LEGISLATIVE COUNCIL

Wednesday 24 November 2010

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

The President read the Prayers.

PLANNING APPEALS LEGISLATION AMENDMENT BILL 2010

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

FOOD AMENDMENT BILL 2010

Message received from the Legislative Assembly agreeing to the Legislative Council's amendment.

BUSINESS OF THE HOUSE

Formal Business Notices of Motions

Private Members' Business items Nos 208 and 233 outside the Order of Precedence objected to as being taken as formal business.

PHILIPPINES MASSACRE

Motion by the Hon. Penny Sharpe agreed to:

1. That this House notes that:

   (a) Tuesday 23 November 2010 marks one year since the murder of 58 people, 32 of them journalists and media workers, in the southern Philippines,

   (b) the Ampatuan Town massacre in Maguindanao province is the world's single biggest atrocity against journalists, marking the lowest point in the Philippines' decades-long culture of impunity for the killings of media personnel,

   (c) according to the National Union of Journalists of the Philippines [NUJP], an affiliate of the International Federation of Journalists [IFJ], the massacre brought the toll of media killings in the Philippines to 136 since 1986,

   (d) four more media workers have been murdered in the Philippines this year and many other journalists across the Philippines continue to endure serious threats because of the content of their reporting, and

   (e) of 196 suspects in the massacre, 19 are now on trial while 130 remain at large, and most of those still free are police and members of private militias.

2. That this House acknowledges that:

   (a) journalists play a vital role in upholding democratic values in Australia and overseas, and

   (b) it is critical that governments ensure this role is respected and protected.

3. That this House remembers those journalists killed in horrific and violent circumstances, and their families, and urges Philippines President Benigno Aquino III to take all reasonable steps to charge and detain the accused and ensure justice is served on those who committed these killings.

SELECT COMMITTEE ON RECREATIONAL FISHING

Extension of Reporting Date

Motion by the Hon. Robert Brown agreed to:

That the reporting date for the Select Committee on Recreational Fishing be extended until Friday 10 December 2010.

POLITICAL PRISONERS IN BURMA

Motion by Dr John Kaye agreed to:

1. That this House:

   (a) welcomes the release of Burmese democracy leader Daw Aung San Suu Kyi from house arrest, and

   (b) congratulates the Burmese pro-democracy movement for its steadfast resistance to military rule and ongoing campaign for democracy.

2. That this House expresses grave concern for the human rights and welfare of the approximately 2,100 political prisoners held by the Burmese regime under appalling conditions which include:

   (a) 12 members of parliament elected in the last free and fair elections held in Burma in 1990, including:

      (i) Khin Maung Win, sentenced to 20 years imprisonment in March 2006,

      (ii) Khun Tun Oo, sentenced to 93 years imprisonment in November 2005,

      (ii) Kyaw Min, sentenced to 47 years imprisonment in July 2005,

   (b) 256 Buddhist monks, including:

      (i) U Gambira, sentenced to 63 years imprisonment in November 2007,

      (ii) U Vinaya, sentenced to 20 years imprisonment in July 2005,

      (iii) U Vayponla, sentenced to 22 years imprisonment in May 2001,

      (iv) U Thumana, sentenced to 29 years imprisonment in November 2003,

   (c) 177 women, including:

      (i) Thin Thin Aye, sentenced to 65 years or more imprisonment in October 2007,

      (ii) Thet Thet Aung, sentenced to 65 years or more imprisonment in October 2007,

      (iii) Thandar, sentenced to 29 years imprisonment in April 2008,

      (iv) Sandar Min, sentenced to 65 years or more imprisonment in August 2007,

      (v) Su Su Nway, sentenced to 8 and a half years imprisonment in November 2007,

   (d) 285 students, including:

      (i) Aye Aung, sentenced to 59 years imprisonment in September 1998,

      (ii) Min Ko Naing, sentenced to 65 and a half years or more imprisonment in August 2007,

      (iii) Naing Aung, sentenced to life plus 14 years imprisonment in April 1988,

      (iv) Aung Thu, sentenced to 65 and a half or more years imprisonment in October 2007, and

   (e) 41 journalists and other media workers, including:

      (i) Win Maw, sentenced to 17 years imprisonment in November 2007,

      (ii) Zarganar, sentenced to 35 years imprisonment in June 2008,

      (iii) Hla Hla Win, sentenced to 27 years imprisonment in September 2009,

      (iv) young activist Bo Min Yu, sentenced to 104 years imprisonment in September 2008.

3. That this House calls for the immediate and unconditional release of all political prisoners detained in Burma.

4. That this House calls on:

   (a) Burmese authorities to embark on a genuine process of national reconciliation and engage in dialogue with all of Burma's ethnic groups, and

   (b) the Australian Government to:

      (i) make the most of the release of Daw Aung San Suu Kyi to bring about lasting reform for Burma and its people,

      (ii) investigate all options for progressing a United Nations commission of inquiry into human rights abuses and war crimes in Burma,

(iii) reinforce the campaign for political reform in Burma with increased pressure through government and diplomatic channels,

(iv) maintain efforts to enforce a universal arms embargo against Burma, and

(v) support at the highest levels of government the efforts of Daw Aung San Suu Kyi and her colleagues to restore democracy, human rights and peace in Burma.

STANDING COMMITTEE ON LAW AND JUSTICE

Report: Inquiry into the Eligibility of Members of Parliament to Serve on Juries

The Hon. Christine Robertson tabled, as Chair, a report No. 46, entitled "Inquiry into the Eligibility of Members of Parliament to Serve on Juries", dated November 2010, together with submissions and correspondence.

Report ordered to be printed on motion by the Hon. Christine Robertson.

The Hon. CHRISTINE ROBERTSON [11.06 a.m.]: I move:

That the House take note of the report.

I am pleased to present the forty-sixth report of the Standing Committee on Law and Justice entitled, "Inquiry into the Eligibility of Members of Parliament to Serve on Juries.

[*Interruption*]

The Hon. CHRISTINE ROBERTSON: Obviously, Mr Gallacher wants to serve on juries. The New South Wales Attorney General referred this inquiry to the Standing Committee on Law and Justice in June this year.

[*Interruption*]

The PRESIDENT: Order! If members continue to interject, I will place them on calls to order.

The Hon. CHRISTINE ROBERTSON: I think that is an example of much of the reason we came to our decisions. The terms of reference asked the committee to examine the eligibility of members of Parliament who do not hold ministerial portfolios to serve on juries. We were asked to consider the existence and extent of any common law immunity that prevents members from serving as jurors, the appropriateness of any such immunity, and the appropriateness of the statutory exemption in the Jury Act 1977 that renders members ineligible for jury service. The committee received submissions from a range of people and organisations, including current and former members of the New South Wales Parliament, the Clerk of the Legislative Council, the Speaker of the Legislative Assembly, Clerks of other parliaments, the Office of the Director of Public Prosecutions and the Public Defenders Office.

Members of Parliament currently are exempt from jury service on two legal bases: an immunity arising from common law, and an exclusion prescribed by statute. This inquiry resulted from a review of the jury selection system under the Jury Act 1977 by the New South Wales Law Reform Commission, which recommended, among other things, that the New South Wales Parliament consider whether the statutory exclusion and common law immunity of its members from jury service should be preserved. Many compelling reasons were raised during the inquiry as to why members of Parliament should be exempt from jury service with nearly all submission makers arguing strongly that the exemption be maintained. One key reason cited for maintaining the exemption is the doctrine of the separation of powers. The independence and impartiality of each arm of government is fundamental to the New South Wales system of government. Allowing individuals who make laws to then adjudicate on those laws would be a breach of that doctrine. This applies to all members of Parliament, not just Ministers, as all members are involved in the promotion and passage of legislation affecting the criminal law.

Another key reason why members of Parliament should remain exempt from jury service is their duty to the House and to their constituents. The committee members do not consider our occupation as members of

Parliament to be more important than any other—an incredibly important issue for this inquiry because we should not perceive ourselves as more important than anyone else. However, we acknowledge the ancient principle that the House has the first right to its members, which is essential to the functioning of Parliament. We acknowledge also the right of citizens to be represented in Parliament by their elected members, and the importance of members being available for their constituents. Members are elected representatives and should not be taken out of this role to serve on a jury.

Numerous other persuasive and valid arguments for maintaining the statutory exemption were raised during the inquiry, such as the potential for bias—whether real or perceived—consistency with other Australian jurisdictions, the limited benefit of adding members to the jury pool, and uncertainty surrounding the status of the common law immunity. The committee therefore supports the ongoing exemption of members of Parliament from jury service and has recommended maintaining the statutory ineligibility in the Jury Act 1977. I thank all individuals and organisations that assisted the committee throughout this inquiry. The committee values the well-researched and informative contributions made by inquiry participants regarding the current and historical reasons for the exemption of members of Parliament from jury service. I urge members to go to the website and read the thoughtful submissions that formed an important part of the legal process for us as parliamentarians. I also thank my committee colleagues for their contributions in producing this bipartisan report. The report and its recommendations were adopted unanimously, without any amendments. I also thank the staff of the committee secretariat—Rachel Callinan, Teresa McMichael and Shu-Fang Wei—for their ongoing professional support. I commend the report to the House.

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

AUDITOR-GENERAL'S REPORT

Report

The Clerk announced the receipt, pursuant to the Public Finance and Audit Act 1983, of the Financial Audits report of the Auditor-General, Volume Seven 2010, entitled, "Focusing on Environment, Climate Change & Water", dated November 2010, received and authorised to be printed this day.

PETITIONS

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**.

Concord Foreshore Trail

Petition calling on the Minister for Health to intervene immediately to maintain public access to the foreshore trail at Rivendell, near Concord Hospital, received from the **Hon. Don Harwin**.

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**.

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Notices of Motions Nos 1 and 2 postponed on motion by the Hon. Tony Kelly.

BUSINESS OF THE HOUSE

Suspension of Standing and Sessional Orders: Order of Business

Dr JOHN KAYE [11.17 a.m.]: I move:

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Member's Business item No. 252 outside the order of precedence, relating to nurse to patient ratios, be called on forthwith.

Debate on this motion is urgent because right now New South Wales has no legislated or mandated nurse-to-patient ratios. Evidence exists that patients are dying prematurely and that patient outcomes are being compromised. The motion is urgent because today nurses are being forced to take industrial action to bring the Government to the negotiating table. Right now there is a crisis in the public hospital system that necessitates this motion being debated urgently. Unless a commitment is given to nurse-to-patient ratios, that crisis will continue. I commend the motion to the House.

The Hon. GREG DONNELLY [11.18 a.m.]: The Government does not support the motion. We have a very busy program of legislation. During approximately the past 24 hours, the Government consulted with the crossbenchers and apprised them of the program of legislation. The Government thought the House would work through those bills in a systematic and organised fashion, but we find that Dr John Kaye now wants to debate a motion outside the order of precedence. During his contribution of not quite 60 seconds, Dr John Kaye was obliged to establish the grounds for his motion taking precedence over other business on the *Notice Paper*. Given the volume of legislation that must be debated, quite clearly he has failed to establish that ground. Therefore the Government opposes the motion.

Question—That the motion be agreed to—put.

The House divided.

