practicable time. Under the new arrangements it is 21 days because a number of people are unwell at the seven-day point. That is the change. I am advised that those were the legal arrangements prior to this arrangement being put in place in 2008.

Question—That Greens amendment No. 1 be agreed to—put.

The Committee divided.

Ayes, 8

Mr Borsak
Mr Brown
Dr Kaye

Reverend Dr Moyes
Reverend Nile
Mr Shoebridge

Tellers,
Mr Cohen
Ms Faehrmann

Noes, 23

Mr Ajaka
Mr Catanzariti
Mr Clarke
Mr Colless
Ms Cotsis
Ms Fazio
Ms Ficarra
Mr Foley

Miss Gardiner
Mr Gay
Mr Khan
Mr Lynn
Mr Mason-Cox
Mr Moselmane
Ms Parker
Ms Robertson

Ms Sharpe
Mr Veitch
Ms Voltz
Mr West
Ms Westwood
Tellers,
Mr Donnelly
Mr Harwin

Question resolved in the negative.**Greens amendment No. 1 negatived.**

Dr JOHN KAYE [9.32 p.m.]: Before moving the next Greens amendment, I acknowledge that this is the first time that all eight crossbench members have voted together. It shows that all those members, who have various political perspectives, can agree on a particular issue. I move Greens amendment No. 2:

No. 2 Page 4, schedule 1. Insert after line 3:

[7] **Section 97A**

Insert after section 97:

97A General review of ECT

- (1) The Minister is to review the use of electro convulsive therapy (*ECT*) in this State.
- (2) The review is to consider (but is not limited to) the following:
 - (a) the frequency of ECT use,
 - (b) the locations at which ECT is carried out,
 - (c) the bases for carrying out ECT,
 - (d) any Department of Health guidelines with respect to ECT and the operation and effect of those guidelines.
- (3) The review is to be undertaken as soon as possible after the period of 12 months from the commencement of this section.
- (4) The Minister must give not less than 12 months notice of the review by publishing notice of the review in a newspaper circulating generally in the State.
- (5) A report on the outcome of the review is to be tabled in each House of Parliament.

This is not by any measure an anti electroconvulsive therapy [ECT] amendment. The amendment seeks to establish a review of the use of electroconvulsive therapy in this State. It proposes that the review is to examine the register of ECT uses, which notes the frequency of ECT use, the location at which ECT is carried out, the bases for carrying out ECT, and any Department of Health guidelines with respect to ECT. It is acknowledged that ECT is used; indeed, in many cases it is a life-saving therapy. However, it also needs to be acknowledged that ECT has a history that is disconcerting, alarming, and in some cases quite frightening. The amendment is designed purely to establish a review so there can be some security that the use of ECT is in the best interests of the patient. I commend Greens amendment No. 2 to the Committee.

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [9.34 p.m.]: The Government does not support Greens amendment No. 2. The amendment proposes a statutory review of the use of electroconvulsive therapy [ECT] in New South Wales. I am advised that a comprehensive review of electroconvulsive therapy has already been undertaken by the Department of Health, and that the proposed additional statutory review would replicate efforts that have already been made as well as confuse other planned reviews. In 2008 the Department of Health established a working group of the Mental Health Clinical Advisory Council, comprising clinicians with ECT expertise, to review the current practice of ECT in New South Wales. The terms of reference for the group were to determine safe and appropriate standards for, and to improve, ECT practice by way of developing a statewide policy.

The consequent ECT Minimum Standards of Practice in New South Wales describe the safe and appropriate use of ECT in New South Wales. Application of the standards will assist in ensuring that people who will benefit from ECT receive evidence-based treatment delivered with professionalism and respect. The standards were launched by the Minister Assisting the Minister for Health (Mental Health) earlier this year following extensive consultation with a range of stakeholders, including non-government organisations. The standards are currently being printed and will shortly be made public and actively disseminated to relevant organisations.

Most importantly, the standards will be reviewed at regular intervals, as required under the NSW Health policy guidelines system. In addition, the entire Mental Health Act will be subject to a comprehensive

review commencing in June 2012, as required by section 201 of the Act. The statutory review process and the regular and ongoing review of Department of Health policy will provide a far more effective means to regularly review the use of ECT in New South Wales and to update accepted practice in light of developing clinical and scientific knowledge. For these reasons the Government does not support Greens amendment No. 2.

The Hon. JENNIFER GARDINER [9.36 p.m.]: The Opposition again notes that the provisions of the Mental Health Act under which electroconvulsive therapy [ECT] is administered are very important. However, we make the point that there has been a review into the processes relating to ECT administration. We note that any facility that administers ECT must have a governance plan. Parliamentary Secretary the Hon. Michael Veitch said that the standards are currently being examined. I understand that by the middle of next year the results of that examination will be published. I would hope, therefore, that the Hon. Michael Veitch's comment that the examination results will be published "shortly" means they will be published within that time frame—that is, by the middle of next year. I have a copy of the recent guidelines, which were updated in June 2010. The Opposition does not support Greens amendment No. 2. We are happy to look at the results of the examination of the standards to be released shortly, and we will then make a judgement as to whether such an amendment should be supported.

Dr JOHN KAYE [9.37 p.m.]: I thank members for their remarks regarding Greens amendment No. 2. I make the point that the review of the Act and the other reviews that are currently occurring perform different functions and are based on different datasets. The review proposed by the amendment would not interfere with the other reviews. The proposed review is specifically designed to examine the statistics of ECT use, the register of ECT uses, and to go through that register and gain a greater statistical understanding of where ECT is being used and how its use aligns with the guidelines that are currently in place. The proposed review certainly does not interfere with the statutory review of the Act, which is a completely different activity, and it does not interfere with the other reviews referred to by the Parliamentary Secretary.

Question—That Greens amendment No. 2 be agreed to—put.

The Committee divided.

Ayes, 8

Mr Borsak
Mr Brown
Mr Cohen

Ms Faehrmann
Reverend Dr Moyes
Reverend Nile

Tellers,
Dr Kaye
Mr Shoebridge

Noes, 25

Mr Ajaka
Mr Catanzariti
Mr Clarke
Mr Colless
Ms Cotsis
Ms Fazio
Ms Ficarra
Mr Foley
Miss Gardiner

Mr Gay
Mr Khan
Mr Lynn
Mr Mason-Cox
Mr Moselmane
Ms Parker
Mr Pearce
Mr Primrose
Ms Robertson

Ms Sharpe
Mr Veitch
Ms Voltz
Mr West
Ms Westwood

Tellers,
Mr Donnelly
Mr Harwin

Question resolved in the negative.

Greens amendment No. 2 negatived.

Schedule 1 agreed to.

Schedules 2 and 3 agreed to.

Title agreed to.

Bill reported from Committee without amendment.

Adoption of Report

Motion by the Hon. Michael Veitch agreed to:

That the report be adopted.

Report adopted.

Third Reading

Motion by the Hon. Michael Veitch agreed to:

That this bill be now read a third time.

Bill read a third time and returned to the Legislative Assembly without amendment.**HEALTH SERVICES AMENDMENT (LOCAL HEALTH NETWORKS) BILL 2010**

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [9.50 p.m.]: on behalf of the Hon. John Hatzistergos: I move:

That this bill be now read a second time.

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

Leave granted.

I am pleased to bring before the House the Health Services Amendment (Local Health Networks) Bill 2010. This important bill amends the Health Services Act 1997 to allow for the creation of local health networks to deliver public health services in New South Wales.

In April 2010 the New South Wales Government reached a historic agreement with the Commonwealth and seven States and Territories to implement national health reform through the National Health and Hospitals Network Agreement.

These reforms will deliver an extra \$1.2 billion in funding to the New South Wales health system over four years and are contributing to 488 beds being opened across the State in 2010-11, and represent a better outcome for patients, carers and families.

The NHHN Agreement will result in major funding and structural changes to the New South Wales health system. Central to these reforms is the creation of local health networks which will be responsible for providing and coordinating health care services in their local areas. A key outcome of the NHHN Agreement was improved access to primary care services and the Government will continue to work with the Commonwealth to ensure the new Medicare Locals align as much as possible with Local Health Network boundaries.

This new approach to the delivery of health care will result in improved patient centred care, more sustainable funding and better integration with primary care services.

Very importantly, these changes pave the way for increased local decision making and greater clinician engagement.

On 29 September 2010, following an extensive consultation process, including nearly 400 submissions, the New South Wales Government announced eighteen local health networks, comprising:

- Eight geographically based local health networks covering the Sydney metropolitan region,
- Seven geographically based local health networks covering rural and regional areas, and
- Three specialty networks covering Children's Health, Forensic Mental Health and services delivered by St Vincent's Health.

The geographically based local health networks were based on specific criteria which included:

- A population-based health needs approach;
- Population growth and change;
- Self-sufficiency;

- "Natural communities" and flow patterns;
- Capacity to maintain clinical service networks; and
- High standards of patient safety and quality of care.

As a result of the feedback received during the consultation process, I plan to issue a set of Ministerial directions for each local health network. Ministerial directions will for example recognise distinct sectors and distinct budgets for Blacktown/Mt Druiitt Hospital, Dubbo Base Hospital and the Orana Region and St George/Sutherland hospitals.

And as part of the reform process, the State Government will be consolidating its relationship with local government. The State Government will enter into a Statement of Intent with the Local Government and Shires Association to facilitate this process, particularly in relation to rural and regional local health networks. This will lead to formal arrangements between the new local health networks and local government around important issues such as improvements to health facilities and workforce development.

The Government will also enhance the role of the Clinical Excellence Commission to strengthen interaction with clinicians and in the new, localised health structure, will appoint three regional coordinators of clinical governance to report directly to the CEC. This will maintain our high standards of the clinical governance in New South Wales.

I am sure that honourable members will agree with me that our public health system is a dynamic one—continually evolving and changing with population growth and ageing, emerging technologies and new models of care.

The State Government is giving priority to developing cross-border health agreements with the Australian Capital Territory, Victoria, Queensland and South Australia through discussions with our interstate colleagues. We currently undertake a range of joint planning activities, and will build on this work in the coming months.

It is our intention that this will lead, in the future, to the development of local health networks which cross State borders and reflect the reality of proximity to services and patient flows.

The bill provides for the establishment of the eighteen local health networks and in doing so will abolish the current eight area health services. It will also enable the establishment of network governed health corporations, to support the Sydney Children's Hospitals Network and the Forensic Network. It also contains provisions to enable, affiliated health organisations to be treated as networks under the NHHN Agreement.

This is the first step of an important and historic reform. It provides a comprehensive legislative basis for establishing and supporting the new local health networks, their governing councils and chief executives.

The new local health networks are a key component of the NHHN Agreement and New South Wales is leading the way on their implementation. Establishment of local health network boundaries, appointment of the Chairs and members of governing councils and chief executives means New South Wales will continue to do so.

Turning to the specific provisions of the bill:

Items [1] to [3] of the bill propose amendments to the objects of the Act to reflect these changes to the structure of the New South Wales public health system.

Like the current area health services, local health networks will provide services on a geographic basis. The new local health networks will, also, under section 17 of the Health Services Act be established as statutory corporations that do not represent the Crown in right of New South Wales, and which are separate legal entities from the Department of Health.

The NHHN Agreement contains a number of important requirements relating to the governance of local health networks, and the bill proposes amendments to the Act to reflect these requirements.

The bill will amend section 26 of the Act to establish local health network governing councils, in the place of the current area health advisory councils.

Section 26 (1) of the Health Services Act already provides for the Minister to appoint the members of the council. This is in line with clause A 11 of the NHHN Agreement, and will be retained.

The new sections 26 (2) and (3) set out the skills and expertise that will be required of members of governing councils in a way that is consistent with the requirements of the NHHN Agreement. This will ensure that governing councils will comprise members with an appropriate mix of skills and expertise to oversee and provide guidance to large and complex organisations. To this end, the bill requires that governing councils include members with expertise and experience in such matters as:

- health management, business management and financial management,
- the provision of clinical and other health services,
- knowledge and understanding of the community served by the network, and
- other backgrounds, skills, expertise, knowledge or experience appropriate for the network.

It is also important to ensure that health professionals working in our local hospitals and health services are recognised. The Government has issued a statewide expression of interest for membership of the governing councils—and local doctors, nurses

and allied health professionals are encouraged to apply. In addition, the Minister for Health has requested the Department of Health to consult with key professional groups including the New South Wales AMA, ASMOF, the NSW Nurses Association and the Health Services Union to develop provisions for the Local Health Network model by-laws to establish formal and clear pathways for local nurses, doctors and allied health professionals to be put forward for the consideration of the Minister for appointment.

To further ensure clinician engagement and community involvement, hospital clinical councils and local health advisory councils will continue to play important roles in the new structure.