Ayes, 23

Mr Ajaka	Mr Gallacher	Reverend Nile
Mr Borsak	Miss Gardiner	Ms Parker
Mr Brown	Mr Gay	Mrs Pavey
Mr Clarke	Dr Kaye	Mr Pearce
Mr Cohen	Mr Khan	Mr Shoebridge
Ms Cusack	Mr Lynn	*Tellers,*
Ms Faehrmann	Mr Mason-Cox	Mr Colless
Ms Ficarra	Reverend Dr Moyes	Mr Harwin

Noes, 18

Mr Catanzariti	Mr Obeid	Mr West
Ms Cotsis	Mr Primrose	Ms Westwood
Mr Foley	Mr Robertson	
Ms Griffin	Ms Robertson	
Mr Hatzistergos	Mr Roozendaal	*Tellers,*
Mr Kelly	Ms Sharpe	Mr Donnelly
Mr Moselmane	Mr Veitch	Ms Voltz

Question resolved in the affirmative.

Motion agreed to.

Order of Business

Motion by Dr John Kaye agreed to:

That Private Members' Business item No. 252 outside the Order of Precedence be called on forthwith.

NURSE-TO-PATIENT RATIOS

Dr JOHN KAYE [11.26 a.m.]: I move:

1. That this House notes that:

   (a) comprehensive rigorous empirical studies of the relationship between nurse staffing and patient outcomes conducted by Professor Christine Duffield at the University of Technology, Sydney, Centre for Health Services Management found that:

      (i) understaffing can lead to a "failure to rescue" and decreased patient satisfaction,

      (ii) patients cared for under a one to eight nurse-to-patient ratio experience a 30 per cent greater chance of dying than those under a one-to-four ratio, and

      (iii) adverse patient outcomes increase with increased overtime, fewer permanent staff, fewer nursing hours per patient day, inadequate clinical nurse educator support and more patients per bed,

   (b) mandated nurse-to-patient ratios in Victoria were introduced 10 years ago and resulted in:

      (i) a safer environment for patients,

      (ii) improved morale for the nursing workforce,

      (iii) a greater number of nurses attracted back into practising the profession,

      (iv) reduced complaints about the health hospital system, and

   (c) increased pressure on nurses resulting from inadequate staffing has resulted in poor job satisfaction and declining morale, a reduction in the number of nurses staying in the profession and a mounting shortage of nurses.

2. That this House supports the NSW Nurses Association for guaranteed mandated minimum nurse-to-patient ratios as defined in their "Safety in Numbers—staffing and skill mix for safe patient care" campaign.

3. That this House calls on the Government to:

   (a) immediately employ the 1,000 registered nurses who will graduate from New South Wales universities this month but will not be offered transition to practise employment,

   (b) lift restrictions on recruitment of nurses and midwives,

   (c) give in-principle support to the Safety in Numbers claims by the NSW Nurses Association for guaranteed mandated minimum nurse-to-patient ratios for each clinical environment, averaging one nurse to four patients plus a registered nurse in charge in medical and surgical wards across the public health care system, and

   (d) enter in good faith into urgent negotiations with nurses and their union to determine the details of implementing the one-to-four nurse to patient staffing and skills mix package.

Around New South Wales nurses are taking industrial action against their desires. They have been forced to take industrial action by a Government that has refused to listen not only to nurses and the Nurses Association but also to the scientific evidence. Professor Christine Duffield at the University of Technology, Sydney, Centre for Health Services Management conducted thorough research into the impacts of nurse-to-patient ratios, and her findings were clear: understaffing can lead to a failure to rescue and decreased patient satisfaction, and patients cared for under a one to eight nurse-to-patient ratio experienced a 30 per cent greater chance of dying than those under a one to four ratio. She also identified that adverse patient outcomes increased with increased overtime, fewer permanent staff, fewer nursing hours per patient, inadequate clinical nurse educator support and more patients per bed.

For the past decade the Victorian Government has had mandated nurse-to-patient ratios, and studies have proved that nurse-to-patient ratios have established a safer environment for patients. It simply means that fewer patients die and the morale of the nursing workforce has improved. This is important not only because it respects the human rights of nurses to work in a safe and satisfying environment but also because it increases the rate at which nurses will stay in the profession and return to the profession after a period away. This is important as New South Wales and the rest of Australia, and indeed the rest of the developed world, face a massive shortage of nurses—a shortage that will have appalling consequences for patient care and for the operation of public hospitals.

The Victorian outcome also resulted in reduced complaints about the public hospital system. That means that there was increased patient satisfaction with their experience in the public hospital system. Many of

us have had experiences of family members, loved ones and friends in hospital. We have seen the amazing work that nurses do, we have seen the enormous stress placed on nurses and we have seen the consequences for the health and safety of those nurses. There can be nothing less satisfying and more undermining for nurse morale than not being able to satisfy the needs of patients, to get to patients as their needs arise and to ensure that every patient has the nursing care that they require.

The Nurses Association has taken proactive steps to address that issue. It funded a research project to look at the consequences of inadequate staffing and at the Victorian outcome. That has resulted in the campaign of the Nurses Association for a guaranteed mandated minimum nurse-to-patient ratio defined in its "Safety in numbers: Staffing and skill mix for safe patient care". This motion is not about nurses; it is about patients. Nurses around New South Wales are taking industrial action because they are fed up with seeing their patients not being able to get quality care and with the stress and workload driving young nurses out of the profession. They are also deeply worried about the future of the public hospital system. They have taken the extraordinary step of defying the Industrial Relations Commission's ban on industrial action, something that the Nurses Association has not done in my memory.

The Nurses Association has not taken that step lightly but it recognises that this is a matter of life and death. This issue involves perhaps up to 30 per cent of patients dying earlier because of the inadequate number of nurses. The Nurses Association, and the nurses who voted for the industrial action, considered this matter very carefully and in doing so understood that a greater evil was at stake—that is, the evil of the ongoing refusal of the Keneally Government and the Minister for Health to engage with them on their "Safety in numbers: Staffing and skill mix for safe patient care" campaign. This motion recognises the significance of that campaign and calls on the Government to work immediately with the Nurses Association to rectify the situation. The Greens recognise, as do the Nurses Association and public commentators, that improved nurse-to-staff ratios will cost money. The questions that this motion puts to all parties in this Chamber are: What is the cost of human life? What is the cost of a functional public health system? What is the cost of the morale of nurses? What money are we prepared to put forward for our public sector nurses and public sector patients? At the moment in many instances there is one nurse per eight patients.

Mr David Shoebridge: Through day shifts.

Dr JOHN KAYE: Yes, which is completely inadequate in most cases. The ratio of one per eight is beyond international standards. That ratio is putting lives at risk, possibly leading to an up to 30 per cent increase in mortality through the day. This motion calls on the Government to engage immediately with the Nurses Association and nurses to negotiate an outcome that works not only for nurses and the public hospital system but also for those patients who are currently denied the level of care they would get under mandated ratios. I commend the motion to the House.

The Hon. JENNIFER GARDINER [11.33 a.m.]: We know that today nurses at various hospitals across the State are taking industrial action in support of mandated nurse-to-patient ratios. What do we know about the Keneally Labor Government and nurses? We know that the Government has cut nurse numbers. We know that, for example, in Western Sydney 340 nurse positions have been cut out of hospitals. We know that nearly 100 nurses have been cut from hospitals on the Central Coast and we know that many nurses are working under stressful conditions in many other parts of the State. We know that as of July 2010 there were 1,193 vacant nurse positions across the New South Wales hospital system because of the incompetence and the failure of the Keneally Labor Government to give nurses a fair workplace.

The position of the Liberals and The Nationals on the other hand is that, first, we believe that nurses are the backbone of the State's health system. We will support the findings of the Industrial Relations Commission in regard to nurse-to-patient ratios. The Liberals and The Nationals are committed to delivering, in government, a work environment that supports nurses and gives them a stronger say in patient care and a real voice in the management of our health services, and we have made that point time and again. The Liberals and The Nationals will support the findings of the Industrial Relations Commission on this subject of nurse-to-patient ratios, which is a very important item in delivering a supportive work environment for nurses. However, the addressing of nurse-to-patient ratios needs to be slotted into the bigger picture of providing nurses with the best possible work environment, which itself is of course aimed at providing the best possible patient care.

There are issues that have been highlighted in this Parliament that still need to be addressed, such as bullying and harassment of nurses, which was a sad feature of the parliamentary inquiry into the Royal North Shore Hospital and then followed up by the Garling Special Commission of Inquiry. More nurses need to be

released to care directly for patients rather than be tied up with administrative duties. I note that today the Nurses Association said that staff in metropolitan hospitals are better off than their regional counterparts. The actual cost of changing the ratio, and its impacts on hospitals' budgets, needs to be known. That point has been made by stakeholders in the health sector. The Opposition has been consulting with the Nurses Association and nurses on the front line, and has also sought information from the Minister for Health, in an effort to access assessments of the impacts of changing the ratio. At the moment that information is still unavailable.

The Opposition needs that information and the public deserves it. We believe the Keneally Labor Government needs to come clean with the Nurses Association and the public and to enter into honest negotiations. Nurses and other stakeholders have been in touch with the Opposition to stress that the impact on particular hospitals of changing the ratio also needs to be thought about carefully because in some hospitals, according to some nurses, the impact would need to be transitioned in a careful way for them not to be further stressed if there were such a change. However, the Liberals and The Nationals believe that the nursing profession deserves a whole package of improvements leading to better working environments for nurses and to deliver improved patient care in this State.

That is what the Liberals and The Nationals will roll out in a timely way, not just via motions in Parliament but via policy packages that we will present as an alternative government to the people of this State. We have already announced some of our policies relevant to nurses. Nurses need positive, practical plans to improve conditions. In principle, as I have said, the Opposition supports a better working environment for our State's nurses. But, obviously, if we want the best outcome for nurses and patients, and if we really want to change the health system in New South Wales, there is only one way to do it and that is to change the Government.

The Hon. PENNY SHARPE (Parliamentary Secretary) [11.38 a.m.]: The Government cannot support this motion that calls on the Government to employ 1,000 additional new graduate registered nurses in the public health system. New graduate programs offered by health services support newly registered nurses as they enter the workforce but are not a requirement for employment. NSW Health facilitates a centralised recruitment process for the employment of new graduate registered nurses in its public health services and three not-for-profit private hospitals across the State. NSW Health has never been the sole employer of all nursing graduates and a number of private hospital and aged care providers also run new graduate programs. On the point of recruitment, the Government does not have a restriction on nurses and midwife recruitment to lift. Any casual glance at the careers section of the weekend papers will see that health services are advertising regularly for nurses and midwives.

NSW Health has been in discussion with the Nurses Association about its claim. The Government is disappointed that the association has decided to proceed with industrial action. The Government is committed to continuing to negotiate with the association in good faith, but this cannot occur whilst industrial action is underway. The Industrial Relations Commission has directed the association not to proceed with the proposed industrial action; however, the association has chosen to defy those orders. The Government remains committed to a fair resolution for nurses and midwives working in the public health system. The option for good faith negotiations is open to the association if it chooses to return to the bargaining table. This motion does nothing to assist that.