A new clause 26 (3A) provides that a local health network governing council will also be required to have at least one member who has expertise, knowledge or experience in relation to Aboriginal health, in keeping with the current advisory council provisions.

The amendments to section 26 also provide that membership of each governing council will be limited to a minimum of six members and a maximum of thirteen.

A rigorous and transparent process is being undertaken to appoint Chairs of governing councils. The Government has made clear that its supports local clinicians being appointed to governing councils and expressions of interest are being sought from suitably qualified persons.

Some of the most important amendments in the bill are designed to establish governance relationships between the State, the chief executive and the governing council, which reflect the framework of the NHHN Agreement.

The agreement provides for the governing council and the chief executive to be jointly responsible for the key obligations of the local health networks in relation to local service delivery, financial accountability, performance and patient outcomes. These key obligations are already embedded in the Act in section 10. These functions will be retained, and the new networks will be accountable for undertaking these responsibilities for their communities

The bill addresses the governance issues in a number of ways.

First, the current powers in section 25 of the Act have been revised. Currently section 25 (b) provides that the chief executive is, in the exercise of his or her functions, subject to the control and direction of the Director General of the NSW Department of Health. This provision will be removed. Instead, the chief executive will, in the exercise of his or her functions, be accountable to the governing council: the terms of this change reflecting the wording of clause A11 of the NHHN Agreement.

Second, a new section 28 has been added setting out in clear terms the functions of governing councils. These functions have been developed having regard to the functions of the local health networks and to ensure complementarity of the roles of the governing council and the chief executive in fulfilling their joint responsibilities.

To this end, the functions of governing councils will include:

- ensuring effective clinical and corporate governance frameworks are established to support the maintenance and improvement of standards of patient care and services by the network and to approve those frameworks,
- approving systems to support the efficient and economic operation of the network, to ensure that the network manages its budget performance to meet performance targets and that resources are applied equitably to meet the needs of the community served by the network,
- ensuring strategic plans to guide the delivery of services are developed for the local health network and to approve those plans,
- providing strategic oversight of and monitoring the network's financial and operational performance,

This will ensure the council maintains a proper strategic oversight and monitoring role in relation to the network's activities.

The chief executive will, under the terms of section 24, continue to be responsible for the day-to-day management of the affairs of the local health network.

The governing council will confer with the chief executive in connection with the operational performance targets and performance measures to be negotiated in the service agreement for the network under the NHHN Agreement and approve the service agreement for the network under the NHHN Agreement.

The governing council will also have specific obligations in respect of the Chief Executive of the Local Health Network. While the chief executive will, consistent with New South Wales public sector employment arrangements, be an employee of the State Crown through the Director General of the Department of Health, the council will have the role of making recommendations for the appointment of the chief executive of the network and, where it considers it appropriate to do so, make recommendations for the removal of the chief executive. This ensures that the council will have a key role in appointment decisions, consistent with the NHHN Agreement.

The council will also continue to undertake some of the functions of the area health advisory councils, particularly, and most importantly, in ensuring that the views of providers and consumers of health services, and of other members of the community served by the network are sought in relation to the network's policies and plans for the provision of health services. The council will also confer with the chief executive on how to support, encourage and facilitate community and clinician involvement in the planning of network services and keep the community informed about local policies, plans and initiatives.

The bill also includes a power to add additional governing council functions by way of regulation. Given the different role and functions of governing councils compared with area health advisory councils, the bill also proposes deleting a number of current provisions relating to area health advisory councils that are unnecessary or inapplicable to governing councils. These provisions include section 27 which sets out the role of area health advisory councils, section 29 which allows the Minister to establish a charter for area health advisory councils, and section 29A which requires area health advisory councils to furnish an annual report relating to the council's performance. Instead, the council will have the function of endorsing the Local Health Network's annual report.

As with members of area health advisory councils presently, under section 26(4) of the Act governing council members shall be appointed for a period of no more than 4 years, such period to be specified in the instrument of appointment.

A new section 29 will be introduced to provide for the Minister to remove governing council members, and, where appropriate, replace them with an administrator. Similar provisions to this proposed section are already in place in respect of board governed statutory health corporations.

This is an important provision. The council and the chief executive will have substantial obligations in relation to the effective and efficient operation of the local health network, and for ensuring appropriate standards of care for their patients. It is critical that where there are failings, Government can intervene, and in the most serious cases, intervene urgently. A power to remove urgently and without reason is currently available in respect of chief executives in the case of area health services and chief executive governed statutory health corporations, and boards in the case of board governed statutory health corporations.

Historically such action has only been taken rarely and in the most extreme cases. It is anticipated this will continue to be the case. Clearly however there needs to be transparency in the event of such a decision. In recognition of this, section 29 will also provide that where the Minister for Health exercises the power to remove a council and appoint an administrator, the Minister must to make a statement to Parliament that sets out the basis for making the decision to appoint an administrator.

The responsibilities of the State under the NHHN Agreement recognise that the State has the overall responsibility for managing the general public health system. The NHHN Agreement therefore provides the State has responsibility for:

- being the statewide system manager,
- system wide service planning and policy, and
- managing network performance.

Section 122 of the Act already recognises some of the broad systemic oversight roles for the Director General of the Department of Health. To ensure that the State can effectively undertake these functions the bill amends section 122 of the Act to provide the director general with the additional functions of:

- providing governance, oversight and control of the public health system and the statutory health organisations within it, and
- issuing lawful directions to statutory health organisations.

The NHHN Agreement not only focused on the State as the overall manager of the public health system, but also recognised the more general financial and other accountabilities of public bodies under State law.

It is therefore important that the State, through the director general, has the capacity to give directions to local health networks, both to ensure they fulfil their statutory and financial obligations and to assist the State meet its own obligations as system manager.

The Local Health Network structure announced by the Government in September this year included two specialty networks of clinical services—the Sydney Children's Hospitals Network (Randwick and Westmead) and the proposed Forensic Mental Health Network.

Given that these services will be provided across local network boundaries, it is considered most appropriate under the framework of the Act for these services to continue to be constituted as statutory health corporations.

Currently chapter 4 of the Act permits either board or chief executive governed health corporations. The Sydney Children's Hospitals Network, for example, is currently a chief executive governed health corporation.

In order to provide for health corporations that comply with the requirements of the NHHN Agreement, a new division will be created in chapter 4 of the Act allowing the establishment of network governed health corporations. The provisions relating to the governance arrangements of network governed health corporations, including appointment and functions of the governing council and chief executive, are to be broadly the same as those for local health networks.

These proposed amendments create a statutory framework to enable Sydney Children's Hospitals Network and the proposed new Forensic Mental Health Network to be established as network governed health corporations, and to be recognised and funded under the NHHA Agreement.

The Government has also announced the recognition of a new St Vincent's Network, comprising St Vincent's Hospital and the Sacred Heart Hospice in Darlinghurst, and St Joseph's Hospital at Auburn. This approach accords with the NHHN Agreement, which recognises the vital role played by non-government providers of public health and hospital services such as St Vincent's.

Non-government sector providers of public health services are dealt with under chapter 5 of the Act. This chapter enables private benevolent bodies to be recognised as affiliated health organisations to be recognised in respect of certain of their establishments or services where public health or hospital services are provided.

It is not proposed to make any structural changes to these arrangements in order to allow St Vincent's to be recognised and funded under the NHHN Agreement.

Given the necessity for St Vincent's to retain its independent board, it is not possible to establish the proposed network as a local health network or a network statutory health corporation under the Act.

Instead, a new section 628 will be inserted into the Act to enable the Minister to make an order declaring that one or more affiliated health organisations are to be, in respect of some or all of their recognised establishments or recognised services, to be treated as a network for the purposes of the NHHN Agreement. Such an order can only be made with the concurrence of the affected affiliated health organisation.

Amendments to insert a new section 1338 into the Act will provide protection for members of the governing councils of both local health networks and network governed health corporations against personal liability for anything done in good faith for the purpose of carrying out their statutory functions. This provision reflects, and updates, the current protections provided to board members of board governed statutory health corporations.

The Government will be introducing separate legislation to establish a National Health and Hospitals Network Funding Authority in New South Wales as required by the NHHN Agreement. Under the agreement all activity based funding from both Commonwealth and State Governments is to be paid to the proposed new funding authority, which will in turn make payments to local health networks in accordance with agreed local health network service agreements.

The New South Wales Health consultation process in relation to proposed local health network boundaries confirmed strong support for the ongoing provision of clinical networks and other services that are currently provided across area health service boundaries. Under section 1268, the director general already has functions to provide support services to public health organizations. In order to facilitate the ongoing provision of such services, the bill proposes to amend section 1268 of the Act to allow the director general to provide services, not only in support of public health organisations and the public hospitals they control, but also to enable the coordinated provision of health services involving more than one public health organisation on a statewide basis.

This amendment will facilitate the ongoing provision by the director general of health support, clinical service networks and clinical support clusters that will provide expertise and support in vital areas such as mental health/drug and alcohol, cancer services, renal services, oral health, imaging and pathology hubs in order to ensure equity of patient access to the appropriate range of services, whilst allowing local health networks to focus on local planning, decision making and implementation.

This amendment is also supported by a proposed addition to the functions of local health networks in section 10 of the Act to recognise networks' role in cooperating with other networks and the director general in relation to the provision of health services involving more than one public health organisation or on a statewide basis.

Section 126, which sets out the performance agreement provisions will also be amended and augmented, to confirm that a performance agreement may include the provisions of a service agreement within the meaning of the NHHN Agreement.

The changes will also extend the provisions relating to the reporting obligations to ensure they will cover the range of data and information necessary for New South Wales to comply with its reporting requirements to the Commonwealth under the NHHN Agreement.

Finally, the bill contains a number of transitional and machinery provisions to facilitate the transfer of assets, rights and liabilities of area health services upon their dissolution.

Given the reforms involve the disaggregation of area health services into local health networks, amendments are proposed to enable this to occur smoothly and without risk of disruption to service provision.

The Government thanks the many clinicians, community members, health managers and stakeholder organisations that have been part of the consultation process which has assisted in the development of the bill.

The Government also thanks the NSW Area Health Advisory Council which under the guidance of the Right Hon Ian Sinclair and Professor Judith Whitworth, played a critical role in facilitating feedback.

And the Government acknowledges and thanks the AMA, ASMOF and the Nurses' Association whose advocacy has assisted greatly in developing the governance arrangements.

Madam President, the reforms proposed by this bill enable the creation of local health networks in New South Wales and strengthen local decision-making and community involvement in health service delivery.

It continues the State Government's positive agenda for health in NSW and our ongoing commitment to deliver the right care in the right place and at the right time for all NSW residents.

I commend the bill.

The Hon. JENNIFER GARDINER [9.50 p.m.]: The common meaning of the word "local" is of or concerning a particular area, restricted to a particular place or in the neighbourhood. The British informal usage is adopted here in Australia: a pub close to one's home—the local. But the New South Wales Labor Party, the

Keneally-Tebbutt Labor Government, has a dramatically different definition of local. To the city-centric Labor Party "local" extends from Oberon to Goodooga: from the Blue Mountains to the Queensland border. That is how Premier Keneally and Minister for Health Carmel Tebbutt have defined one of Labor's so-called local health networks: the Western Local Health Network. It is a preposterous notion, but here it is to be enshrined in law by virtue of this bill.

This absurd notion of "local" was reinforced in advertisements placed by the New South Wales Government in last weekend's press calling for applications for the appointment of chief executive officers of the local health networks to be established by this bill. In those advertisements the vast Hunter-New England, so-called, Local Health Network is defined as one of the "metropolitan" local health networks. So the Keneally-Tebbutt Government considers that Tenterfield, Glen Innes, Inverell, Tamworth and Armidale, for example, are all part of the Newcastle, Sydney, Wollongong conurbation. That is what the advertisements said last Saturday. It is yet another preposterous definition of "local", and yet another example of a State Labor Government that has lost its senses. I have never before heard Tenterfield described as being part of any metropolis. It is a fantastic place, but it is not part of Newcastle, Sydney, Wollongong. It is an absurd notion. It is even more absurd when you see that Minister Tebbutt, in speaking to this bill in the other place, said that one of the specific criteria for defining the geographically based local health networks was "natural communities". If anyone can tell me what is natural in the sense of community between Tenterfield, for example, and Newcastle, I would like to hear from them.

During the Rudd reform discussions held with the States, the New South Wales Minister for Health, Carmel Tebbutt, had a row with the Commonwealth over the size and number of local health networks—the centrepiece of former Prime Minister Rudd's wish list for health reform, which he had to put on the agenda suddenly to draw attention away from the other troubles he was encountering at that time. His initial plan was for 150 local health networks, including up to six hospitals in each network. But in April this year Ms Tebbutt trumpeted, "Under the agreement reached with the Commonwealth we have successfully limited the number of local health networks to 90 nationally, rather than the 150 originally proposed." This bill creates 18 local health networks and abolishes the eight, dare I say, unlamented area health services. In other words, the New South Wales Labor Government never got it. The Keneally Government could not bring itself to let go, especially in non-metropolitan New South Wales, of the area health services created in 2005 by the then Minister for Health, Morris Iemma. Certainly communities in the mid west of the State, those that gravitate towards Dubbo Base Hospital for example, are particularly upset with the boundaries confirmed by this bill. Dubbo should be the centre of a genuinely local health district.

The Hon. Duncan Gay: Hear! Hear!

The Hon. JENNIFER GARDINER: I acknowledge that the Hon. Duncan Gay loudly says, "Hear! Hear!" That is what has to happen. That is what community representatives and clinicians told the Labor Government, but Dubbo and the Orana region have been ignored. The member for Dubbo in the other place has caved in on this issue and has supported this ridiculous map, which extends from Goodooga to Oberon and Blayney. The Minister for Health has tried to assuage community anger about this by saying that "ministerial directions will recognise distinct sectors and distinct budgets for Dubbo Base Hospital and the Orana region". The community serviced by St George and Sutherland hospitals and Blacktown-Mount Druiitt Hospital in the metropolitan area has similar concerns.

It would not matter what the boundaries were, Dubbo Base Hospital and the aforementioned metropolitan hospitals should have a budget. A ministerial directive is not necessary for a budget, at least not in a health system that is governed in a sensible way. The Hunter-New England Area Health Service, which has been renamed by deleting "AHS" and substituting "LHN", is in a similar situation: the Armidale Medical Staff Council wanted the Hunter-New England Area Health Service split, but the council's doctors and the doctors of Tamworth have been ignored.

The Minister for Health maintains that this bill followed an extensive consultation process. In recent months my colleagues and I have conducted community consultation meetings across New South Wales—from Tweed Heads to Deniliquin. During that process the meetings conducted by the New South Wales Labor Government were often described as "telling" meetings, not "listening" meetings. There was a clear sense of: This is how it will be. Departmental PowerPoint presentations were also used to force home that message. In many instances the drawing up of boundaries for the local health networks was considered a fait accompli. This was underscored by the advertising for members of the local health network governing bodies before the proposed boundaries had been presented to the Parliament.

As for the State Labor Government catching on to what communities and clinicians were telling anyone who cared to listen—namely, that they wanted more local decision-making and greater clinician engagement in health services across this country, particularly in New South Wales and Queensland—when introducing this bill in the other place the Minister for Health said through gritted teeth, "Very importantly, these changes pave the way for increased local decision-making and greater clinician engagement." That statement came after years of successive Labor Ministers for Health directing their efforts to attack the Liberals and The Nationals "Making It Work" policy, published in March last year, and its predecessor policy. The "Making It Work" policy commits our two parties to genuine engagement between communities in hospitals and health services, and re-engaging clinicians in the governance of localised health services. Devolving power does not come easily to the New South Wales Labor Party. It has had to be dragged kicking and screaming to this point and, as I have said, for many parts of the State it does not localise services at all.

The bill provides for network-governed health corporations to support the Sydney children's hospitals network and the forensic network. It enables affiliated health organisations to be treated as networks under the National Health and Hospital Network Agreement, and provides the legislative basis for the new local health networks, their governing councils and chief executives. Local health networks will be established as statutory corporations that do not represent the Crown in right of New South Wales, and that are separate legal entities from the Department of Health. The current area health service advisory councils, which were designed to be toothless, and which were toothless, will disappear. They are to be replaced by local health network governing councils to be appointed by the Minister for Health.

The bill sets out the skills and expertise required to be possessed by members of those governing councils, consistent with the National Health and Hospital Network Agreement. These include expertise and experience in health management, business management, financial management, the provision of clinical and other health services, knowledge and understanding of the community served by the particular network and other backgrounds, skills, expertise, and knowledge or experience appropriate for that network. It is pretty much along the lines of the district health boards that apply through successive Liberals-Nationals and Labor governments in Victoria. Model by-laws will be drawn up to provide for the appointment of clinicians. Hospital clinical councils and local health advisory councils will be able to operate under the new structure. Personnel on the governing councils shall include at least one person who has expertise, knowledge or experience in relation to Aboriginal health. The governing council of each will have a minimum of six members and a maximum of 13.

After initially opposing the appointment of local clinicians to these governing councils, the Keneally-Tebbutt Government backflipped and said that local clinicians may now be appointed to governing councils. I must say that that was always what the Liberal and National parties were proposing. Again the Labor Government has had to be dragged kicking and screaming to the table to allow local clinicians to serve on the governing bodies in their local networks. The work of the governing council and chief executive officer will be to implement the key obligations of local health networks in relation to local service delivery, financial accountability, performance and patient outcomes.

Members will recall that it was John Howard and Tony Abbott who previously proposed, in the Federal jurisdiction, a community-based governance of our hospital system. The reforms envisaged by former Prime Minister Mr Rudd, which the Keneally-Tebbutt Government signed up for, required amendments to the Health Services Act to provide that chief executives—who, under the area health service Iemma model, were subject to the control and direction of the Director General of New South Wales Department of Health—will be accountable under the new model to the local health network governing council. Under this model, in copying the Liberal and National parties' health policy, the Labor Government will ensure that chief executives are answerable to the local health network governing council. The functions of the councils are set out in the bill, and the roles of the governing council and the chief executive are meant to be complementary.

Governing councils will need to ensure that effective clinical and corporate governance frameworks are established to support and maintain improved standards of patient care and services by the network and to approve those frameworks. They will have to approve systems to support the efficient and economic operation of the network. They will have to ensure that the network manages its budget so it meets performance targets and that resources are applied equitably to meet the needs of the community served by the network. The councils will ensure that strategic plans to guide the delivery of services are developed for the local health network. The governing council will approve those plans, and provide strategic oversight and monitoring of the network's financial and operational performance so as to make sure that the council maintains a proper strategic oversight and monitoring role in relation to the network's activities.

As with the area health service model that it replaces, the chief executive will be responsible for the day-to-day management of the affairs of the local health network. The governing council will confer with the chief executive in relation to the operational performance targets and performance measures to be negotiated in the service agreement for the network under the National Health and Hospitals Network Agreement and the council will approve the service agreement for the network. The governing council will have specific obligations in respect of the chief executive of the local health network. While consistent with the New South Wales public sector employment arrangements, the chief executive will be an employee of the State Crown through the Director General of the Department of Health, and the council will have the role of making recommendations for the appointment of the chief executive of the network and, when it considers it appropriate to do so, make recommendations for the removal of the chief executive. This fits with the Federal-State agreement.

The councils will be charged with ensuring that the views of providers, consumers of health services and other community members in the bounds of the network are sought in relation to the network's policies and plans for the provision of health services. They will confer with their chief executives on how to support, encourage and facilitate community and clinician involvement in the planning of network services, and keep the community informed about local policies, plans and initiatives in line with the policies that the Liberal and National parties have put up in the last couple of years and also in the previous general elections.

The bill empowers the Minister to add more governing council functions by way of regulation, and it requires the council to endorse annual reports of the local health network. Governing council members will be appointed for up to four years, the period of the appointment to be specified in the instrument of appointment. The Minister will be empowered to remove governing council members and, where appropriate, to replace them with an administrator. The provision relates to other board-governed statutory health corporations. In introducing the bill, the Minister said that it is anticipated that this power would be used rarely, and only in the most extreme cases. She said that there must be transparency in the event of such a decision, and certainly the Opposition would hold the Government to that. If an administrator is appointed, the new legislation will require the Minister to make a statement to the Parliament setting out the basis for the decision to act in such a drastic way. The bill also amends provisions relating to system-wide service planning and policy, and network performance so that the director general will have additional functions of providing governance, oversight and control of the public health system and statutory health corporations within it, and issuing lawful directions to statutory health organisations. That again is a part of the Federal-State agreement.

The director general will be empowered to give directions to local health networks to ensure that they fulfil their statutory and financial obligations and to assist the State to meet its own obligations as the system manager. The earlier notions of health reform in the debate led by Kevin Rudd were headed, particularly prior to the Federal election before last, to indicate that if the States did not measure up in delivering health services the Federal Government would take them over. That has fallen away and you can see in the language of the Government that New South Wales will in fact be the system manager of the New South Wales health and hospitals system. Mr Rudd never got anywhere near delivering on his election promise.

The local health network structure will have two specialty networks of clinical services—the Sydney children's hospital network, incorporating the Randwick and Westmead children's hospitals, and the proposed forensic mental health network. These services transcend local health network boundaries and so they will continue to be constituted as statutory health corporations. Network-governed health corporations will be able to be established under the legislation with similar governance arrangements as for the local health networks, so the Sydney children's hospital network and the proposed new forensic mental health network will be established under that part of the bill.

Another network will be the new St Vincent's Hospital and Sacred Heart Hospice in Darlinghurst combined with St Joseph's Hospital at Auburn. Provisions in this bill allow private benevolent bodies to be recognised as affiliated health organisations in respect of certain of their establishments or services where public health or hospital services are provided. A new section is inserted into the Health Services Act that will enable the Minister to make an order that gives recognition to establishments or services and the opportunity to be treated as a network for the purposes of the National Health and Hospital Network. The affected affiliated health organisations would have to concur with such an arrangement, so there is some flexibility as to future organisations being under the aegis of this framework.

The bill provides for protection of members of governing councils of both local health networks and network-governed health corporations against personal liability for anything done in good faith when carrying

out their statutory functions. Under the National Health and Hospitals Network Agreement a National Health and Hospitals Network Funding Authority will be established in New South Wales. All activity-based funding from both the Commonwealth and New South Wales governments is to be paid to the proposed authority, which will then make payments to the local health networks in accordance with agreed local health networks service agreements.

It is true that the concept of clinical networks has strong support and many services are provided across and beyond the current area health service boundaries. Under these amendments, the director general will be able to provide such services so as to enable the coordinated provision of health services involving more than one public health organisation on a statewide basis. This will provide equity of access to services, which include mental health services, drug and alcohol services, cancer services, renal services, oral health services, and imaging and pathology hubs. At least that is the intent of the legislation. The local health networks are to focus on local planning, decision-making and implementation. Local health networks are to cooperate with other networks and the director general in providing health services involving more than one public health organisation or on a statewide basis. The other provisions of the bill relate to transitional arrangements in dissolving the area health services.

Of course, governance provisions are vitally important. However, as many of my colleagues have noted during debate on this bill in Parliament, the future existence of various hospitals is not guaranteed by changing the boundaries of the Government's framework for the New South Wales health and hospitals system. Many questions arise about various facilities across the State, such as whether the hospital at Bellingen has a future and if so what that future is. My colleagues on the northern beaches in Sydney are frustrated at the failure of the Labor Government to honour commitments about the future of hospitals in that part of Sydney. My colleague the member for Orange, Mr Russell Turner, reminded us of the disastrous history of the Greater Western Area Health Service, which was practically broke and could not pay its bills, like many of the area health services over the years: it was not alone in that regard. The member for Wagga Wagga correctly stated that the area health services have been an abject failure in the Riverina and southern parts of the State.

The New South Wales Labor Government has failed to deliver a new hospital for Wagga Wagga and for Tamworth. It has failed to deliver a hospital in Tumut. It has failed to deliver a new hospital at Dubbo and at Parkes. It has failed to deliver a new hospital at Forbes and at Bega in a timely way. It has been bailed out by the Federal Government in relation to proposed infrastructure projects, such as the fourth pod at Port Macquarie and the long wait for improvements to operating theatres and the emergency department at Grafton Hospital. The member for Albury correctly pointed to the transfer in recent weeks of 11 staff members from Albury public pathology services to Sydney. This transfer seems to be completely in the wrong direction and at a time when the Rudd plan, which is taken up in part in this bill, envisaged decentralisation, not growing Sydney jobs in the health sector from rural and regional New South Wales. Further healthcare jobs in the Albury district are mooted for such transfer.

The member for Port Stephens highlighted the non-appearance of the promised HealthOne clinic at Raymond Terrace and the lack of government support for Tomaree Community Hospital, a facility that does not even have an X-ray machine. My colleague the member for Murray-Darling, Mr John Williams, highlighted the cross-border issues in his vast electorate and said that the Riverina and Victorian healthcare patient flow was not being sufficiently recognised. He argued that there had been insufficient genuine consultation with stakeholders in relation to these changes. A feature of this debate tonight is that these local health network boundaries are being defined in this legislation. Yet the Medicare locals, as they have been strangely named, have not been determined. In fact, Nicola Roxon, the Federal Minister for Health, made a statement yesterday that discussion is ongoing about the location of those boundaries. The Federal-State agreement said that the two sets of boundaries were to be reasonably compatible.