The Government has a strong history of supporting nurses and midwives. We have worked hard since coming to office to bolster the nursing and midwifery workforce, improving working conditions and recognising the important clinical role that nurses play in our health system. Under this Government the number of permanent nurses and midwives employed in the health system has risen from around 32,000 in 1996 to more than 43,000 currently—an increase of over 30 per cent. New South Wales nurses are amongst the highest paid in the country. Since 1995 we have continued to improve nurses' wages and conditions and, as a result of this continued investment, the average pay for nurses and midwives has almost doubled from about $700 a week to almost $1,400 a week. This Government moved to protect New South Wales nurses from the blackmail of WorkChoices because we recognise our role to protect and, when we can, improve the pay and industrial conditions of nurses.

We have also looked at ways of reforming the nursing and midwifery workforce to best harness the skills of the workforce so that we can maintain standards of excellence. We have introduced a range of new clinical roles for nurses and midwives that provide a strong clinical career path for nurses in our health system. Over the past four years nearly $20 million has been provided for an additional 160 clinical nurse educator

positions. These positions support new nurses as well as providing education to nurses and midwives on the wards and units of hospitals. In addition, we have spent $44 million for 500 clinical support officers, who will enable nurses to spend more time caring for patients by relieving them of paperwork.

Each year we invest in a range of recruitment and retention strategies for nurses. Since 2005-06 we have invested over $180 million on nursing recruitment and retention strategies, which have delivered an additional net increase of 4,147 permanently employed nurses and midwives to the system. Since Labor came to office this Government has continued to recognise and support the central role of nurses in our health system. We have done this by investing in the total number of nurses, improving wages and conditions, and investing in meaningful clinical career paths. This motion does nothing to support resolving the current industrial action. The Government cannot support it.

Mr DAVID SHOEBRIDGE [11.42 a.m.]: Faced with stonewalling from the Government in negotiating on this issue, the nurses have been forced to defy an order of the Industrial Relations Commission to take no industrial action. This is a serious matter for the union and nurses involved, and they have taken this strong step only because of the continuing intransigence of this Labor administration to negotiate in any meaningful way on this issue. One can only hope that, faced with the collective resolve of the nurses, the Government will be brought to the table to have meaningful consultation.

We have heard from the Coalition for many months—indeed for many years—that it is "committed to supporting nurses, but... committed to protecting the environment, but... committed to our public hospital system, but...". There are only four months to go before a State election. Adequate nursing ratios have been a live issue in this State for at least the past two years. If the Coalition does not know what it supports now and still fails to give an unqualified commitment to our hardworking nurses how can it expect anyone to accept that its approach in government will be in any meaningful way different from the existing sleepwalking administration? This is an opportunity for the Coalition to step up to the mark and actually say something. I commend the motion to the House.

Reverend the Hon. FRED NILE [11.44 a.m.]: The Christian Democratic Party supports the motion, but does not support nurses taking industrial action when, to protect the health of patients, the court has directed them not to strike. It is estimated that 400 patients have already had their elective surgery postponed and, in the worst-case scenario, NSW Health officials predict that as many as 2,000 patients could have their surgery moved. It is the first strike in nine years by nurses, who are protesting about wages and staffing levels.

I support the nurses in their demands and the motion calling on the Government to immediately employ 1,000 registered nurses who will graduate from New South Wales universities this month, to lift restrictions on recruitment of nurses and midwives, and to give in-principle support to the "Safety in numbers" claims by the Nurses Association for a guaranteed mandated minimum nurse-to-patient ratio for each clinical environment averaging one nurse to four patients plus a registered nurse in charge in medical and surgical wards across the public healthcare system. I call on the State Government to continue urgent negotiations in good faith with the union and the nurses. It is obvious from the inquiries I have been involved in, particularly the Royal North Shore Hospital inquiry, that nurses in this State are under a great deal of pressure. That pressure can cause errors and could unfortunately even cause a patient's death, so it is a very serious matter to ensure that there is sufficient nursing care in all our public hospitals.

Dr JOHN KAYE [11.45 a.m.], in reply: I thank members for their contributions. Nothing that Ms Gardiner said should preclude the Opposition from voting for this motion. I understand many things that the Opposition said and the Greens agree that fixing the nurse-to-patient ratio will not resolve all the problems of the public health system. It is not a panacea by any means, but it is an important first, necessary step. As to Reverend the Hon. Fred Nile's concerns about industrial action, this motion does not support the industrial action by the nurses; it only gives in-principle support to the safety in numbers claims by the Nurses Association. It purely says that this House offers in-principle support for the campaign. This House recognises the cost implications and recognises that there is much more negotiation to happen, but it is calling on the Government to take the first step in those negotiations by entering into urgent good faith negotiations with the Nurses Association. I commend the motion to the House.

Question—That the motion be agreed to—put.

The House divided.

Ayes, 8

Mr Borsak	Reverend Dr Moyes	*Tellers,*
Mr Brown	Reverend Nile	Mr Cohen
Ms Faehrmann	Mr Shoebridge	Dr Kaye

Noes, 28

Mr Ajaka	Mr Gay	Ms Robertson
Mr Catanzariti	Ms Griffin	Ms Sharpe
Mr Clarke	Mr Khan	Mr Veitch
Mr Colless	Mr Lynn	Ms Voltz
Ms Cotsis	Mr Mason-Cox	Mr West
Ms Cusack	Mr Moselmane	Ms Westwood
Ms Ficarra	Ms Parker	
Mr Foley	Mrs Pavey	*Tellers,*
Mr Gallacher	Mr Pearce	Mr Donnelly
Miss Gardiner	Mr Primrose	Mr Harwin

Question resolved in the negative.

Motion negatived.

NATIONAL PARK ESTATE (SOUTH-WESTERN CYPRESS RESERVATIONS) BILL 2010

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [11.55 a.m.], on behalf of the Hon. John Robertson: I move:

That this bill be now read a second time.

The National Park Estate (South-Western Cypress Reservations) Bill 2010 represents the completion of regional forests assessments in New South Wales. It deals with the last piece of the puzzle, the cypress and woodland forests of south-western New South Wales. Previous assessments and agreements have been undertaken for the Eden, southern, upper and lower north-east, Brigalow-Nandewar and Riverina regions. This Government is proud of its history of forest reform since the commencement of the deferred forest agreement and interim forest assessments 15 years ago. When introducing the river red gum bill into the Legislative Council six months ago, reference was made to the tradition of strong and balanced forest conservation decisions taken by the Government since 1995. With this bill the tradition continues.

I acknowledge the traditional owners of the lands managed as national parks and reserves across the State and their ongoing connection to and custodianship of these lands. I pay my respect to their elders, both past and present. I also acknowledge the commitment and work of community members and Aboriginal staff involved with the National Parks and Wildlife Service in managing these special places. Last year the Government tasked the Natural Resources Commission with carrying out a regional forest assessment and making recommendations on the use and management of the public forest land in the south-western cypress State forests. There are 197 previously unassessed State forests within this region, covering nearly 196,000 hectares. While the majority of the forests are dominated by white cypress and associated woodlands, many forests are eucalypt woodland dominated and are not being logged.

These forests are dotted across southern and central New South Wales, and are significant as some of the only naturally vegetated land in the most cleared part of New South Wales. The region also has some of the lowest levels of reservation in New South Wales. The forests support significant areas of three types of endangered ecological communities, as well as many threatened species, particularly birds. The Crown timber industry in the region is based upon two cypress mills, one at Condobolin and the other at Narrandera, both operated by Grants Holdings. The Baradine sawmill takes most of its timber from the Brigalow-Nandewar forests; however, it will occasionally access timber from the south-western cypress forests. Unlike in other forest assessments, these mills have already locked in 20-year wood supply agreements. These mills are important employers in their communities.

In May this year the Natural Resources Commission submitted its assessment and recommendations to the Government. The commission found that the forests support a range of environmental, social, cultural and economic values, and that they can continue to be managed to support all these values. The commission made 10 recommendations regarding the ongoing management of the south-western cypress forests. The recommendations address matters including the need for active management of the forests across all tenures, the development of an integrated forestry operations approval, reviews of forest management zoning, investment in silvicultural thinning, reservation of some forests and improvements in connectivity.

The Government supports and endorses the bulk of these recommendations. The bill represents a key component of the Government's response to the report and recommendations of the Natural Resources Commission. The bill achieves the balance that the Natural Resources Commission said could be delivered for the south-western cypress forests. The forest industry will be able to continue in its current form. The Minister has been advised that this will not affect the existing 20-year cypress wood supply agreements. More than half of the forests being transferred are eucalypt woodlands that are of no commercial timber value.

The Government is committed to expediting an integrated forestry operations approval providing the legal certainty that has not existed in the past. The Natural Resources Commission recommended that 29 of the 197 forests, totalling 26,256 hectares, being eucalypt woodland forest with little or no cypress resource, be managed for their conservation values. The Government endorses this recommendation, and 24 of these forests will be reserved under the National Parks and Wildlife Act. The other five will be protected and managed by the Land and Property Management Authority. The Natural Resources Commission recommends that the other 168 cypress State forests remain in State Forest tenure. It also recommended additional rules around harvesting and grazing in some of these forests.

The Government has considered the balance of these two recommendations and determined that a better result would be achieved through the reservation of a further 19 whole State forests and part of another three under the National Parks and Wildlife Act, along with streamlining the additional rules regarding harvesting and grazing. These additional forests total 20,609 hectares and will contribute to a significant increase in reservations in central and southern New South Wales, improving the representation of white cypress pine in the reserve system, and contributing to New South Wales and Commonwealth reservation targets without affecting wood supply agreements. In the Government's view, this places an additional emphasis on the reservation targets that have been critical to all other forest assessments.

In making this decision the Government has been cognisant of the minerals potential of some of these forests. As a result, three forests will be reserved as State conservation areas. Part 2 proposed section 13 will require the directors general of the Department of Environment, Climate Change and Water and Industry and Investment NSW to give reasons why—

Pursuant to sessional orders business interrupted at 12 noon for questions.

QUESTIONS WITHOUT NOTICE

DRUG COURT PROGRAM

The Hon. MICHAEL GALLACHER: My question without notice is directed to the Attorney General. Does the Attorney General recall his earlier announcement of $3.7 million in annual funding to introduce a Drug Court program in the Hunter region? Why then does the November 2008 report of the Centre for Health Economics Research and Evaluation estimate that the annual cost of running a Drug Court was closer to $8 million per annum, excluding the component of final sentencing? Can the Attorney General explain to the House why there is such a substantial difference in establishment costs between Hunter Valley and Parramatta Drug Court?

The Hon. JOHN HATZISTERGOS: For a number of reasons. The volumes of people who will be dealt with at Parramatta Drug Court will be different from the numbers being dealt with in the Hunter; it is not exactly on the same scale. Parramatta Drug Court also deals with a compulsory drug treatment centre, which the courts based in the Hunter will not. In response to the member's question I advise that there are a number of differences. Referring to the other aspect of the member's question, I have made it quite clear on previous

occasions that we do not propose to offer a Drug Court like that in the Hunter, which means that some of the resources, including the use of the senior judge, Judge Dive, who comes from the Parramatta court, will also be utilised for the Hunter.

TAXI SERVICES AVAILABILITY

The Hon. PENNY SHARPE: My question is addressed to the Minister for Transport. Will the Minister update the House on measures undertaken to increase the availability of taxis?