The member for Goulburn, Ms Pru Goward, talked about the threat to maternity services at Bowral Hospital and the need to address this issue. She pointed out that this legislation does not assist in that regard. She described the southern local health network as "horrific", as it stretches from Goulburn down to Batemans Bay and inland to Bombala and includes Queanbeyan and Yass. It is an enormous area and it is too big. Her colleague Mr Andrew Constance, the member for Bega, agreed that the area is too big. It is bigger than Wales or Scotland. Incidentally, Scotland has smaller local governance areas based on the Victorian and New Zealand models. The area needs to be broken up. My colleague the member for Lismore, Mr Thomas George, referred to the haste, the lack of genuine consultation and the ongoing stresses faced by all those who need the services of Lismore Base Hospital. The stage three development of this hospital must go ahead.

One of the issues that came out of my recent community consultations related to discharge policies with patients having to find their own way home from hospital, sometimes without a pair of shoes. I recently visited Lismore with Thomas George to highlight such inadequacies. I am sad to say this issue came up in many of the meetings I held across the State in recent weeks. These issues must be addressed. The geographic boundaries of governing bodies are extremely important, but they are only part of the story. My colleague the member for Pittwater, Mr Rob Stokes, referred to an excellent paper published in 2009 by Emeritus Professor of Economics at the University of New South Wales, Wolfgang Kasper, who talked about radical surgery as the only cure for New South Wales hospitals. He wrote:

The new bureaucracy—

that is, under the Iemma model—

has closed a number of hospital beds, hospital wards, and even entire hospitals. For example, no fewer than 34 maternity units in country NSW have been shut down over the past thirteen years. The tendency has been towards "big is beautiful", irrespective of what the clients may want. The trend has been to cut costs by reducing facilities and services rather than searching for improvements in productivity. This is of course typical of most central bureaucracies: Fewer and more uniform facilities are easier to plan and control, while the pursuit of customer service is seen as an inconvenient nuisance.

In his autobiography, *A Journey*, Tony Blair said in relation to his reforms to the National Health Service:

The changes so far had shown clearly that the greater the autonomy for schools and hospitals the greater the innovation.

That is borne out in Victoria, which has district health boards, unlike New South Wales. There is research that shows that the localised governance structures in Victoria have triggered innovation—something the New South Wales Government did not embrace until Mr Rudd, as I have said before, dumped on this State Labor Government and made it clear that his consultations with communities and clinicians across New South Wales showed that the Labor Government was wrong in opposing devolved governance of health and hospital services in this State. They had got it wrong.

The Liberals and Nationals are interested to see that the Keneally-Tebbutt Government has copied to a large extent the policy we published in March last year. We note that the Keneally Labor Government has had 15 years to fix our hospitals, but clinicians, patients and communities across the State are describing the system as near breaking point and the Garling report said it was at the brink. The bottom line is that if people want to change the health system in New South Wales they need to change the Government. The New South Wales Liberals and Nationals have strong plans for real health reform that puts patients first and gives clinicians and communities a real say.

The Labor Government said everything would change on 1 July with the Council of Australian Governments health agreement, but nothing has changed. Hospitals are still struggling and patients are waiting too long for treatment. Labor has rushed through the establishment of its huge area health services such as those for western New South Wales, southern New South Wales, and Hunter New England in the same way that Morris Iemma did as Minister for Health. There was a lack of proper and genuine consultation with local communities and front-line health professionals on how the boundaries would be formulated. That is underscored by the fact that the Government closed nominations for council chairpersons before the boundaries were even finalised. The primary health care organisation [PHCO] networks envisaged as the other part of the governance structure of the National Health and Hospital Network Agreement have not been decided.

The Liberals and Nationals remain committed to our policy released in March last year of creating new health districts. They will not be the vast areas created under this bill and will have local boards, which will comprise community representatives and local clinicians. We will consult widely with local communities and their clinicians when formulating the boundaries of those health districts. Factors that will be taken into account include existing clinical networks, the role of existing hospitals, the location of major referral hospitals, existing divisions of general practice boundaries and the Medicare locals, or whatever they end up being called under the Federal-State agreement, boundaries of any newly created PHCOs, and the boundaries of local health networks created by this bill, should they be operating successfully. I acknowledge that in some places local health networks may fit easily with what the community wants, but in other parts of the State they do not.

The Liberals and Nationals will genuinely consult with all interested stakeholders to get the right boundaries for health services that put patients first. If local clinicians together with their local communities put forward detailed proposals that address the particular health needs of their districts, then we will be very happy to sit down and examine those suggestions. Unlike Labor, a New South Wales Liberal and Nationals

government will not have politicians and bureaucrats drawing lines on maps: instead we will engage communities and clinicians to develop the geographic framework as the best model for health services that put patients first.

The Hon. CHRISTINE ROBERTSON [10.24 p.m.]: I find it very difficult to deliver this speech after listening to the stuff trotted out by the Hon. Jennifer Gardiner. Some country clinicians contacted me during the process and certainly did not say the sorts of things I just heard. I support the bill. This legislation follows the historic agreement reached at the Council of Australian Governments [COAG] in April 2010. These reforms will deliver an extra \$1.2 billion in funding to the New South Wales health system over four years and are contributing to 488 beds being opened in New South Wales in 2010-11. This is a great outcome for the patients and families of New South Wales.

Already since April a total of 439 new beds have been announced for public hospitals across the State—at Prince of Wales Hospital, Campbelltown Hospital, Wollongong Hospital, Nepean Hospital, the Sydney children's hospital network and Westmead Children's Hospital, Sutherland Hospital, Royal North Shore Hospital, Maitland Hospital, John Hunter Hospital, St George Hospital, Blacktown-Mount Druitt hospitals, Gosford Hospital, Wyong Hospital, Port Macquarie Hospital, Dubbo Base Hospital, Orange Base Hospital, St Vincent's Hospital, Liverpool Hospital, Royal Prince Alfred Hospital, Concord Hospital, Tamworth Base Hospital, Westmead Hospital, Bathurst Base Hospital, Wagga Base Hospital, Coffs Harbour Health Campus, Canterbury Hospital, Ballina Hospital, and St Joseph's Hospital at Auburn. The list is fairly long and includes lots of country hospitals. Of course, a lot of this work was done not as a result of political opportunism, which we just heard from the Hon. Jennifer Gardiner, but to achieve clinical outcomes for human beings and equitable service for country people.

A key plank of the National Health and Hospital Network [NHHN] Agreement is the creation of new local health networks. Following the State Government's extensive consultation process a total of 18 local health networks will be established in New South Wales—eight local health networks in metropolitan areas and seven in rural and regional New South Wales. There will be three specialist networks—the Sydney children's hospitals network, the forensic mental health network and a further specialist network that covers services delivered by St Vincent's Health. The Government extends its thanks to all the groups and individuals who took part in the consultation process. Specific criteria assisted in determining the boundaries of geographically based local health networks and included a population-based health needs approach—not a politically opportunistic approach—population growth and change, self-sufficiency, natural communities and flow patterns, capacity to maintain clinical service networks, and high standards of patient safety and quality of care.

Local health networks will be responsible for ensuring that effective clinical and corporate governance frameworks are established to support the maintenance and improvement of standards of patient care and services by local health networks and to approve those frameworks; approving systems to support the efficient and economic operation of the network, to ensure that the network manages its budget performance to meet performance targets and that resources are applied equitably to meet the needs of the community served by the network; ensuring that strategic plans to guide the delivery of services are developed for the local health networks and to approve those plans; and providing strategic oversight for and monitoring of the local health network's financial and operational performance in accordance with the statewide performance framework against the identified performance measures in the performance agreement for the network.

The local health networks will also be responsible for recommending to the Minister or delegate to approve the appointment or removal of the chief executive; conferring with the chief executive in connection with the operational targets and performance measures to be negotiated in the service agreement for the network under the NHHN Agreement; approving the service agreement for the network under the NHHN Agreement; seeking the views of providers and consumers of health services and other members of the community as to the network's policies, plans and initiatives and to confer with the chief executive on how to support, encourage and facilitate community and clinician involvement in the planning of network services; advising providers and consumers of health services and other members of the community as to the network's policies, plans and initiatives; and liaising with the governing councils of other local health networks in relation to both local and statewide initiatives for the provision of health services.

Amendments to section 28 define these functions. Under the agreement each local health network must have a governing council appointed by the State Government and a chief executive recommended by the governing council and appointed by the Minister. Proposed section 25B makes it clear that the chief executive will be accountable to the governing council. Very importantly, the new local health networks will work closely with Medicare locals to improve the delivery and coordination of primary care services.

This is important legislation and the new local health networks will bring many benefits to the people of New South Wales on top of what has happened for the people of country New South Wales, particularly in the past 10 years with improvements in their health service. The new local health networks will deliver improved patient centre care, strengthen local decision-making, and ensure a greater level of clinical engagement. I commend the bill to the House.

Dr JOHN KAYE [10.30 p.m.]: On behalf of the Greens I speak briefly on the Health Services Amendment (Local Health Networks) Bill 2010. I was fascinated to hear the contributions of the previous two speakers, particularly the contribution of the Hon. Jennifer Gardiner. I wondered if what we were really being told was that under a Liberal-Nationals government New South Wales would pull out of the Commonwealth and State agreement on health reform. I am not saying that that is necessarily a bad thing but it is interesting that what was outlined for the organisation of health seems to me to be outside the terms of the National Health and Hospitals Network Agreement and it would therefore, presumably, put New South Wales in the same situation as Western Australia, that is, standing outside of the agreement.

As previous speakers pointed out, this legislation creates 18 local health networks—eight geographically based in the Sydney metropolitan area; seven geographically based covering rural and regional areas; and three so-called specialty networks, covering children's health, forensic mental health services and services delivered by St Vincent's Health. It is interesting to compare the legislation as it is presented to Parliament with the discussion document put out by the Department of Health. One of the remarkable differences between the discussion document advocated by the Department of Health and the legislation is that the legislation creates a separate network for the St Vincent's Health network, and that was not in the original document. It is interesting to watch the evolution of, effectively, a private entity within the public health system. I would like to hear the Parliamentary Secretary comment on where the advice came from for a separate St Vincent's network. Did it come from the department? Did the department advise the Government for or against the creation of a separate network for St Vincent's? Was that advice heeded by the Government, and who did the Government consult to come up with the decision to create what is, effectively, the eighteenth health network, which was not in the original documentation?

It feels a little bit like "here we go again": that we are going to rearrange the boundaries on hospital care delivery yet again. We heard arguments from the Opposition and from the Government about the merits of various boundaries. It seems that there will always be politics involved in these decisions and it seems that it is very difficult to get these decisions right. It is true that, as the Hon. Christine Robertson pointed out, if the areas are made too small there will not be the concentration of services and, as the Hon. Jennifer Gardiner pointed out, if the areas are made too big, the distances will be too great and the areas will become unworkable. I instance the Greater Southern Area Health Service, which is completely unworkable because of its size. Somewhere in between those propositions lies a compromise that is probably as good as one can get. It is not clear to us, given the process that was used to develop the geographical boundaries between 15 of these local health networks, that we have got it right. Nonetheless, this is where we are going and this is what we are going to do.

The Greens have a number of concerns with this legislation. The first relates to governance. It is not at all clear that we have the right mix between clinical expertise and local consumer expertise. To get that mix right and to recognise that hospitals are essentially owned by the community and are a community asset, governance should reflect the community from which those hospitals come. The current governance arrangements do not appear to respect that. In fact, in many ways the governing councils add yet another layer of bureaucracy. Another concern is that primary health care appears to have been split off from the hospitals. There are some good and bad reasons for doing that—as in every health care arrangement decision there are always pluses and minuses. But it is very clear that the modern understanding of quality health care delivery requires a continuum between hospitals and primary health care. That continuum has been ruptured by the arrangements that have been presented in this legislation. We are also very concerned about the makeup of those governing councils, and about the lack of clinical and local community expertise on those councils. There seems to us to be a real need to arrive at a better balance.

I conclude by making the observation that this is just one part of reform of the hospital system. The major part of that reform is the Federal Government's push for case-mix funding, which of itself is a major concern. We have seen a version of case-mix funding operate in Victoria with disastrous consequences wherein people who are sicker than their case type and who require a more expensive treatment in their case type end up putting an unnecessary financial burden on a hospital, and people who require less treatment than their case type are encouraged into hospital in order to push up the numbers in that particular case class.

The economic and the health care consequences of case-mix funding can be quite catastrophic. We raise here major concerns about the move to case-mix funding, which, after all, is a fairly straightforward application of microeconomic, economic rationalist or neoliberal policies with regard to hospitals. It is basically designed to put additional pressure on hospital staff to reduce costs. If ever there was an area in which there was already too much pressure on staff, it would have to be our hospitals. Our concern is that case-mix funding will be yet another weapon that will be used to beat up on the nurses, the doctors, the ancillary staff and the support staff in hospitals, with appalling consequences for their wellbeing and the wellbeing of patients. Clearly that debate will continue throughout the next year as the network is implemented. However, we put on record now our concerns about the move to case-mix funding. That having been said, the Greens will not oppose the bill.

The Hon. CATHERINE CUSACK [10.38 p.m.]: The Health Services Amendment (Local Health Networks) Bill 2010 is very historic legislation. No member should be in any doubt about the profound nature of what the bill seeks to do. The explanatory note to the bill states in the principal amendments for the establishment of local health networks that the proposed Act makes amendments to the Health Services Act 1997 to replace the current system of area health services with a system of local health networks for the purposes of the National Health and Hospital Network Agreement. Schedule 1.1 [34] will replace schedule 1 to the Act, which currently lists the names and areas of area health services, with a new schedule that lists the names and areas of the new local health networks. Schedule 1.2 makes general amendments to the Act so as to update provisions by replacing references to area health services and area health advisory councils with references to local area health networks and local health network governing councils respectively.

This Act in effect brings to an end an era of almost 30 years of area health services that have varied in number. Currently there are eight but they are now to be replaced by 18 local area health networks. The former North Coast Area Health Service has been split into two and will become two networks: to the north it will be known as the Northern New South Wales Local Health Network and to the south it will be known as the Mid North Coast Local Health Network.

Hazel Bridgett has been appointed chair of my local area health network. I congratulate her on her appointment and I wish her every success. But the question is: What is success and how hard is it to achieve success in health? Carmel Tebbutt is only the twenty-sixth health Minister since the Ministry of Health was established in 1913. That list of 26 health Ministers contains names that members of both the Liberal and Labor parties should be proud of. Health is one of the senior portfolios and generally the most promising and effective Ministers have been appointed to that role. When I look at the list of names of those who became Ministers for Health I realise that many were talented parliamentarians, and many were regarded as future Premiers. However of the 26 members only two—Barrie Unsworth and Morris Iemma—went on to become Premier of New South Wales.

I consider that to be quite remarkable, given that Health is easily the largest and most important of all the portfolios. It deals with life and death on a scale that is almost without peer, not just in Australia but around the world. The New South Wales health system is simply enormous. That only two premiers were produced from 26 health Ministers, who on balance represent the best and brightest in our system, speaks volumes about how difficult the Health portfolio is. I make that observation because Health has always been awash with big emotion, big money, big vested interests, big media coverage and a level of demand that is simply overwhelming. I do not believe any member in this House would disagree with that assessment. It is easily the most reform-resistant area of policy, and not just in New South Wales or Australia but also globally.

The issues that we confront are not special to us. The litany of scandals, inquiries and reforms is legendary in public policy all around the world and not just in Australia. I have not spoken on health issues since my election in 2003 because my husband, Chris Crawford, served as chief executive officer of my local area health service, initially in the Northern Rivers Area Health Service and now in the North Coast Area Health Service, which will be abolished on 31 December. I am incredibly proud of his service to our community and to this State. I make no pretence at all of being impartial about that. I consider Christopher to be a hero as he has patiently and relentlessly navigated his way through a system of interests, funding and regulatory complexity that would leave Machiavelli gasping for breath. He always has the public interest at heart and he fights with fairness.

At a public level members of his community often have no understanding of what is going on and what he is attempting to do. His ability to withstand pressure is the difference between the consumer underdog gaining access to the care and quality of life that we all want and expect. Somehow our health system—I do not mean in the government sense; I am talking holistically about the system—seems almost purpose-designed to

deny. This ethical and personality type in the public service is often misunderstood and monumentally undervalued. Chris has served in the health bureaucracy for the whole of the term of the Labor administration in New South Wales. I acknowledge the courtesy that Labor Ministers have extended to him during that time, given that my serving on the Opposition frontbench places our family in a position of vulnerability.

I emphasise that Chris has been a consummate professional in his role and he goes to bizarre lengths to maintain a professional distance. One night my youngest son asked me why his father's briefcase was always locked, as many children attempt to access their parents' briefcases. I did not realise that Chris locked his briefcase when he brought it home. That highlights his commitment to serve the Government of the day. As I said, he has always been treated respectfully and professionally by Labor health Ministers. Nothing is mandatory in politics, in particular, in New South Wales politics—something that I have not taken for granted. Little might come of this but I say to the Government that I will never forget that courtesy.

Tonight the issue to which I wish to refer relates to the insights I have had into the difficulties experienced over the years by the Health bureaucracy. It has been my great honour to meet and to develop friendships with many of the good people who make up the so-called Health bureaucracy. In many communities these people are the whipping boys and girls for the failings of our health system. They are also taxpayers, ratepayers, parents and citizens, usually playing a significant role in their local communities, whether it be through the parents and citizens associations, fire fighting or in some other voluntary capacity. They seem ordinary but they are marked by an extraordinary zeal for planning and delivering the best possible health services within current planning constraints.

Tonight I take this opportunity to speak up for those servants of the public interest because I have found them to be exceptionally qualified and very idealistic about the work they perform and the problems they solve on a daily basis. They never meet the people who benefit from their efforts, and those people will never know of their efforts or realise the benefits to them and their families. It is an unsung ethic that keeps our complex, stubborn and, at times, recalcitrant health services working. The latest restructure throws all those people and their families yet again into uncertainty. I say this not as a topic of complaint but rather as a topic of fatigue. I am concerned that the continuous reshuffling of the bureaucracy in the name of reform does not add a dollar; indeed it can be costly in administrative and human capital. I recognise that Federal funding will be coming with these reforms, and obviously that is welcome.

However, I believe we should bear in mind that administrative reforms come at a human capital cost. If we want the best and brightest to operate our health services, we must recognise their idealism and their support for reform—which we all know is difficult—and recognise the fatigue and demoralisation that are an inevitable result of shoving around bureaucrats without addressing the structural and professional issues in health that are screaming out for change, albeit politically difficult change. Reforming the bureaucracy is the soft option but it always seems to be the first option. I hope, forlornly, that this legislation will be followed through with zeal for actual reform and that we do not repeatedly hit at the soft targets, that is, the public servants. Those exceptional and experienced people, many of whom in my area are overqualified, have families and lives that can bear only so much abuse and stress.

We ought to be valuing and nurturing our health administrators. We pay a price when we lose them every time we belt into them as soft targets that cannot fight back. I make this statement as a wife and as a mother. However, I have never sought to speak on this issue in my time in this Parliament because I do not believe my personal views are a matter for the public. Having had privileged insights into the fragility of the human chain of services that delivers such a professional and respectful service to citizens, irrespective of their colour, creed or the cause of their illness, I say to all members that we must respect the bedrock of our health system. I believe it has been strained to breaking point. If we pass that breaking point, it will be at enormous cost to those intangible qualities that ensure that the aspiration to provide the best care in the world free of charge is still alive in New South Wales.

I commend my colleague the Hon. Jennifer Gardiner for her contribution to debate on this legislation and on all the other health bills that come before us. I am not convinced that these reforms necessarily are the way to go. However, I acknowledge that the passage of legislation dealing with area health services will probably end the most important era in the history of health administration in New South Wales.

My plea to the Government and to my colleagues is to look after the people who look after all of us. They are outstanding unsung heroes. They certainly do not seek accolades. They would have left their positions

long ago if that were the case. They deserve fairness. It is in the interests of us all to care about their morale and to make the positions they are being offered more attractive. Putting aside my personal admiration, these people are the hinges upon which the success of our entire health system turns.

Reverend the Hon. FRED NILE [10.50 p.m.]: The Health Services Amendment (Local Health Networks) Bill 2010 amends the Health Services Act 1997 to implement a local health network system in accordance with the National Health and Hospitals Network Agreement. The agreement is former Prime Minister Rudd's legacy. He devoted a great deal of time and effort to bolstering State health systems and to providing very important funding for those systems. Because of that agreement, the State Government has no option but to reorganise the New South Wales health system. The objective of the agreement is to improve patient-centred care. We will see whether that is achieved. As members have said, it would have been better to establish smaller local health networks rather than these very large structures, which are only slightly smaller than the area health services that they will replace. This new structure will still see decisions being made far from the local hospitals that must implement them.

I remember the frustration expressed by doctors and staff during the inquiry into Royal North Shore Hospital about administrative decisions being made at Gosford. That arrangement did not work and it created many problems for the hospital. Those problems will probably persist because the so-called local health networks are too big and further amendments to the legislation will therefore be necessary. The Hon. Jenny Gardiner emphasised the need for truly local hospital networks and local hospital boards, and I agree with her. Local hospital boards have been criticised and it has been said that they result in waste and inappropriate use of hospital facilities, equipment, staff and so on. However, that system seemed to work far better than the existing system. Local hospital boards generated pride and sacrifice and produced a far better outcome. Doctors felt that they were genuinely involved in the administration of the hospital when they worked with a local board.

We will now have eight local health networks in the metropolitan area and seven in rural and regional New South Wales, three specialist networks, the Sydney Children's Hospital network, the forensic mental health specialist network and a further specialist network covering services provided by St Vincent's Hospital and Mater Health. Dr John Kaye was critical of the Government's recognition of the St Vincent's network, which comprises St Vincent's Hospital, the Sacred Heart Hospice in Darlinghurst and St Joseph's Hospital at Auburn. That structure accords with the National Health and Hospitals Network Agreement, which recognises the vital role played by non-government providers of public health and hospital services such as St Vincent's Hospital. As members know, for nearly three years I have had weekly involvement with St Vincent's Hospital because my wife Elaine is being treated there for cancer of the liver. I admire the doctors, nurses and other staff for the care and compassion that they offer to all patients, not only to my wife.

This bill will enable private benevolent bodies to be recognised as affiliated health organisations in respect of certain of their establishments or services where public health or hospital services are provided. I understand that no structural changes are proposed to allow St Vincent's Hospital to be recognised and funded under the National Health and Hospitals Network Agreement. St Vincent's will retain its independent board, which has worked very well and is a classic example of the value of the local hospital board model. It is not possible to establish a proposed network as a local health network or a network statutory health corporation under the Act. Instead, a new section will be included in the Act providing for the Minister to make an order declaring that one or more affiliated health organisations are, in respect of some or all of their recognised establishments or recognised services, to be treated as a network for the purposes of the National Health and Hospitals Network Agreement. Such an order can be made only with the concurrence of the affected affiliated health organisation. That is a good outcome and it will ensure the maintenance of the high standard of care that is offered at St Vincent's Hospital and similar hospitals.

Schedule 1.1 [12] provides for the establishment of local health networks and states that a statutory health corporation may be constituted as a network governed health corporation. It appears that they are now the alternative names; that is, the network will operate under two titles. I assume that will facilitate provision of the Federal Government's financial support. However, I would appreciate it if the Parliamentary Secretary were to explain that arrangement. That duplication appears throughout the bill and it seems that the chief executive officer will have responsibility for both organisations.

As members have said, advertisements have been published and local health network council chairmen are being appointed. The bill also provides that the Minister can dismiss the entire organisation with or without reason. It would be helpful to have a reason if such drastic action were taken. Will the Government treat the new local health network councils in the same way that it has treated local councils? Will the Minister have similar

power to dismiss them without reason and to appoint an administrator? If so, these networks will be operating under the Minister's shadow and they will be under pressure to please him or her. That may hinder the implementation of good local initiatives. Boards might feel the need to second guess the Minister in an effort to maintain their place in the system. I support this bill, which will facilitate a major reorganisation of our health system. Again, we will be able to assess it only after it has been operating for some time to see whether it has achieved what the Government and former Prime Minister Rudd had in mind. We will have to wait and see.

The Hon. MARIE FICARRA [10.59 p.m.]: The Health Services Amendment (Local Health Networks) Bill 2010 amends the Health Services Act 1997 to accommodate the Council of Australian Governments [COAG] health reforms agreed to in April 2010. The bill abolishes the existing 8 area health services and establishes a system of 18 geographical local health networks: 8 local health networks to cover metropolitan Sydney, 7 covering rural and regional areas, and 3 speciality networks covering children's health, forensic mental health and services delivered by St Vincent's Health. The existing New South Wales Health organisation of eight area health services in operation since 2004 has attracted much criticism over the years from clinicians and nurses at the coalface, apart from much public concern regarding the mismanagement of resources with too much bureaucracy, rather than improving patient service delivery and giving greater support to our hardworking doctors, nurses and allied healthcare workers. The New South Wales public health system employs almost 100,000 people and includes approximately 220 hospitals ranging from large teaching facilities to smaller multipurpose services in country New South Wales. The clear disconnect between clinicians and administrators has been damaging to the reputations of our public hospitals and healthcare providers over the past 15½ years. Importantly, we have lost valued local community involvement. In 2008 a special commission of inquiry into acute care services in New South Wales public hospitals published the Garling report, which warned that the Department of Health management of this sector was in a bad way. The report noted:

It is clear that the establishment of the eight area health services has caused serious disruption and unrest. It has led to decentralised approval processes described by clinicians as "disheartening", "demoralising", "dysfunctional" and "inefficient".