The Hon. JOHN ROBERTSON: I acknowledge the continued interest of the Hon. Penny Sharpe in this matter. Taxis play an important role in the movement of people in and around Sydney. There are an estimated 175 million passenger journeys by taxi each year in the city alone. To meet the continued demand for taxi services, late last year the Government announced reforms to taxi licensing arrangements to get more taxis on the road, to provide better services for passengers, as well as to provide better opportunities for taxi drivers to become their own boss. Under the reforms the Director General of Transport NSW now determines the number of non-transferable annual licences to be issued each year in Sydney. This number is determined every year after reviewing passenger demand growth, service levels, demand for more licences, as well as the sustainability of the industry.

The New South Wales Government is working to ensure that response times continue to improve in Sydney. That means we need sufficient taxis to cater for the needs of those who live here and use taxis for work and leisure, and for those who are visiting our wonderful city. New licences are put to the market by open tender or auction so that the market determines a realistic price for each licence. In 2010-11 a total of 316 taxi licences will be issued. They will comprise 167 new fleet growth licences and 149 replacement licences. This represents a 3.2 per cent increase in the number of taxis available, and that will significantly help to improve service levels. The tender for the final 66 replacement licences to be issued this year has been released this week. These taxi plates are in addition to the 83 replacement licences and 167 growth licences awarded earlier in the financial year.

Of the 167 brand new taxi plates, 121 are now on the road with more to come on line before the end of the year. That is more than 120 extra taxis out on the streets servicing customers in time for the Christmas rush. The Government is also continuing to focus on increasing the number of wheelchair accessible taxis on the road. The Government has implemented a comprehensive range of initiatives to help reduce the performance gap between wheelchair accessible taxis and standard taxis—things like making wheelchair accessible taxi licences available at $1,000 a year in metropolitan areas and at no cost in country areas to boost the wheelchair accessible taxi fleet; providing an incentive payment of $8.47 per trip to drivers of accessible taxis for each hiring by a passenger in a wheelchair; and establishing a strong compliance program to ensure that all accessible taxis are accepting hirings by passengers in wheelchairs when needed. These initiatives are working.

The accessible taxi fleet is continuing to grow strongly and the performance gap has been closing between standard taxis and accessible taxis. Over the past 12 months the number of wheelchair accessible taxis in New South Wales increased from 718 to 805 as at 1 November 2010. Wheelchair accessible taxis now comprise 11.9 per cent of the total taxi fleet in New South Wales. The gap in response times also decreased. In January 2006 the gap in response times between standard and wheelchair accessible taxis was three minutes and 33 seconds, and in September this year that gap had reduced to one minute and 25 seconds. The Government's taxi reforms are delivering more taxis, faster response times and better access for people with disabilities. We will continue to monitor the performance of the taxi industry to ensure that standards continue to improve for taxi passengers in Sydney and right across New South Wales.

FISHING AREA CLOSURES

The Hon. DUNCAN GAY: My question is directed to the Minister for Planning, representing the Minister for Primary Industries. Is the Minister aware of a letter written by Bill Talbot, Director, Fisheries Conservation and Aquaculture, on the proposed fishing closures at Fish Rock and South West Rocks? In that letter Mr Talbot wrote:

> ... research has observed grey nurse sharks trailing lures at Fish Rock.

I ask the Minister whether he is also aware of a departmental response to a freedom of information request asking for the previously mentioned research, which states:

> ... there is no documentation to answer this query. To obtain the data, a phone survey was conducted with commercial dive operators working in the area. These estimates were obtained approximately ten years ago.

If that information is correct and the research is based on 10-year old telephone interviews, how can the Minister and this Government justify now closing off the area to fishing? [*Time expired*.]

The Hon. TONY KELLY: I am not aware of that but I presume that the Deputy Leader of the Opposition was asking that question of the relevant Minister. I undertake to pass on his question to the Minister and to obtain a response.

SUICIDE PREVENTION

The Hon. ROBERT BORSAK: My question without notice is directed to the Attorney General, representing the Minister for Health. Is the Minister aware that a recent supported report of the Public Health Association of Australia entitled "Assessing Cost-effectiveness in Prevention" by researchers from the University of Queensland and Deakin University states that the 1996 gun buyback and legislative changes are not cost-effective interventions, but instead are high-cost measures that cannot be tied to corresponding reductions in suicide? Given that recently the total average annual operating costs of Australia's firearm registries have been conservatively estimated at $27 million—which is $2 million more each year on average than funding for the national suicide prevention strategy—can the Minister advise how much funding the New South Wales Government has currently allocated to suicide prevention measures, and what are those measures?

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

INDUSTRIAL LAND AND EMPLOYMENT

The Hon. IAN WEST: My question is addressed to the Minister for Planning, Minister for Infrastructure, and Minister for Lands. Can the Minister update the House on the Government's efforts to ensure there is enough land for future employment in Sydney?

The Hon. TONY KELLY: I thank the member for his question and continued interest in housing in New South Wales, particularly in Sydney's west. One of the Government's key responsibilities is to ensure sufficient land is available for new housing as well as adequate land nearby to cater for a healthy range of jobs. For five years the Government has delivered on its commitment to provide greenfield land for sustainable growth in the specially designed and designated north-west and south-west growth centres. To date we have rezoned enough land for more than 38,000 new homes and 23,000 jobs in both growth centres. Last week, with the member for Riverstone, John Aquilina, I announced the rezoning of a 550-hectare precinct called Marsden Park Industrial.

The Hon. John Robertson: The member for Riverstone is a good and hardworking local member.

The Hon. TONY KELLY: I acknowledge the comments of Minister Robertson, who also has a great interest in this area of New South Wales.

The Hon. Michael Gallacher: Yes, a newfound great interest.

The Hon. TONY KELLY: He lives in the area.

The Hon. John Robertson: Exactly right.

The Hon. TONY KELLY: By 2036 the north-west subregion, which covers the local government areas of Blacktown, Blue Mountains, Hawkesbury, The Hills and Penrith, will have to accommodate a further 400,000 people. That is where the Minister lives, is it not?

The Hon. John Robertson: Yes.

The Hon. TONY KELLY: To ensure that as many people as possible can work close to home we need to increase the number of jobs in this subregion by more than 50 per cent by 2036. Employment centres such as Norwest are reaching capacity, and companies are looking for new, well-positioned sites with good transport links for their offices, showrooms and distribution centres. We need to provide new land in precincts like Marsden Park Industrial to increase not only the number of jobs in Sydney's west, but also the range of those jobs to better match the higher skills and education levels of the people living in that area. With access to the

M7 and other major roads, Marsden Park Industrial is well placed to become a major industrial and employment base. It will also be a boost to residents in the established southern suburbs of Hassall Grove, Bidwill and Shalvey, who will benefit from new work opportunities close to home.

It is important for people to have the opportunity to live near their workplaces so that they can spend less time travelling to work and more time with their families and friends. Marsden Park Industrial is the ninth precinct to be rezoned by the New South Wales Government since we created the growth centres in 2005. Planning is well underway to rezone a further six residential and employment zones. This means that almost half the precincts in those growth centres will have been rezoned or released for planning in the first five years. Importantly, Marsden Park Industrial is the first precinct to be released under the New South Wales Government's Precinct Acceleration Protocol, which allows planning and development to proceed earlier than proposed, provided it is at no additional cost to taxpayers.

The largest landowner in the precinct, Marsden Park Developments, already has detailed plans to build Sydney's largest business community. Shortly it will lodge the first of its plans for assessment with Blacktown City Council. By this developer moving forward first, a number of smaller local developers will also benefit. Marsden Park Developments will invest $28.8 million to upgrade 1.7 kilometres of Richmond Road, which fronts the site, to a four-lane highway—a significant change. I use that road when I return home to Wellington. I know that Minister Robertson also uses that road. I cannot wait to see that upgrade, which will commence in about four years. Marsden Park Developments will deliver essential services such as power, sewerage and water for the entire precinct and set aside 63 hectares of conservation land open space so future residents and workers can enjoy the outdoors and a healthy lifestyle. [*Time expired*.]

HOME CARE

The Hon. IAN COHEN: My question is addressed to the Minister for Disability Services. The Auditor-General's report on Human Services and Technology shows that Ageing, Disability and Home Care has not met most of its home care performance targets for 2010. Specifically, it missed the target for the total number of assessments by more than 3,000, and the total number of hours of service was more than 90,000 under the target. Will the Minister explain why Home Care did not meet the set performance targets? How will the Minister ensure that Home Care performance targets are met under the Stronger Together II package?

The Hon. PETER PRIMROSE: I thank the member for his question. The Home and Community Care Program provides vital support to frail older people, younger people with a disability and their carers to support them to remain in their own homes, enhance their independence and prevent their premature admission into residential care. The Home and Community Care Program provided services to almost 234,000 people in 2008-09. The New South Wales Government contributes approximately 40 per cent to program funding and the remainder is provided by the Australian Government. The New South Wales Government's commitment to improving services for people with a disability, their families and carers can be seen by everyone. The Keneally Government is working half way through its 10-year plan for Stronger Together, which is a blueprint for a decade of improvement, change and revitalisation.

Stronger Together puts on the record our determination to make a real difference to disability services. In 2006 we released Stronger Together and backed it with an additional $1.3 billion over its first five years. That is a 46.2 per cent increase on the recurrent budget for disabilities over just five years. The member specifically asked me about Strong Together II. Stronger Together is a 10-year program, and we are halfway through it. I have had the privilege over the past few months of taking part in 13 community consultations around New South Wales listening to people with disabilities, carers and their families, who tell us specifically what we have done right, what we have done wrong and what changes they want. We announced that we will continue to expand Stronger Together in its second five-year phase. Accordingly, as the Premier has indicated, we will make that announcement before the end of this calendar year. At that time I am sure the member will get all the facts and figures he seeks. I look forward also to his response.

STATE INFRASTRUCTURE LEVY

The Hon. GREG PEARCE: My question is directed to the Minister for Planning, Minister for Infrastructure, and Minister for Lands. Why has the Minister failed for so long to set a State infrastructure levy for the West Dapto land release, which was rezoned in May after years of delay, thus preventing much-needed land release in the Illawarra? As the Minister has previously admitted delays in meeting land release targets in the Illawarra given the failure to set the levy, how will land release targets be met in the future?

The Hon. TONY KELLY: The Department of Planning has been working on a State infrastructure levy. The Government has a State infrastructure levy in the growth centres that has been reduced by 50 per cent up until June 2011. We are looking at something similar in the Hunter and Illawarra growth centres. I will be making sure that that is adopted by the Government prior to any new releases being dealt with.

YOUTH CONDUCT ORDERS PROGRAM

The Hon. CHRISTINE ROBERTSON: My question is addressed to the Attorney General. What is the latest information on the Youth Conduct Orders Program?

The Hon. JOHN HATZISTERGOS: I thank the member for her question. The Government has a strong commitment to reducing rates of juvenile reoffending. We know that juvenile recidivism is often influenced by causative factors such as mental health problems, drug and alcohol addiction, poor school attendance and such issues as poor parenting and accommodation options. Two years ago the Parliament approved new legislation to trial a radical new program called Youth Conduct Orders to get repeat juvenile offenders and their families to confront these issues. Like the recently introduced intensive correction order option in the adult criminal jurisdiction, youth conduct orders combine behavioural restrictions with intensive and case-managed rehabilitative treatment. A trial of the program commenced last year in the Campbelltown, Mount Druitt and New England police local area commands. It allows the Children's Court to place young offenders charged with certain offences on a youth conduct order for up to 12 months.