The 2005 restructure "created an overcentralised management structure which has alienated clinicians who are the heart of the public hospital system". Doctors, nurses and allied health professionals working in our hospitals must be praised for keeping our hospital system alive and kicking. They do an amazing job even when many of them feel dejected and concerned about the problems that this Government has not addressed for many years. The geographic areas of the huge area health services were described in the Garling report as immense with the Greater West Area Health Service covering an area larger than Germany, and the Hunter New England Area Health Service the size of England. The Garling inquiry heard from numerous experienced doctors, nurses, managers and community members who identified problems arising from the creation of these area health services, including:

Decision makers geographically removed from those who rely on them.

Added layers of bureaucracy between doctor and decision makers.

Decision-making and accountability have been publicly assessed as being at substandard levels regarding performance indicators, with chief executives of area health services—now accountable to the Director General of the New South Wales Department of Health who, in turn, is accountable to the Minister—regarded as inaccessible, and their decisions are not communicated to those affected by them. Transparency in decision-making and resources allocation is non-existent. It was reported that hospital administrators rather than doctors make decisions about patient care:

Loss of local control at hospital level, with General Managers perceived by clinicians to be disempowered, lacking decision-making authority, limited expenditure delegations and no discretionary expenditure built into hospital budgets. Clinical managers cannot make routine purchases or decisions, which impedes patient care, particularly where urgent supplies are required.

The shadow health Minister, Jillian Skinner, in debate on this legislation in the other place, said:

The role of Medical Staff Councils "has been sidelined since 2005, and effectively marginalised by the 2005 restructure." Inadequate spending delegations was commented upon, with evidence from one senior doctor in charge of a network with a \$50 million annual budget as not being permitted to authorise, for a junior staff member, a replacement pager costing \$169. Clinicians and community members claimed they were unable to scrutinise budgets. One senior doctor said: "... the only time I hear about the budget is when I have exceeded it". They complained about no incentives to keep within budget or save money.

... despite one of the objects of the lemma reforms to reduce bureaucracy, what we have seen locally is a vast enlargement of the bureaucracy, not just the numbers and layers of bureaucrats but also the bureaucratic processes that go on.

Transparency and accountability became early casualties of these drastic, ill-conceived and one size fits all hastily introduced changes. This followed the virtual dismantling of all significant organs of independent input into decision-making and review ...

In March 2009, the New South Wales Liberals and Nationals released a policy document entitled "Making it Work" which reformed the governance of New South Wales Health. Among other things, we committed to abolishing the eight huge dysfunctional area health services and establishing approximately 20 health districts in their place serviced by district health boards comprising local clinicians and community representatives selected on merit and with a range of financial and strategic skills. The New South Wales Liberal and Nationals committed to extend the clinical referral networks that link medical experts across the system and to retain certain back office corporate support functions at a central level. We must empower local communities by giving them better information, and useful data that assists them in the delivery of patient care. We must let them have a real say in the public health system. We need greater accountability for promised outcomes.

How hypocritical of Minister Tebbutt who first rubbished the New South Wales Liberals and Nationals policy in Parliament on 2 December 2009 and then repeated her parroting foolishness on many occasions in the public arena. Of course, the Keneally Labor Government was forced to eat humble pie when former Prime Minister Kevin Rudd, knowing that this New South Wales Labor Government was so on the nose with electors over health service delivery, announced health reforms to acknowledge the importance of local and clinician involvement and required the establishment of health networks to receive funding for public hospitals. Network boundaries were drawn up by some faceless bureaucrats in New South Wales Health and then taken on a PowerPoint "We are here to tell you" tour described by Minister Tebbutt as broad consultation. Concerns about the Central West boundaries have been outlined already by the Hon. Jennifer Gardiner, but I shall highlight the concerns expressed by clinicians and the community in the St George and Sutherland region that I know so well. This region will be overpowered by the Eastern Sydney Prince of Wales network. More work is required if we are to have a good working relationship between these well-respected public hospitals affected by and committed to excellence in patient care.

It is becoming clearer that nothing has changed in NSW Health: it will still be a "command and control" operation with a bit of window-dressing to appease the media and the ever-hopeful public desperate for improvements in our health system. Why the indecent haste with this bill by Premier Keneally and Minister Tebbutt? We have three working days to consult on a bill that the Government says will bring the greatest reform to health since Medicare was introduced. That shows the disregard with which this Government holds the people most affected and involved by this restructuring process. There remains concern that a lack of appropriate Federal funding will endanger the viability of rural and regional health services. Communities need guarantees from this Labor Government that no facilities will be closed or have funding cuts that will hamper their ability to deliver their health services.

The Keneally Labor Government has been forced in this legislation to acknowledge the failure of its huge area health services and its lack of genuine local engagement in the past. The new system certainly is not simpler than the one it replaces. It is still not clear how or why the new system will improve the longstanding problems of service delivery and budgetary mismanagement in Health in this State. We have many concerns over Labor's plan, including the lack of consultation, the muddled local health network boundaries, the lack of integration with primary care networks, the failure to negotiate cross-border agreements and the lack of clarity about how head office will interact with local networks. We do not oppose this local health network legislation because it moves in the direction of our proposed healthcare system and away from this Labor Government's failed area health services.

The New South Wales Liberal Party and The Nationals reserve the right to change the system for the better in the future, after consulting with local communities. We implore the Government to work closely with healthcare professionals and the communities they faithfully represent.

Reverend the Hon. Fred Nile: To get changes through the upper House.

The Hon. MARIE FICARRA: That is right. As Reverend the Hon. Fred Nile says, it is going to be a challenge to get any changes through the upper House. We hope that that will be possible. The Labor Government has had 15½ years to fix the health system but it has failed and is now desperate to get re-elected. If we want to change the health system in New South Wales, the message to everybody is clear: You need to change the Government. The New South Wales Liberal-Nationals Coalition do not oppose the bill but we stress our strong plans for real health reform in the future, where communities have a say and patients are put first.

The Hon. MATTHEW MASON-COX [11.10 p.m.]: I will make a few brief remarks about this very important bill, the Health Services Amendment (Local Health Networks) Bill 2010. In so doing, I will reflect on the impact of the bill on southern New South Wales, the area where I live and where this bill will have

significant effects, as it will have across the whole State and indeed the nation. But before I do that I want to reflect on the genesis of the new arrangements, which came out of the brash statements by former Prime Minister Kevin Rudd before the last election when he said, "We will fix health or we will take over health." Those rash words have led, after a happy series of accidents, to this bill. In a similar context, think of the other things that former Prime Minister has bequeathed as his legacy to the Australian people—the pink batts fiasco, Building the Education Revolution, the National Broadband Network, and the Kevin "clunker" Rudd scheme.

Western Australia did not fall for the mirage offered by our former Prime Minister. It saw through the facade, would not take the 30 pieces of silver and would not give up its 30 per cent GST. Yet the New South Wales Government rushed in headlong, without considering the consequences. The bill contains very little change. In relation to southern New South Wales, consider the new areas covered by the so-called local networks. The Southern New South Wales Local Health Network, which replaces the Greater Southern Area Health Service, is particularly worthy of consideration. One would expect a review of the system to look for commonalities of interest, where it would make sense to create a health service area. Instead, the Government has adopted boundaries similar to those of the old Greater Southern Area Health Service. Rather than taking us forward, we have gone backwards and will continue with a regime that has existed for far too long and has demonstrated, for the past 16 years of this Government, that it cannot deliver better health services to people in southern New South Wales—or indeed across the State.

I do not understand what the community of Bega has in common with the community of Goulburn. Where is the common interest? There is no explanation as to how this new health network might integrate with the Australian Capital Territory health system. During the Federal election campaign when the local health networks were announced after a consultation period—which I think the Hon. Marie Ficarra explained better than anyone else was really government-knows-best consultation—the local member, the Hon. Mike Kelly, pronounced that the Australian Capital Territory health system would just have to fall in line. Since then we have heard from the Australian Capital Territory Government that that will not be the case. It jealously guards its system and wishes to see the best results locally.

We see problems with the system in cross-border areas around the Australian Capital Territory. We have a beautiful new hospital in Queanbeyan, which cost some \$50 million yet fails to provide any new services to the community. Again, we see a litany of problems emanating from the hospital, which has been the subject of a lot of media scrutiny locally. Over the past 12 months more patients have been redirected to Canberra hospitals. Over the past 12 months the cost to this State for the increased use of Canberra hospitals by New South Wales patients is in the order of another \$20 million, or an increase of 30 per cent. New South Wales patients are being directed across the border when we could provide services locally much more effectively and at much lower cost. That causes significant staffing problems at Queanbeyan Hospital, and particularly affects morale. About 12 senior nursing positions have been lost in the past 12 months. A number of those positions have gone to Canberra hospitals, which have a much stronger support network and a better system for looking after highly skilled professionals.

These sorts of bureaucratic responses to local needs add up to a loss of hope locally. Professionals who work in the system, as the Hon. Catherine Cusack pointed out, need to be treated with respect and consulted in a meaningful way rather than being told that this is the way the Government has decided it will work, regardless of their concerns. The role of clinicians in the process has again been inadequate. The consultation process has involved anything but consultation; we simply have another restructure and another name change, but similar boundaries. It probably qualifies for the often-quoted maxim of insanity: repeating the same thing and expecting different results is madness.

The Hon. PENNY SHARPE (Parliamentary Secretary) [11.16 p.m.], in reply: I thank members for their contributions to the debate and for their support of the Health Services Amendment (Local Health Networks) Bill 2010. I note that the Opposition will be supporting the bill, after many lengthy comments from those opposite. The changes in the legislation before us mark the beginning of a significant transformation of the New South Wales health system. The legislation gives the Government the clear tools to begin the process of implementing national health reforms and will help guide the way forward. The establishment of 18 local health networks across New South Wales will mean that we continue to improve patient-centred care and will strengthen local decision-making and clinician engagement.

A couple of issues were raised during the debate that I would like to respond to. Dr John Kaye asked about St Vincent's and how St Vincent's has become a local health network. He is not in the Chamber, but I will place this response on the record as he asked me specifically. St Vincent's has been in discussions with the

Commonwealth about how its special status can be recognised under the new local health network model and it received advice that it met the requirements to become a local health network. Victoria has already agreed with that approach and when St Vincent's approached the New South Wales Government during the consultation period the Government agreed that it made good sense, given the size and nature of the services provided by St Vincent's at Darlinghurst and its distinctive role in providing services statewide. The specialist network will enable St Vincent's to build on its vital role in public healthcare and to work effectively with other local health networks. Other public hospital services provided by non-government organisations in New South Wales are smaller in scale and are more appropriately funded consistently with the current local funding arrangements.

Reverend the Hon. Fred Nile raised two issues. The first was in relation to the Minister's discretion to remove governing council members. The removal of council members for any or no reason reflects current provisions in relation to the appointment of boards or board-governed statutory health corporations and those applying to chief executives. As indicated in the agreement in principle speech, the council and chief executive will have substantial obligations. It is critical that the Government has the capacity to intervene urgently when there are serious failings. Historically, the removal of officers and members has been done only rarely and in the most extreme cases. The Government expects that this will continue to be the case. However, there needs to be transparency in the event of such a decision. In recognition of this, section 29 will also provide that, when the Minister for Health exercises the power to remove a council and appoint an administrator, the Minister must make a statement to Parliament that sets out the basis for making the decision to appoint an administrator.

As to the naming of statutory health corporations, the provisions relating to networked statutory health corporations are not an alternative name for local health networks. While there will be 15 geographic networks, there will be two specialist, service-based networks—the Sydney Children's Hospital and the Forensic Mental Health Network. The provisions Reverend the Hon. Fred Nile referred to are simply designed to support those two types of bodies to be recognised as local health networks and have the same governance structure as the geographic networks. That is why their names appear throughout the bill. Implementation of these reforms will result in improved patient-centred care as well as better coordination and linkages with the primary care system through new Medicare locals. The State Government will work with the Commonwealth Government to ensure that Medicare local boundaries align as closely as possible with our local health networks.

The provisions of the bill are a good first step in implementing national healthcare reforms. It is important to note that Australia has high rates of hospitalisation. For example, our rates are 67 per cent higher than those of Canada and 19 per cent higher than those of the United Kingdom. There are not enough incentives, particularly in the primary care system, to deliver coordinated care that will keep people out of hospital. We must be serious about addressing these issues and work with the Federal Government to provide a more sustainable source of funding for health services. We must get the incentives right so that the appropriate care is provided in the right place at the right time. The Council of Australian Governments agreement that the Government has signed takes us further along the path towards achieving those goals. In conclusion, I state for the record the thanks of the New South Wales Government to the many clinicians and staff, area health services and members of the community who have taken the time to participate in the consultation process that has led to the introduction of the bill. I commend the bill to the House.

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

Motion agreed to.

Bill read a second time.

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

Third Reading

Motion by the Hon. Penny Sharpe agreed to:

That this bill be now read a third time.

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

ADJOURNMENT

The Hon. PENNY SHARPE (Parliamentary Secretary) [11.22 p.m.]: I move:

That this House do now adjourn.

PALLIATIVE CARE

The Hon. GREG DONNELLY [11.22 p.m.]: On Friday 4 November 2010 I had the privilege of attending the 2010 New South Wales Palliative Care Conference at the picturesque Cypress Lakes Resort in the Hunter Valley. The conference commenced on the evening of 3 November with a reception, followed by two full days of conferencing, on 4 and 5 November. The two days of conferencing were filled with a range of excellent presentations from many palliative care experts, along with informative workshops and several concurrent sessions covering a number of important issues. The theme of the conference was "Hands on in the Hunter". Particular attention was given to a range of initiatives, activities and research projects being undertaken in Newcastle and the Hunter Valley region.

The keynote speakers included Professor David Currow, who is the chief executive officer of the Cancer Institute of New South Wales; Professor Brian Kelly, who is a professor of psychiatry at the School of Medicine and Public Health at the University of Newcastle; Dr Peter Saul, who is the Director of Intensive Care at the Newcastle Private Hospital; Associate Professor Katherine Clarke, who is the Director of Palliative Care at the Calvary Mater Hospital; and Dr Susan Newton, who is a staff specialist in palliative care for the Maitland-Dungog Palliative Care Service. Papers presented by the keynote speakers covered a range of topics that are relevant to palliative care. What struck me while I listened to the speakers was how fortunate we are in this State to have such a highly skilled and motivated group of individuals working in the area of palliative care.

As the presentations demonstrated, not only are those people through their profession applying current world's best practice in providing care and support, along with family members and friends, for those who are approaching the end of their lives, but they are innovating and developing new practices and techniques. Over time, it can be expected that some of this groundbreaking work will both enhance and improve current palliative care treatment regimes and standards, not just in New South Wales but around Australia and overseas. With respect to the concurrent sessions and workshops, the contributions from the speakers and presenters were equally impressive. All told, the conference booklet published 39 abstracts covering matters ranging from frontline care in a rural setting to capacity building in palliative care nursing teams and prevention with compression of post-thrombotic syndrome in palliative care day hospital patients.

More than 250 delegates to the conference had such a range of worthwhile options to choose from that I am sure some people had difficult choices to make about the sessions they would attend and those they would have to miss. Hopefully all the papers and presentations will be brought together and published in due course, thereby enabling people to share all the available material and information. I take this opportunity to acknowledge and pay tribute to the magnificent job done by the conference organising committee. The members of the committee are the Chair, Peter Cleasby, Claudia Guigni, Linda Hansen, Helen Moore, Joan Ryan, Anne Scott, Caroline Short and Kate Stuart. I especially mention Peter Cleasby and Linda Hansen who are respectively the president and the executive officer of New South Wales Palliative Care. The people of New South Wales are particularly fortunate to have these two most dedicated people leading and driving the peak palliative care body in New South Wales. Their tireless work as advocates for the cause of palliative care as well as their dedication and professionalism set wonderful examples for us all. I conclude by reading the message from the Premier of New South Wales that was read out at the commencement of the conference by Peter Cleasby. The message states:

There is no more skilled and challenging branch of medicine than palliative care - the science, the art, of caring for the terminally ill, medicine at its most humane, our closest approach to the divine prerogative of mercy.

My Government places great value on the work of all those involved in palliative care, from the specialist doctors and GPs to the nurses, allied health workers and countless volunteers who together provide the best possible care to thousands of Australians in their hour of greatest need.

I pay tribute to the outstanding work of Palliative Care New South Wales for their national leadership in advancing the cause of modern palliative care and the community's understanding of all it promises in the relief of suffering and the preservation of human dignity.

The organisers of this week's conference are to be congratulated on assembling such an impressive list of speakers. The sharing of ideas and information through open discussion and collaborative workshops will benefit all who take part.

I join with my Government colleagues in wishing delegates, speakers and guests a very happy and successful conference. Long may your vital work continue.

Kristina Keneally, MP
Premier

I fully endorse the Premier's comments.

TAMWORTH REGION RENAL PATIENT TRANSPORTATION SERVICES

The Hon. TREVOR KHAN [11.27 p.m.]: Tonight I wish to draw to the attention of the House an issue that is very important to people living in north-western New South Wales. Health services are very important to many people who live in rural and regional areas. Often the health services provided to people in rural and regional areas are many hundreds of kilometres away from their homes. It is because of this reality that we need a proper and equitable system of non-emergency transport and support to deliver people to the health services that they need and deserve.

Tonight I will focus specifically on patients in the Tamworth region who suffer from renal failure. Most patients who suffer from kidney failure are forced to undertake renal dialysis up to three times a week. They have no option but to travel hundreds of kilometres to Tamworth Hospital, for example, to receive dialysis, which is the only thing keeping them alive. I doubt that many of us in this House could imagine such an existence. I have been contacted by many of those undertaking renal dialysis at Tamworth Hospital. Their stories are a sad reminder of the added struggle of living in regional and remote communities. I am grateful to Mr Dennis Bucknell from Tamworth, who is a champion for renal dialysis patients in remote and regional areas. In my many discussions with Dennis he continually tells me that many are finding it increasingly difficult to travel to obtain dialysis treatment. With ever-increasing numbers of people needing renal dialysis, this problem is growing in number and severity by the day.

There are several options for patients who live far away from medical services. However, patients needing dialysis often fall through the cracks and are not adequately supported by any of the established programs. Many patients would prefer the use of non-emergency ambulance transportation. However, the criteria for non-emergency ambulance transportation are quite strict. Many kidney dialysis patients in the Tamworth region are unable to use the service. I have been told that the program and eligibility criteria need to be examined closely. I call on the Government to immediately review the criteria so that those who do not fit the strict eligibility regime, as it stands today, are protected in a fair and equitable way.

The other usual means of transport to hospitals and medical services is provided by community groups who offer transport services free of charge on a volunteer basis. But this transport option is generally unavailable to dialysis patients because of the nature of their treatment. Dialysis patients need increased care and attention that cannot be provided by volunteers. As such, these community transport providers often decline to transport dialysis patients. What happens in many circumstances is that patients have no option but to drive themselves to and from the hospital. The danger arises when patients, who really should not be driving, hop into a car to drive home immediately after having received dialysis treatment. These patients are not 100 per cent fit and the risk of an accident is undoubtedly greatly increased. However, many have no other option.

More than 30 years ago the Commonwealth Government established the Isolated Patients Travel and Accommodation Assistance Scheme to help patients and their carers with the cost of travel from their remote homes to hospitals. Since the transfer of the responsibility to the States in 1987 the program and support provided has not kept pace with the needs of the community. On average, the fuel subsidies paid by the States is about 15¢ per kilometre. However, the Australian Taxation Office currently assesses the cost of travel by private car to be at least 58¢. There seems to be a great disconnect in the cost and the subsidy currently provided. The tyranny of distance adds to the difficulties for those who are already under great stress due to their medical condition. The support we give to those patients in rural and remote communities needs urgent review.

The Keneally Labor Government is showing the same neglect on this issue that it has shown when it comes to other health services in Tamworth—namely, the continual delay to deliver on the promise to redevelop Tamworth Hospital. This Government has given up on Tamworth and unfortunately the member for Tamworth appears incapable of getting the attention of the Government to deliver on its promises. Tamworth residents deserve better. As has been said many times in this place, "distance should not equal disadvantage".

TRIBUTE TO PATRICIA GILES

Reverend the Hon. Dr GORDON MOYES [11.32 p.m.]: As parliamentary leader of Family First New South Wales I speak tonight about the forthcoming retirement of Councillor Patricia Giles. The *Manly Daily* described her as "a fighter and an energetic woman who gets things done". Patricia Giles is the longest-serving mayor of Pittwater Council, having served seven terms from 1997 to 2004. She also served as deputy mayor for four terms from 2005 to 2009. Patricia will retire, after more than 25 years of fighting for Pittwater, at the next local government elections, in 2012. Patricia Giles played an important part on the

Pittwater Municipality Committee in 1985 that began the fight to secede from its giant southern cousin, Warringah Council. In 1991 then Minister for Local Government, David Hay, announced that Pittwater would be legally divorced from Warringah. A provisional council was installed and at the first election in 1992 Patricia Giles was elected to represent central ward and she has been re-elected ever since, easily outlasting every other councillor on Pittwater Council.

Since the 1980s Patricia has been involved in many resident action groups—in particular, the Pittwater Grove Residents Committee. Patricia led the fight to retain and upgrade Mona Vale Hospital from 1997, along with the saving of the Warriewood-Ingleside escarpment. She also led the fight to create a regional park at Winnererremy Bay, which resulted in the saving of the area from development. It was subsequently turned into a large reserve that, to this day, is a highly popular area of open space used by the local community and visitors to the area. She was also active in saving Bicentennial Park at Mona Vale, raising \$14,000 for playground equipment.

Patricia has held positions on numerous committees and task forces, including chairperson on the National Parks and Wildlife Advisory Committee, member of the Bicentennial Environment Committee, the Local Government Association Land and Environment Taskforce, the Ministers Migration Taskforce and the New South Wales Local Government Advisory Group. She is a patron of the Newport Surf Life Saving Club Disabled Nippers Program and has been awarded the Distinguished Service Award by Surf Life Saving Northern Beaches. She has also donated and sponsored the Mayors Award for Courage in Lifesaving and is patron of the Mona Vale Girl Guides.

On Australia Day in 2006 Patricia Giles was awarded the Order for Australia Medal for service to her local government and to the community of Pittwater. In 2007 she received the Emeritus Award at the Local Government Council as well as the *Manly Daily* Centenary Medal for service to the community. Patricia will leave Pittwater Council in 2012 with a sense of great pride at having been a part of a new council that took a few years to find its feet but has since achieved the sort of functionality that other councils and ratepayers can only envy. Patricia has never changed her goal, which is to conserve, protect and enhance Pittwater's natural and built environment for current and future generations. She has always used her Christian beliefs as a platform for her decision-making and firmly believes that councillors must reflect the views of the majority of its residents and be prepared to make the tough decisions. I conclude with a recent quote from Patricia Giles that is indicative of the way we should all act in representing the people of New South Wales. She stated:

I've always believed in trying to do what is best for the future of Pittwater. I'm from the community for the community—that has always been my mantra. (Former Warringah Federal MP) Edward St John once told me to always vote with your heart, be true to yourself, and to never blindly follow the party line. I took his advice to heart. I always tried not to be political but to do what was best for Pittwater, not what was best for political gain.

Patricia thanks God for directing her pathway. She is always proclaiming, "If God is for you, who can be against you?" She thanks her wonderful family of six children, their spouses, a large number of grandchildren and her husband, Ian Giles, who have walked with her the long miles each step of the way. Finally, she thanks the fantastic people with community spirit in Pittwater who have always encouraged and supported her to continue to fight and who regularly make her life a piece of paradise. Rise up and praise her. They call her blessed.

WOMEN BUS DRIVERS

The Hon. SOPHIE COTSIS [11.37 p.m.]: The year 2010 is a significant milestone for women bus drivers. This month we will commemorate the fortieth anniversary of the first women to drive government buses in New South Wales. This significant milestone deserves recognition particularly as the few women in transport at the time led and pioneered the way for women's equality in the workforce, including equal employment opportunities in government services and promotion based on merit. This anniversary deserves its place in New South Wales history. It is timely for the Parliament to recognise and send its congratulations to the activists, the women and men who led the campaign, and the many women who stood solid in the face of discrimination from some of their male colleagues, some unionists, management, and even their husbands and brothers.

To celebrate, two major festivities will be held at Waverley and Brookvale bus depots from 9.00 a.m. to 3.00 p.m. on 24 November 2010. I encourage and welcome the community to come along. These activists deserve our best wishes and to enjoy their day. Recently I was honoured to be invited as a guest of the Women's Campaign Committee of the Rail, Tram and Bus Union and I met with the hardworking and talented women

transport service workers. I congratulate each of them on their commitment to fight the issues of today and commend them for their strategic initiatives in pursuing these challenges to improve conditions for shift workers, balancing work and family, to name a few.