Orders require offenders to undergo intensive cross-agency case management with their families. As part of that, offenders are provided with access to services and programs that are designed to deal with the causative factors I mentioned earlier. Orders may also include certain behavioural restrictions, such as curfews, non-association orders and school attendance requirements. Those types of restrictions are designed, first, to complement the rehabilitative component of the order and, secondly, to keep young offenders away from situations in which they might be drawn to re-engage in offending behaviour. The pilot program is currently being independently evaluated by the Nous Group, which has prepared an interim evaluation report.

In preparing the report, the Nous Group undertook extensive consultation with the New South Wales Police Force, New South Wales Juvenile Justice, Legal Aid New South Wales, the Bureau of Crime Statistics and Research, the Children's Court, the Law Society of New South Wales and the Aboriginal Legal Service. The report makes a number of recommendations that for the most part are aimed at increasing the number of young offenders placed on youth conduct orders. The Government has agreed to implement the changes in legislation that is soon to be introduced in the House.

The changes include extending the period for referral under the trial until February 2012; expanding the program to allow a young person to participate in the scheme if he or she either resides in, or is a regular visitor to, or has committed a relevant offence in the participating local area command; increasing the number of participating local area commands to include Blacktown, St Marys, Liverpool and Macquarie Fields; expanding offences that can be considered under the scheme to include all offences capable of being dealt with to finality by a Children's Court, excluding sexual offences and serious children's indictable offences; and making it clear in the legislation that participation in the program will not lead to worse outcomes for young offenders.

By including a greater range of eligible offences in the program, courts may be more willing to utilise a youth conduct order, with its focus on intensive rehabilitation, in situations in which a court might otherwise impose a more punitive sanction. Defence practitioners will also be more likely to advise their clients to agree to the imposition of a youth conduct order if there is greater certainty they will obtain a better outcome by agreeing to and completing a youth conduct order. The Department of Justice and Attorney General has undertaken detailed consultation on the proposed changes through the Youth Conduct Order Advisory Committee, which comprises representatives from the Aboriginal Legal Service, the New South Wales Law Society, Legal Aid New South Wales, Search Results, the Council of Social Service of New South Wales, the Youth Action and Policy Association, the Vocal Victims of Crime Assistance League and the Youth Justice Coalition. I am advised the committee is supportive of the changes.

The Youth Conduct Orders Program provides courts with better options for rehabilitating young offenders. The legislative improvements to the program will soon be introduced to the House and will ensure that even more young offenders are given the opportunity to get on—and stay on—the straight and narrow.

TRAIN HORN NOISE

Ms CATE FAEHRMANN: My question is directed to the Minister for Transport. Following his "All Aboard!! Last Stop for Train Horns" media announcement on 30 June 2010, is he aware that a survey of residents since then has reported multiple blasts of horns when trains are leaving Redfern station between the hours of 4.00 a.m. and 6.00 a.m.? Has any assessment been done by the Government on compliance with changes to the rule? Given that the Rail, Tram and Bus Union openly opposes his ruling on the use of train horns for safety reasons and that the community continues to suffer from the sounding of train horns late at night and early in the morning, will the Minister admit that the change of the rules has failed and commit to working with both sides to find a suitable alternative to train horns?

[*Interruption*]

I am talking about stopping the horns, not the trains.

Reverend the Hon. Dr Gordon Moyes: What is this about horny trains?

The PRESIDENT: Order! I remind members that interjections are disorderly at all times, particularly distasteful interjections.

The Hon. JOHN ROBERTSON: Among many other things, the Government has examined how we can reduce noise on a variety of levels. RailCorp is activating a whole range of initiatives designed to reduce noise because it is conscious of its neighbours. It is worth noting that over a period of 100 years train horns have been blown when trains are departing stations. That is 100 years of history and it is a practice that is related to safety. While most drivers have implemented the change to the rules, there will be times when drivers—those who have always been conditioned to blasting train horns as their services leave stations—continue to sound a train's horn out of mere habit. The incidence of that occurrence is very small.

The reality is that horns are still used around the rail network as a safety measure. If a train approaches workers who are located on a line or near a line, drivers blast the train's horn to ensure that the workers are aware the train is approaching. That safety measure is in addition to other safety measures implemented by RailCorp to ensure the safety of rail workers. We will continue to ensure that train horns are used when it is appropriate to do so. In conjunction with RailCorp, the Government will ensure that a change in practice is implemented. However, I make the point that the practice has existed for some time, and random incidences will occur from time to time.

DELTA ELECTRICITY AND HYDRO ALUMINIUM

The Hon. ROBYN PARKER: My question is directed to the Treasurer. I refer to his admission yesterday when he said, "Indeed, directives have been given in relation to Delta. We are in the middle of the transaction", and his subsequent denial yesterday when he said, "For the benefit of the House I would like to clarify that at no time before or during the energy transaction process have I or any member of the staff issued a direction to Delta relating to its contract with the Kurri Kurri smelter." Will the Treasurer confirm what his Government's actual involvement has been in the breakdown of negotiations? Will he explain to the 800 workers of Hydro Aluminium and the estimated 2,500 Hunter residents whose livelihoods are dependent on the smelter why, because of the actions of the New South Wales Government, their futures now are uncertain?

The Hon. Luke Foley: Point of order: The question is out of order. It contains significant argument.

The Hon. Duncan Gay: To the point of order: I contend that there is no argument. It is simply the statement of two facts: the Minister gave two entirely different answers. The first was in response to the question and the second was supplementary information given at the conclusion of question time, which entirely contradicted his first answer. That is a statement of fact rather than an argument.

The Hon. Greg Donnelly: To the point of order: The imputation in the last part of the question is the problem.

The Hon. Michael Gallacher: What about the font? Are you not happy with the font?

The PRESIDENT: Order! I will place the Leader of the Opposition on a call to order if he continues to behave in that manner. **I** will allow the question.

The Hon. ERIC ROOZENDAAL: I refer the member to my previous answer.

The Hon. Duncan Gay: Point of order: There was not a previous answer to this.

The PRESIDENT: Order! There is no point of order.

WESTERN EXPRESS AND CITY RELIEF LINE PROJECT

The Hon. SOPHIE COTSIS: I address my question to the Minister for Transport. Will he provide an update on planning for the Western Express and City Relief Line?

The Hon. JOHN ROBERTSON: I thank the member for her question. The Keneally Government is committed to providing faster, more frequent and higher capacity services for the people of Western Sydney. That is why we are building the Western Express and City Relief Line. The Western Express and City Relief Line is a key component of the Metropolitan Transport Plan. This project will increase the capacity of the rail network in the Sydney central business district and will be a critical enabler for adding effective links to the network—like the South West Rail Link, the Parramatta to Epping Rail Link and the North West Rail Link.

The Government is getting on with the job right now with planning for construction of the Western Express and City Relief Line. I advise the House that tenders by expert engineering and design consultants to plan the delivery of the Western Express and its associated City Relief Line through the Sydney central business district closed on Monday this week. The design consultants will be undertaking design development studies, such as alignment options, rail systems, station infrastructure planning, programming and risk assessments. I also advise that Transport New South Wales has called for tenders for detailed geotechnical and survey work for the Western Express.

Test drilling work will be carried out in the central business district as part of detailed investigations into possible route options for the new City Relief Line. The geotechnical work will involve testing rock and other subsurface conditions deep beneath the city's streets to confirm its suitability for tunnelling. The process is part of the work involved in identifying the concept alignment for the City Relief Line. Survey work will be used to pinpoint the depth of building basements and other critical data, such as the location of power, water and telecommunications systems. The work to be carried out by geotechnical and survey experts will provide input into the detailed design development work now being carried out for the Western Express program. The tenders for both the geotechnical and survey services will close in mid December and the works will commence in late January 2011.

The Western Express and City Relief Line will increase the number of seats available for western Sydney commuters by approximately 6,000 an hour during the morning peak. The project includes platform extensions at Emu Plains, Kingswood, Werrington, St Marys and Mount Druitt to cater for 10 car length trains to unlock capacity. These platform extensions will enable trains that are 25 per cent longer to operate from western Sydney directly into the central business district. Passengers will not only enjoy greater capacity and more frequent services; journey time savings will also be significant. These savings include a 17-minute reduction in travel time from Springwood, 10 minutes from Penrith and on the Richmond line seven minutes from Blacktown and five minutes from Parramatta. This project will also have flow-on benefits for commuters on the Bankstown, Liverpool, Macarthur, Illawarra, Main South and Northern lines. The Western Express and City Relief Line is critical to the long-term transport needs of Sydney. While the Opposition refused to support this important project for the commuters of western Sydney, this Government is getting on with the job and working hard to ensure that the Western Express and City Relief Line is ready for construction as soon as possible.

TILLEGRA DAM

Dr JOHN KAYE: My question is addressed to the Minister for Planning. I refer the Minister to a letter sent on 28 October 2010 to Ms Carol Pasenow, the Chair of the No Tillegra Dam Group, in which he said, inter alia:

> Should the project be approved by me—

the Tillegra Dam project—

> the Proponent would be required to submit a detailed design report, design drawings and peer reviews to the Dams Safety Committee prior to construction.

What steps has the department taken to assess the impacts on the cost-benefit analysis of the $477 million Tillegra Dam of the scenario that the Dams Safety Committee requires additional civil engineering works not envisaged in the existing costings for the project?

The Hon. TONY KELLY: In terms of Tillegra Dam, the Department of Planning is ensuring that it gets expert opinions on the effect of water issues, heritage issues and all the other issues that have been raised. The department is looking at all of those issues and I trust it explicitly to give me a report based on merit.

RAIL SAFETY

The Hon. JOHN AJAKA: My question without notice is addressed to the Minister for Transport. In light of the Minister's answer yesterday regarding train driver fatigue, in which he said of the Waterfall incident, "[it] included no specific recommendations in relation to fatigue management", is it not the case that there were four recommendations dealing with fatigue management from the Waterfall incident? How does the Minister explain his answer yesterday in light of these facts?

The Hon. JOHN ROBERTSON: I stand by that answer and refer to the previous answer.

CARERS ADVISORY COUNCIL

The Hon. TONY CATANZARITI: My question is directed to the Minister for Disability Services. Will the Minister update the House on the New South Wales Government's new Carers Advisory Council?

The Hon. PETER PRIMROSE: I am pleased to advise that Cabinet has endorsed the appointment of members to the Carers Advisory Council, and the new members were announced this morning. The council was established under the New South Wales Carers (Recognition) Act 2010 to recognise and increase awareness of the immense economic and social contribution that carers make to the New South Wales community. The role of the Carers Advisory Council, as described in the Act, is to advance the interests of carers, and review and make recommendations to the Minister on any significant legislative or policy proposal, or any other matter relating to carers referred to the council by the Minister. The council will give carers a direct voice to government and direct access to me as Minister for Disability Services. The Act requires that the majority of members on the council must be primary carers.

When the New South Wales Government advertised positions for the council in August it was overwhelmed with interest. More than 190 carers applied, and the quality of the applications was outstanding. Carers are busy people. I sincerely thank all those who applied to be on the council for their interest and their willingness to contribute their time and expertise to support other carers. An extensive selection process was undertaken, including interviews with shortlisted candidates. Cabinet has now endorsed the recommendation of 10 carers for appointment to the council. These individuals come from throughout New South Wales and will represent the diversity of carers and the broader community. I am pleased to announce that the carers appointed to the inaugural New South Wales Carers Advisory Council are Mrs Deborah Bewick, Mrs Nancy Bosler, Mrs Mary Lou Carter, Ms Maryann Housham, Ms Elizabeth Ingram, Mrs Cheryl Koenig, Mrs Carolyn Quinn, Ms Catharine Retter, Mr Peter Stevens and Ms Tabitha Wilson.

I congratulate these outstanding individuals on their appointment. They bring a range of perspective, expertise and experience gained through many years of caring for family members and loved ones. They also bring a great deal of passion and commitment to advancing the interests of carers. They represent a diverse group of carers from different backgrounds across various areas of the State, and I know they will do a wonderful job in advancing the interests of all carers across New South Wales. I look forward to working with them and receiving their advice on the best ways to enhance public recognition of carers and to improve practical support for carers in their caring roles. Cabinet has also endorsed the appointment of four additional industry expert members to the council: Elena Katrakis, Chief Executive Officer of Carers New South Wales; Professor Deborah Brennan, an academic at the Social Policy Research Centre of New South Wales who has expertise in carer research; a senior officer from Ageing, Disability and Home Care, Mary-Jane Clark; and a senior officer from New South Wales Health, Catherine Lynch.

I look forward to personally chairing the first meeting of the Carers Advisory Council, which will be held on 13 December. At that meeting we will discuss the council's priorities. One of the first issues I would like the council to investigate is the needs of young carers. There are more that 90,000 carers aged under 25 in New South Wales, and I am keen to receive the council's advice on how they can be better supported and engaged.

On behalf of all members of this House, I again thank all those individuals who expressed interest in joining the Carers Advisory Council. I am sure that this new council will provide a great opportunity to promote carers' issues now and into the future.

MAROUBRA PUBLIC HOUSING

Reverend the Hon. Dr GORDON MOYES: I ask the Minister for Planning, representing the Minister of Housing: As the Minister would be aware, on 31 August this year I asked him a question without notice relating to the deplorable living conditions of public housing tenants in Maroubra, to which one of his comments was:

> The Housing NSW handyperson has also commenced daily walk-rounds to identify if there have been any breaches of security, broken windows, et cetera, to determine any urgent action that needs to be taken.

In light of that, is the Minister aware that these public housing tenants are still being forced to live in conditions with fire exits totally blocked, windows that are broken and inoperable, walls with holes and exposed electrical wires, broken security doors, unusable broken toilets and stolen copper piping, and tenants reporting that they have not seen a handyman for at least 20 years?

The Hon. TONY KELLY: I thank the honourable member for his question about housing in Maroubra. I will pass on his question to the Minister concerned. I have an answer for the member on another question he asked about housing, which I will provide at the end of question time.

FERRY SERVICES

The Hon. DON HARWIN: My question is directed to the Minister for Transport. What is the Minister's response to the 27,000 ferry commuters who have been stranded at wharves in the past year, and that, contrary to his public assertions, there has actually been a net loss of more than 30 ferry services as a result of the most recent ferry timetable changes?

The Hon. JOHN ROBERTSON: I am sure members of the Opposition want to franchise ferries as their starting point for public transport. As I said yesterday, Mike Baird said, "That is where we will start. We will franchise our ferries. You will get on a ferry, you will get a Big Mac and they will ask you whether you want to upsize with a meal deal."

The Hon. Michael Gallacher: I hope they have a healthy choice.

The Hon. Duncan Gay: It sounds good to me.

The Hon. JOHN ROBERTSON: The Deputy Leader of the Opposition said it sounds good to him. They are very keen to franchise out public transport. As the member for Manly said, they will start with public transport. We implemented a timetable specifically to address those issues. The numbers referred to by the Hon. Don Harwin were unacceptable and we introduced the new timetable to ensure that our ferry capacity is meeting demand on the Parramatta River.

WEED AND FERAL ANIMAL CONTROL

The Hon. SHAOQUETT MOSELMANE: I address my question to the Minister for Lands. Will the Minister update the House on the Government's ongoing support for weeds and feral animals control on Crown land?

The Hon. TONY KELLY: Almost half the land in New South Wales is Crown land and the Keneally Government is focused on meeting its obligations as a major landholder. It is our duty to protect native wildlife and the variety of our State's natural environments such as wetlands, rainforests, rangelands and State parks. That is why this Government, in its pledge to protect native vegetation and biodiversity, has set aside funds specifically for weed and pest control programs. This financial year alone, the Government will spend $775,000 on programs—that is, $585,000 for weeds and $190,000 for pests. The funding is mostly from the Public Reserves Management Fund, with $150,000 provided by the Department of Industry and Investment, through the Noxious Weeds Advisory Committee.

The Land and Property Management Authority [LPMA] has legal and moral obligations to prevent weeds from spreading. A total of 155 weed eradication projects will be carried out by councils and weeds

county councils, Crown reserve trusts, government agencies and community land care groups. Some of the funds will be used for control of weeds of national significance, such as bitou bush, serrated tussock, blackberry, alligator weed, salvinia, lantana, gorse, bridal creeper and willows. Regional weed action plans will be supported for species such as groundsel bush, giant Parramatta grass, pampas grass, African lovegrass, spiny burr grass, tiger pear, Scotch broom, St John's wort, fireweed and African boxthorn. These projects are designed to protect and enhance communities of threatened native plants and animals on Crown land.

Looking after our environment is something that is dear to me and native vegetation is extremely important not just for today but for future generations to enjoy as well. Specific pest animal control programs will also be carried out under the management of the LPMA—39 projects valued at $190,000 will be completed by Rural Lands Protection Boards, trusts, local councils, government agencies and community groups over the next year. These include the Fox Threat Abatement Plan, Regional Wild Dog Plans, cooperative rabbit control schemes, and programs to control other pests on public land such as pigs, goats, cane toads and feral cats. The programs will also protect and enhance communities of threatened native species on Crown land, including the pied oystercatcher, hooded plover, little tern, beach stone curlew, bush stone curlew and brush-tailed rock-wallaby.

I want to put on record my thanks to all the local groups and State agencies for their cooperation and assistance in administering these weed control programs statewide. The work of these public bodies and volunteers is integral to controlling pests across the State. I stress once again that the Keneally Government is committed to sustainable management of Crown land for providing for better outcomes for native vegetation and biodiversity. The weed and pest funding I have outlined ensures we deliver on this commitment for another year.

BROTHELS

Reverend the Hon. FRED NILE: My question without notice is addressed to the Minister for Planning. Has the Land and Environment Court approved a brothel at 12 Scott Street, Liverpool, within 125 metres of a Liverpool primary school, which was previously rejected by the Liverpool council? Has Liverpool Public School Principal Susan Walkerton, with the support of the Department of Education and Training, lodged an objection to the brothel as children aged four years and over will walk past the proposed brothel? Will the Minister introduce legislation or a regulation prohibiting brothels in view of a school, hospital, church or residence as applies to street prostitution law?

The Hon. John Hatzistergos: It is already the law.

Reverend the Hon. FRED NILE: It is opening next to a school.

The Hon. TONY KELLY: There are important reasons why brothels are monitored, that is, to ensure health and safety. They are a legal business in New South Wales; however, the operation of brothels is restricted to ensure the community can be confident about where they are located and the conditions under which they operate.

The Hon. Christine Robertson: For public health and safety.

The Hon. TONY KELLY: I acknowledge the interjection, for public health and safety. In some other States more brothels are underground which presents issues, including people coming into the country illegally.

Reverend the Hon. Fred Nile: Sex slaves.

The Hon. TONY KELLY: And, as the member interjects, sex slaves. That is exactly what occurs in illegal brothels. Councils have the power to determine the locations of brothels within their local government area. The Department of Planning has provided councils with the template which demonstrates how councils should draft local planning provision for premises such as brothels. This includes clear restrictions on the proximity of these premises to schools, churches and other community facilities, as well as residential, recreational and open space areas. In assessing development applications for brothels councils are also required to take into account the implications for children likely to be in the neighbourhood. Within that broad framework councils have the flexibility to incorporate additional requirements to meet local needs, as long as some area remains within the local government area where brothels are a permissible land use. In many cases it

is in industrial areas. It is up to councils to assess, approve or reject the development applications for brothels on their merit. I understand the issue raised by Reverend the Hon. Fred Nile and I will look at this case and at the court decision.

PARLIAMENTARY BUDGET OFFICER

The Hon. CHARLIE LYNN: My question is directed to the Treasurer. Why has the Government neglected to engage an external recruitment company to gain the biggest range of potential quality candidates in the process of selecting the New South Wales Parliamentary Budget Officer?

The Hon. ERIC ROOZENDAAL: I am more than happy to answer questions in relation to my portfolio, however, that matter is not part of my portfolio.

DIGITAL ECONOMY

The Hon. EDDIE OBEID: I address my question to the Treasurer. Would he inform the House about the latest digital economy success stories in New South Wales?

The Hon. ERIC ROOZENDAAL: I thank the member for his question and his interest in this matter. I have more good news for the $400 billion New South Wales economy. As members may be aware, the New South Wales Government is committed to building this State's digital economy. Information and communication technologies are changing the way we live, from social networking and online business to the mobilisation of our lives and workforces. The arrival of the National Broadband Network will deliver a major shift in the way our economy operates both at a domestic and a global level. The National Broadband Network will drive demand and opportunities for new online applications and services that can deliver economic, social and environmental benefits. The New South Wales Government acknowledges this future as well as the potential of New South Wales to capitalise on its leading strengths in information and communication technology and creative industries. That is why the Government has announced a $36 million digital economy strategy to help New South Wales take advantage of this shift as a global leader.

I would like to update the House on some recent success stories, all supported by the New South Wales Government. Earlier this month we saw the launch of a world-first computerised oar. This oar enables rowing coaches to analyse scientifically the performance of their rowing squads. It has been developed right here in New South Wales. The Arondight oar, named after Sir Lancelot's sword, was launched at the World Rowing Championships in New Zealand. This innovative technology has been developed by a Brookvale company, Talon Technology, together with Croker Oars of Taree, with testing support from the Australian Institute of Sport. The New South Wales Government's Innovation Pathways Program helped with product testing and technology demonstration trials.

Another recent success story involves a Sydney legal services technology company called Evidence Technology, which has secured a major investment partner following the New South Wales Government's assistance. Evidence Technology provides technology services like audiovisual systems and secure video conferencing to over 600 sites, including courthouses, police stations, parliamentary chambers and council facilities, across Australia and New Zealand. The New South Wales Government helped to develop Evidence Technology's business plans resulting in it securing a strategic partnership with another legal technology firm. Evidence Technology's managing director, Peter Carter, said:

> Without the NSW Government's assistance in helping us develop our business plans through the Innovation Pathways Program ... we would not have been in a position to raise this important investment.

A ringing endorsement. These are just two examples of the support that the Government is giving to small business at the cutting edge of technology, supporting jobs and economic growth in New South Wales. I look forward to continuing to update the House on further achievements of the New South Wales Government in supporting technological growth in our State and, in particular, our digital economy.

BARANGAROO DEVELOPMENT

Mr DAVID SHOEBRIDGE: My question is directed to the Minister for Planning. Noting the evidence of the Director General for Planning in budget estimates that the success of Barangaroo is dependent

on the provision of adequate public transport, will he, having the final say as Minister under part 3A, confirm that any approval he gives to increase the floor space or scale of Barangaroo will be explicitly subject to the completion of adequate public transport facilities on the site to meet demand?

The Hon. TONY KELLY: Let me again tell Mr Shoebridge that any decision I make regarding Barangaroo or any other development application will be based on merit assessment by the Department of Planning. I will point out the relativity of some of the submissions we get from various groups, and all of those are on the department's websites. There has been a big campaign against Barangaroo by the city of Sydney, by a couple of newspaper groups, and despite that campaign and despite letter-dropping at some units in Kent Street and getting an additional 100 submissions, at the close of submissions for the new concept plan there were about 200 submissions. At the close of submissions for the excavation, there were seven submissions—fewer than for the heritage listing of the cauldron at the Olympics site. As opposed to that, there were about 3,800 submissions on a gravel pit in western Sydney.

COURT FEES

The Hon. DAVID CLARKE: My question without notice is directed to the Attorney General. Is the Attorney General aware that the Civil Procedure Further Amendment (Fees) Regulation 2010, which commenced on 18 October 2010, introduced a new set of filing fees for proceedings in the Supreme Court of New South Wales, which in many instances are higher than those that were in place prior to the commencement of the amending regulation? Is he aware this will mean that, for example, a solicitor seeking to have hearing days allocated for a case expected to run 12 days will now have to obtain at least $15,208 before the dates are allocated in order to protect himself or herself from personal liability under parts 2 and 3 of the Civil Procedure Regulations 2005, whereas prior to the introduction of the new fees the solicitor would have been due to pay only $4,600? Is it a fact that such large increases will have the effect of restricting access to justice for many, and that it appears to run counter to the objectives of the civil justice system of just, quick and cheap resolution of disputes?

The Hon. JOHN HATZISTERGOS: Quite the opposite. Court fees are reviewed each year to ensure that they remain commensurate with the increases in the costs of administering justice. On 1 July court fees were increased by 4 per cent, which is in line with the rate of public sector pay rises. The annual adjustment of court fees ensures that parity is maintained in apportioning the costs of administering the court system between litigants and taxpayers. A substantial subsidy is provided by the taxpayer for the cost of running the court system which is not fully covered by court fees, which are actually levied. In addition to the annual increases in court fees it is proposed to increase a number of the Supreme Court fees to move to parity with fees of the Federal Court. This increase is based on the in-principle agreement between Ministers at the May 2010 meeting of the Standing Committee of Attorneys-General. The agreement supported the Commonwealth increasing its funding for legal assistance through the revenue fee increase in Federal courts.

Fee parity between the Federal and State and Territory courts where jurisdiction is shared is aimed at eliminating forum shopping by court users—jurisdiction is shared in a large number of matters between the Federal Court and supreme courts. The department consults stakeholders, including the Law Society and the Bar Association, in relation to such increases. Care needs to be taken to ensure that costs recovered, including court fees, do not impact adversely on disadvantaged groups in the community. In New South Wales court fees are structured to ensure that they target those who use the court resources most and have the capacity to pay. For example, corporations pay double the fees paid by individuals for filing a range of processes with the court, for hearing allocation, jury requisition and retention, and the preparation of appeal papers. In contrast, the system of fee waivers which also applies provides relief for those who are struggling financially, or where there are compassionate grounds for waiving or reducing the fees that are otherwise payable.

CRIMINAL JUSTICE PROCESSES

The Hon. LUKE FOLEY: I address my question to the Attorney General. Can the Attorney update the House on the latest initiatives by the Government to improve the operation of criminal justice processes and the use of jury or judge-only trials?

The Hon. JOHN HATZISTERGOS: The right of an accused to trial by jury in the District Court and the Supreme Court is an important right that is recognised in legislation. Currently, a criminal trial may proceed without a jury only if an accused applies to the court. However, the accused must obtain the consent of the

Director of Public Prosecutions for the trial to proceed in this fashion under section 132 (3) of the Criminal Procedure Act 1986. New South Wales is the only Australian jurisdiction that gives the Director of Public Prosecutions the power of veto over a defendant's request to have a judge-alone trial.

Last year the Chief Judge of the District Court asked me to review this area in the Criminal Procedure Act 1986 and proposed that the court be allowed to settle a dispute if the prosecution and defence could not agree on the issue of trial by judge alone. In response, the Government, in consultation with the Chief Justice of the Supreme Court, Legal Aid New South Wales, the Director of Public Prosecutions and other legal stakeholders, developed a model to allow either party in a criminal matter to apply for the trial to proceed before a judge sitting alone and to provide for the court to decide where the parties were in dispute.

I referred this model to the Standing Committee on Law and Justice for its consideration on 27 April this year. Following its deliberation the committee has recommended that the court, not the Director of Public Prosecutions, make the decision with regard to the request of an accused for a judge-only trial. The committee found that the proposed model provides a fair and transparent system for both the accused and the prosecution to apply for a judge-alone trial, and that jury trials will continue to be used for the majority of matters in the criminal justice system.

The committee also suggested some amendments to improve the model in three areas relating to: the need for an accused to provide informed consent to an application; raising the threshold in the jury tampering exception; and ensuring that the interests of justice test includes an inclusive, not an exhaustive, list of factors for the courts to consider. The only circumstances where an accused could be compelled to have a judge-alone trial without their consent would be where there is a real risk of jury tampering and all other means reasonably available to the court cannot address that risk.

The Government will shortly be introducing legislation to implement the committee's unanimous recommendations. I welcome the fact that the committee was able to consider this issue in detail and was able to consider the opinions put forward by a variety of experts and that all members, Government, Opposition—

The Hon. Michael Gallacher: Did you ask Greg Smith?

The Hon. JOHN HATZISTERGOS: It is interesting that the Leader of the Opposition raises that matter because I notice that John Ajaka and David Clarke, the shadow Parliamentary Secretary, both supported the recommendations of the upper House Law and Justice Committee report whereas the member for Epping had a different view. He said that he personally thought it was a backward step. He said:

> I think the current system is working perfectly well; I don't see the need to change it.

Notwithstanding all the legal knowledge that the member for Epping undoubtedly has, no doubt on this issue he would have been better informed had he read the committee's report. Particularly if he had read the contribution of his colleagues the Hon. David Clarke and the Hon. John Ajaka, who in a very skilful contribution to the committee were able to guide it to a unanimous recommendation, the effect of which was to say the member for Epping was wrong. I did not want to say that but the Leader of the Opposition raised the matter. [*Time expired.*]

The Hon. LUKE FOLEY: I wish to ask a supplementary question. Will the Attorney General elucidate his answer?

The Hon. JOHN HATZISTERGOS: Apart from the contribution of the Liberal members of the committee, I want to acknowledge the contribution made by David Shoebridge and, in particular, by the chairperson, Ms Christine Robertson, who said in her foreword to the committee report:

> On balance, and after much deliberation, the Committee has concluded that the proposed model for judge alone trials provides a fair and transparent system for both the accused and the prosecution to apply for a judge alone trial.

As I indicated, we will be implementing the recommendations of the committee. I take this opportunity to place on record the contribution the Law and Justice Committee has made during the term of Parliament by way of some very useful recommendations on law reform, this being amongst them. I particularly want to acknowledge the work of Christine Robertson as chairperson of the committee, as she will be leaving us at the end of this term of Parliament.

If members have further questions, I suggest that they place them on notice.

CHILD PROSTITUTION

The Hon. JOHN HATZISTERGOS: On 20 October 2010 Reverend the Hon. Fred Nile asked me a question about child prostitution. I provide the following response:

Advice has been sought from the Director of Public Prosecutions on this prosecution and will be provided once it is received.

I note that it has been reported that there was a plea of guilty in this matter.

With regard to the member's question about Government efforts to prevent further child prostitution, while this is primarily a matter for NSW Police and Community Services, I provide the following information.

In March 2009 the Government released its response to the report of the Wood Special Commission of Inquiry into Child Protection Services in NSW, providing a new blueprint for the way that children are protected in this State.

The new system aims to spread the child protection responsibility across agencies, both government and non-government, to get better protection for children.

Child Wellbeing Units have been rolled out in the main mandatory reporting agencies, including the NSW Police Force unit of 28 officers.

The unit started full operations on 24 January 2010.

In the 2010-11 Budget the great work of this unit and the NSW Police Force Joint Investigation Response Team referral unit continues to be supported with $3.8 million a year over the next four years as part of the Keep Them Safe child protection initiative.
As anticipated, the Police Child Wellbeing Unit has received the largest number of reports. To date, the Police Child Wellbeing Unit has received over 20,000 reports or over 65 per cent of all contacts made with all the Child Wellbeing Units.

The Police Child Wellbeing Unit has made close to 1,500 reports to the Child Protection Helpline for children at risk of significant harm, and has referred over 1,000 children to other services including the newly established Family Referral Services.

WARRAWONG PUBLIC HOUSING

The Hon. TONY KELLY: On 20 October 2010 Reverend the Hon. Dr Gordon Moyes asked me a question relating to Warrawong public housing. I provide the following response:

Housing NSW has allocated in excess of $3 million to the reconfiguration of Bent, Todd and Green Streets in Warrawong. The strategy focuses on reconfiguring the public housing concentration in the area and improving the layout and facilities of units in the street.

Major works currently being undertaken to the Todd, Bent and Green Street complexes, including the demolition of buildings and construction of car parks may be attributed to the presence of vermin in and around the complexes.

Works orders have been raised for the placement of tamper resistant lockable rodent traps around the perimeter of each structure and garbage disposal areas. In addition, there will be the placement of standard rodent traps to accessible roof areas and subfloor areas using moisture resistant baits.

In August 2010, Housing NSW was made aware of a fire at Todd Street. At the time, the property was boarded up and the tenant was permanently relocated. Housing NSW has now completed the repairs to the fire damaged property and the property is currently being relet.

Housing NSW is also aware of the theft of downpipes at the complexes. Housing NSW will replace the downpipes as part of the major construction works currently being undertaken.

There are no OH&S issues associated with the missing downpipes as they are not located above walkways and do not cause water to pool in high traffic areas.

Sustained maintenance and upgrading programs over the last decade have resulted in huge improvements to condition and amenity of social housing dwellings.

As part of the New South Wales Government's 2010-11 Budget, $470.2 million will be provided to maintain and upgrade public, community and Aboriginal housing. Public housing will receive $445.7 million, community housing $10 million and $14.5 million will be spent on Aboriginal housing.

Maintenance and upgrades will range from painting to major upgrading works. Many of the dwellings are on public housing estates where improvements to individual houses and community infrastructure are supported with other community renewal strategies to build safer, more liveable communities.

Our maintenance model emphasises a planned, rather than responsive, approach which results in more cost effective and equitable delivery of maintenance across the State.

The current maintenance contract commenced in October 2008 and represents the largest single maintenance contract project for residential housing in the southern hemisphere, entailing $1.6 billion of programmed work over a five-year period.

Housing NSW is working collaboratively with head contractors to continually improve maintenance services to social housing tenants in a cost-effective manner that ensures effective custodianship of the $31 billion social housing asset portfolio.

MOUNT PLEASANT COAL PROJECT

The Hon. TONY KELLY: I have an answer to a question asked by Ms Cate Faehrmann about the Mount Pleasant coal project, most of which I had already said in my original answer. The proponent, Coal and Allied, has been asked to carefully consider all issues raised in all the submissions, including those of the Department of Environment, Climate Change and Water. No decision will be made on this project until all issues raised and all impacts have been carefully assessed.

HOME CARE

The Hon. PETER PRIMROSE: Further to my response to Mr Ian Cohen's question about Stronger Together and the Home and Community Care Program, I am aware, as I indicated, that the Auditor-General has issued an unmodified independent auditor's report for the Home Care Service of New South Wales and the Department of Human Services. In relation to the decline in the number of assessments and hours of service identified by the member, as is made clear in the report itself, the decrease in hours of service provided and average hours per client in 2009-2010 when compared to 2008-09 was due to the delivery of 113,000 service hours over the targeted hours in 2008-09. This led to fewer service vacancies in early 2009-10, which in turn triggered fewer assessments.

The New South Wales Government has demonstrated its continued commitment to the Home and Community Care [HACC] Program, which provides vital support to frail older people and younger people with a disability to support them to remain in their own homes. While we remain strongly committed to the Home Care Service of NSW as the largest provider of Home and Community Care services in the State, increasingly these services are provided by the non-government sector. Indeed, we now have almost 600 Home and Community Care providers across the State.

Finally, I reaffirm my earlier answer that Stronger Together will continue to provide quality service to people in New South Wales; however, I note for the member's benefit that the Home Care Service of NSW and the Home and Community Care Program more broadly are funded under a separate agreement with the Federal Government and not under Stronger Together. The New South Wales Government is committed to continuous improvement of this vital service, which is relied on by frail older people and people with a disability across New South Wales.

Questions without notice concluded.

[*The President left the chair at 1.06 p.m. The House resumed at 2.40 p.m.*]

STATE EMERGENCY AND RESCUE MANAGEMENT AMENDMENT BILL 2010

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

Motion by the Hon. Penny Sharpe agreed to:

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

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

BUSINESS OF THE HOUSE

Suspension of Standing and Sessional Orders: Precedence of Business

Motion by the Hon. Penny Sharpe agreed to:

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

Precedence of Business

Motion by the Hon. Penny Sharpe agreed to:

That Government Business take precedence of Committee Reports and Budget Estimates this day.

NATIONAL PARK ESTATE (SOUTH-WESTERN CYPRESS RESERVATIONS) BILL 2010

Second Reading

Debate resumed from an earlier hour.

The Hon. PENNY SHARPE (Parliamentary Secretary) [2.43 p.m.]: Prior to question time I was speaking in debate on the second reading. At this point I seek leave to incorporate the rest of the second reading speech in *Hansard.*

Leave granted.

In making this decision, the Government has been cognisant of the minerals potential of some of these forests. As a result, three forests will be reserved as State Conservation Areas. Part 2 section 13 of the bill will require the Directors General of the Departments of Environment, Climate Change and Water, and Industry and Investment, to conduct a review of these State conservation areas within 12 months, and to give reasons why each area of land should not be reserved as national park based on evidence of mineral values. Where a decision has not been made within 12 months, the land will automatically be reclassified as national park.

The reservations under the National Parks and Wildlife Act will be done in two parts, the first, covering 41 forests, will take place on 1 January 2011. The second, a group of five forests, will be reserved on 1 January 2012. This will allow Forests NSW to conduct an "exit harvest", in order that these reservations have a minimal impact on the available timber resource. The "exit harvests" will be carried out in line with updated standards agreed between the Department of Environment, Climate Change and Water and Forests NSW. Forests NSW will not be permitted to enter into any new interests for these forests without the approval of the Director-General of the Department of Environment, Climate Change and Water.

I wish to emphasise that this bill will not impact the existing cypress timber industry. 149 forests (3 of which will be part reserved), covering nearly 150,000 ha, will remain as State forest. The majority of the forests being reserved are eucalypt woodland, and not of value for the cypress timber industry

Part 3 of this bill provides other significant benefits for the forest industry, by way of improved certainty. Firstly, logging operations in the forests will be subject to an interim approval through until the end of June 2011, to ensure harvesting can continue while an updated approvals arrangement is negotiated. Secondly, an Integrated Forestry Operations Approval will be completed by 30 June 2011, bringing the south-western cypress forests into line with the best-practice standards operating elsewhere in NSW. And lastly, the bill waives the need for a forest agreement between the Ministers for Climate Change and the Environment and the Minister for Primary Industry, in order to expedite the process of the development of an Integrated Forestry Operations Approval. These provisions mirror those which were approved early this year for the River Red gum forests, which have been very successful.

Part 2 clause 12 of the bill requires the Minister administering the Forestry Act 1916 to declare a special management zone within Manna State Forest, which is one of the 149 State forests which will remain as State forest tenure. This is to recognise the Aboriginal significance of Manna Mountain, and Forests NSW will commence discussions with the Aboriginal community of the region to determine the appropriate area to be covered by this zoning. Logging will not be permitted within the special management zone.

Joulni addition to Mungo NP and Joulni SCA

This bill also provides for three other important reservations in New South Wales. The first of these is the formal protection of the property known as Joulni Station, addressed in part 2 section 9 and schedule 5 of the bill.

The property adjoins the southern boundary of the World Heritage Listed Mungo National Park in the rangelands of the south western corner of NSW, about 140 kilometres north-west of Balranald.

The township of Balranald markets itself as the gateway to Mungo National Park. Over 50,000 people a year visit Mungo National Park. They come from across the world and Australia to this World Heritage area.

The Government is moving now to fully protect the World Heritage values of Joulni by adding the World Heritage section of the property to Mungo National Park. The eastern third of the property, outside the World heritage Area, is to be reserved as a State conservation area. This part of the property is affected by an exploration licence under the Mining Act and reservation as SCA will allow for that exploration work to be completed. The exploration relates to titanium.

Two other matters should be noted. The travelling stock route that runs through Joulni will be reserved as part of the national park and State conservation area. On the rare occasions that stock are moved on foot through this area they actually travel along

the Western Lands road located to the west of the TSR. The road of course will not be reserved as part of the park and to replace the TSR a 60-metre wide corridor centred on the road will be left unreserved. This has been agreed with the local Livestock Health and Pest Authority.

The other matter relates to an existing permit held by a neighbouring grazier that allows him to graze sheep in Joulni. The grazing arrangements are managed so as to not impact on the World Heritage values of the property and so as to avoid any impacts on the lunette. The grazier has the support of the Tribal Elders for continued access for grazing and the permit will be allowed to continue, in line with the existing use provisions in the National Parks and Wildlife Act, for the foreseeable future.

Brigalow and Nandewar Crown lands

In 2005, 352,000 hectares of forested public lands with high conservation value were permanently protected through the creation of the Brigalow and Nandewar Community Conservation Area. This area is located on the western side of the northern tablelands and extends westward to include the north-west slopes, generally north of Dubbo.

The community conservation area incorporates a balance between conservation and continued industries in the timber, gas, minerals and apiary sectors plus ongoing community input to land management.

The area encompassed by the Brigalow and Nandewar Community Conservation Area has experienced great modification, largely for agricultural development, for over 100 years. This has included the clearing of some 70 per cent of the original vegetation and has subsequently resulted in high rates of species decline through habitat fragmentation.

The creation of the Brigalow and Nandewar Community Conservation Area provides a secure foundation to assist in halting this loss of biodiversity. The areas identified in this bill add significantly to that foundation.

The Community Conservation Area resulted from five years of detailed scientific analysis through the Brigalow and Nandewar Western Regional Assessments and extensive community consultation. However until now, a consideration of Crown lands in the Area has been missing.

Recently the Department of Environment, Climate Change and Water, the Land and Property Management Authority and Department of Industry and Investment carried out an assessment of Crown land spread across the community conservation area covering a wide range of environment types. Further transfers of high conservation value Crown land may be carried out in the future, however these areas are the subject of determination processes under the Aboriginal Land Rights Act and it may be some time before a further comprehensive assessment process is possible. Individual areas could however be dealt with through the well-established reserve referral process implemented by the Department of Environment Climate Change and Water with other government agencies.

As a result of the assessment to date this bill will reserve 8,446 hectares of Crown land, with 348 hectares to be added to reserves that existed prior to the Community Conservation Area (shown in schedule 4 part 1) and the remainder to be added to reserves established as part of the Community Conservation Area or as new Community Conservation Area reserves (shown in schedule 7). Areas with ongoing minerals interest have been reserved as Community Conservation Area Zone 3, and the review provisions that apply to State conservation areas in the cypress forests that I outlined earlier have also been included in schedule 7 and will apply to these areas.

This reservation will add significant diversity to the lands conserved within the Community Conservation Area. Over half of the Crown lands to be reserved contain at least one endangered ecological community. The Woodsreef Serpentinite community has no representation as yet in the formal reserve system and the Serpentine Ridge and Woodsreef reserves will provide the only formal protection of this rare landscape by protecting 385 hectares (or 4.3 per cent) of its occurrence. Seven other communities to be protected by the bill have less than 2 per cent of their area reserved and two others have less than 5 per cent.

The reservation of 3,423 hectares in the Tingha Plateau State Conservation Area, south of Inverell, will protect remnants of three endangered ecological communities: the 'McKies Stringybark I Blackbutt open forest', 'Howell Shrublands' and 'Box-gum Woodlands'. This new reserve contains what is thought to be the largest occurrence of the 'McKies Stringybark Blackbutt Open Forest' endangered ecological community on public land and this provides an irreplaceable opportunity to protect this community. It will also provide protection for at least 10 threatened species, including the squirrel glider and little lorikeet.

Important cultural heritage sites will also be protected, including in the Warialda, Breelong and Woodsreef and Goulburn River reserves.

As part of the administrative steps in identifying the Brigalow-Nandewar Crown lands for transfer, the Government has carefully reviewed the status of the land so it can exclude from transfer any land where a land claim is pending under the Aboriginal Land Rights Act.

In addition, the bill includes a provision in part 2 clause 14 in the instance that an administrative oversight has occurred and in fact a land claim exists over land reserved as part of the bill. Should this occur then reservation will remain in place until the land claim is decided. If all or some of the land claim is granted to the land council then the reservation will be automatically revoked over that land so it can then be transferred to the land council.

The Department of Environment, Climate Change and Water is aware that some of the Crown lands will be affected by licences or other permits issued under the Crown Lands Act. These are usually annual licences and are mostly for rough grazing. The National Parks and Wildlife Act contains existing use provisions, which recognise such licences and allow the Minister to renew them.

The Department will work with the Land and Property Management Authority to ensure that there is a comprehensive list of affected licence holders available. The department will implement the same arrangements in relation to the licences as has occurred with other Crown land and forest transfers. The licensees will be contacted and advised of the changed tenure and administrative arrangements. There will be a thorough process of consultation, in which each licence holder will be contacted.

Merry Beach caravan park revocation—Murramarang National