I was also privileged to meet with June de Lorenzo, the lead campaigner from the Waverley depot, who led the women bus drivers campaign and who moved an historical resolution for women to train and become government bus drivers in 1970. June de Lorenzo and her colleagues are to be congratulated. We thank her and the many strong women in transport services who have successfully campaigned for the right to equal access to work and pay opportunities as men in the workplace. June is a terrific person. Her passion for equal and fair access to opportunity is relentless. Even today she is out there fighting. I love that great Australian spirit. June said to me, "You get nothing without a fight, love."

This campaign began in early 1970. There was a shortage of bus drivers and one of the suggestions was to recruit truck drivers. The women at Waverley depot were infuriated that they were not asked and there began a concerted campaign by women who were willing and able to fill the shortages. At the time women were lorry drivers, cab drivers, pilots, and captains of ships; women had driven buses during the war. Eventually, through strategic campaigning and the strength of June de Lorenzo, these activists broke down the barriers and paved the way for women to be trained as bus drivers. This was revolutionary. It opened the way for important campaigns over the years for women to seek promotional opportunities to advance to other positions in the industry, such as bus inspectors and revenue clerks, which led to further career and financial advancement.

In October 1970 the first 10 women commenced training. June Lusk was the first woman rostered for driving duties on 27 November 1970, representing the end of years of resistance to women bus drivers. I send my congratulations to June Lusk and her family on this historical moment for women in New South Wales. There were other significant changes, one being the end to age discrimination against women bus workers. While men could be employed up to the age of 54, women could be employed only up to the age of 34. However, when women started working as bus drivers in the 1970s, they were stood off duty when it was known to management that they were pregnant. In November 1981 a case was brought before the Equal Opportunity Tribunal of the Anti-Discrimination Board for the right of women employees to continue in their employment during pregnancy. Also importantly, today women on maternity leave working for State Transit can accrue service while on paid maternity leave.

Today there are approximately 322 women bus operators working in government, and the largest depots of women operators are Waverley, Port Botany and Ryde. I encourage more women to join the ranks. Today women make up 53 per cent of New South Wales workers. There are still many careers where women's participation is low. This is better than 40 years ago but there is still a long way to go. The Government has undertaken a range of initiatives to encourage women's participation in traditionally male-dominated occupations. Some examples include the Women in Trade Support Program run by RailCorp, the Roads and Traffic Authority's Women in Engineering Program, which encourages young women to consider a career in engineering, State Transit's recruitment program targets its advertisements to women through posters in buses that profile women in State Transit, and recent changes to rostering to enable more staff to work part time.

This year the New South Wales Government varied the Crown employees award to provide women with paid leave breaks to breastfeed or express milk in the workplace. This is a fantastic step forward to encourage women's participation back in the workforce, and I know the enormous contribution made to the economy and workplace productivity in New South Wales. Work is underway to apply this award to various workplaces in the public sector, including State Transit. There will always be more to do, and nothing is done without a fight. I congratulate the Women's Campaign Committee of the Rail, Tram and Bus Union, State Transit and the activists involved in organising the fortieth anniversary. I know it will be a great success.

RADIOACTIVE WASTE

The Hon. MARIE FICARRA [11.41 p.m.]: I congratulate the people of western Sydney and their local representatives, Councillor Tanya Davies and the Liberal member for Penrith, Stuart Ayres, on winning the battle to stop the New South Wales Labor Government's proposal to transport nearly 6,000 tonnes of radioactive waste, dug up from the former uranium smelter in Nelsons Parade, Hunters Hill, and bury it at Kemps Creek. On 17 October 2010 I was alarmed to read the article in the *Australian*, "Radioactive waste to be trucked through the city", which stated that "secret documents passed to the *Sun-Herald* show soil from a uranium smelter in Hunters Hill, previously proven to be hazardous in tests by nuclear experts, has been

reclassified as safe by the State Government" and would be transported through the city and dumped at Kemps Creek. I was astounded to learn that the State Property Authority was to pay the private owner of the Kemps Creek waste site \$3.5 million to take nearly 6,000 tonnes of radioactive waste. The article further stated:

The Keneally State Government is then expected to sell each of the three contaminated blocks at 7, 9 and 11 Nelson Parade, Hunters Hill for \$34 million.

This proposal was an obvious grab for cash that not only demonstrates the negligence and incompetence of this State Labor Government but also indicates a serious disregard for the people of western Sydney. What a disgrace that the State Labor Government was prepared to use western Sydney as a dumping ground for radioactive waste. Did it not think of the dangers to people's health and the impact that this would have on the local community?

The Hon. John Ajaka: They don't care.

The Hon. MARIE FICARRA: As the Hon. John Ajaka rightly says, they do not care. Where were the local Labor members on this dangerous proposal? Why were they not out there fighting for their community, as Councillor Tanya Davies was? I understand that on 15 June 2010 the Government and the State Property Authority signed a contract with the Sustainable Energy Development Authority to store the waste at Kemps Creek. However, the State Property Authority decided to brief Penrith City Council only after the event, on 28 June 2010.

The Hon. Helen Westwood: It's got to go somewhere.

The Hon. MARIE FICARRA: Again, that shows complete disdain, and I am surprised by the Hon. Helen Westwood. This showed utter contempt and disregard for the local council and community. On Sunday 17 October 2010 the Leader of the Opposition, Barry O'Farrell, broke the story on radio that this State Labor Government intended to use western Sydney as a dumping ground for radioactive waste. I congratulate the outstanding work of the residents and the Penrith City Councillor and Liberal candidate for Mulgoa, Councillor Tanya Davies, who leapt into action to stop this Labor Government's proposal. Residents formed ROAR—Residents Opposed to Active Radiation—and distributed a petition calling on Premier Keneally to abandon the State Labor Government's plans to transfer radioactive waste to Kemps Creek.

On 19 October 2010 the Liberal member for Penrith, Stuart Ayres, also questioned the Premier in the other place regarding the proposal. Regardless of the article in the *Sydney Morning Herald*, "Keneally rules out Kemps Creek as a dump for Hunters Hill nuclear waste", the Residents Opposed to Active Radiation and Councillor Tanya Davies are extremely concerned that Premier Keneally has only instructed the State Property Authority to look for other options, including interstate or overseas locations, to dump the waste.

The residents of Kemps Creek and wider western Sydney want the Premier to tear up any contracts signed for the Kemps Creek site and give an absolute written undertaking that no radioactive waste will be dumped in Kemps Creek or wider western Sydney. Again, I congratulate the community of Kemps Creek, wider western Sydney, the Liberal candidate for Mulgoa, Tanya Davies, and the Liberal member for Penrith, Stuart Ayres, on the pressure they brought to bear upon the State Labor Government to stop this outrageously irresponsible and dangerous proposal.

ELECTRICITY INFRASTRUCTURE

Dr JOHN KAYE [11.45 p.m.]: The impacts of the New South Wales Government's \$17.9 billion electricity wires, poles and substations spending reach well beyond just rising power bills. The New South Wales State-owned electricity companies are riding roughshod over community concerns to build new infrastructure. EnergyAustralia, Country Energy, Integral Energy and Transgrid are pushing ahead with proposals to build substations and powerlines in hundreds of locations across New South Wales, including Empire Bay, Kincumber, Granville, Ryde, Tenterfield, Bondi, Wamberal, Rose Bay and Chester Hill. Residents and community and environment groups have opposed many of these projects on a number of grounds. The project is not needed because the forecast for peak demand has been exaggerated. There are alternatives that are cheaper, better for the environment and have a lower impact on local residents. These include improved energy efficiency, strategic demand management and local generation, such as roof-top solar.

In many cases alternative sites and routes have been identified. In many other cases the proposal would have unacceptable impacts on the local natural environment, such as the loss of important habitat. In other cases

concerns have been raised about the impacts on the built environment, including streetscapes. Many residents have raised health concerns in relation to magnetic fields. The energy utilities are largely ignoring these community concerns and proceeding regardless. Alternative routes and sites have been ignored by the electricity supply authority or summarily dismissed.

The Greens believe that lower-cost outcomes using decentralised generation, demand management, energy efficient and smart grid technology would produce lower electricity bills, help reduce greenhouse gas emissions and take the pressure off many local communities battling electricity infrastructure projects. Energy utilities in New South Wales are effectively their own consent authorities for infrastructure. State planning regulations give EnergyAustralia, Country Energy, Integral Energy and Transgrid the power to ignore State planning laws, community objections and alternatives and grant themselves permission to go ahead with their own projects.

The State Environmental Planning Policy (Infrastructure) 2007, Regulation 41 exempts energy utilities from the requirement to obtain consent for energy infrastructure developments. The New South Wales Government has been panicked by a number of high-profile blackouts into agreeing to the massive \$17.9 billion electricity infrastructure spend. The Keneally Government has effectively rejected electricity demand management and energy efficiency as alternative options to building more substations. This is confirmed by the answers from the former Minister for Energy to my questions on notice in Parliament.

The Minister claimed that the advice he had received is that the massive capital expenditure on new lines and substations was the only option to keep the lights on in northern New South Wales and elsewhere. As well as failing to ensure that substations are sited away from homes, schools and sensitive environmental areas, electricity distributors have been ignoring the option of placing electricity cables underground because of additional expenses. Underground cables reduce the risk of bushfire and reduce exposure to electromagnetic fields.

The Empire Bay substation is being built by EnergyAustralia at a cost of \$50 million. Construction of the substation and overhead wires would compromise foraging areas used by threatened species, including the glossy black cockatoos, micro-bats and the yellow-bellied glider, and would interfere with the corridor to the Cockle Bay wetland used by gliders and bats. In 2003 the New South Wales Land and Environment Court recognised the environmental significance and created restrictions on the use of the land and placed a covenant on the land for bushland preservation and regeneration. EnergyAustralia is disregarding the restrictions and proceeding to clear swamp mahogany and paperbark swamp forest in and near the water course, which is a preservation zone. There has been no resolution of ongoing uncertainty relating to the serious health impacts of long-term exposure to magnetic fields on residents living or working near a substation or high-voltage line.

EnergyAustralia is also building a \$30 million substation in Ryde. This project for a zone substation is proceeding with little consultation with residents. Health issues were not properly assessed. EnergyAustralia failed to take into account the potential health impacts of the cumulative impact of electromagnetic fields from existing electricity infrastructure and the new infrastructure. EnergyAustralia is also redeveloping a substation in Anglesea Street, Bondi, that will largely destroy the residential streetscape. Residents greatly fear increased exposure to magnetic fields as a result of the new substation.

Successive energy Ministers have outsourced decision-making over the future of electricity supply to bureaucrats who are more focused on building monuments to coal-fired electricity than on providing a twenty-first century clean energy solution. By writing off demand management the Government has ignored the potential for thousands of long-term jobs in clean energy options. Instead of looking at ways to reduce the need for expensive capital works, the Minister has given the green light to ignoring communities and the environment. [*Time expired.*]

NATIONAL ROAD TRANSPORT WALL OF FAME

The Hon. HELEN WESTWOOD [11.50 p.m.]: In August this year Michael "Mick" Simpson of Sefton was inducted into the National Road Transport Wall of Fame at Alice Springs. Mick's induction is in recognition of his significant contribution to the road transport industry. Mick began his long career in road transport in 1969 when he began his working life with Frank W. Johnston Transport at Greenacre. During his career as a professional driver Mick has had a number of roles, including as bus driver in western Sydney, a tow truck driver in metropolitan Sydney, and an intrastate truck driver with Telstra. Mick currently works with

Wales Truck Repairs at Smithfield. As a volunteer, Mick has driven the Rainbow Labor float in the Gay and Lesbian Mardi Gras since 2007, and no doubt we will see him again guiding the Rainbow Labor float down Oxford Street on 5 March next year.

The aim of the wall of fame is to show that road transport is more than the bloke who drives the truck. Mick Simpson is a perfect example of this. Mick gives much back to the community, both through his work as a professional driver and through his actions in his local community. Mick initiated and organises the Wales Annual Charity Golf Day, which raises significant funds for the Bill Walsh Cancer Research Laboratory. Cancer research is important to Mick and his wife, Edie, whose beloved daughter, Belinda, died of kidney cancer in 2007 when she was just 32 years old. Mick also takes part annually in Convoy for Kids to raise funds for Westmead Children's Hospital and Telstra Child Flight. Mick Simpson is a compassionate and caring man who is truly deserving of the honour bestowed upon him.

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

Motion agreed to.

The House adjourned at 11.52 p.m. until Wednesday 10 November at 11.00 a.m.
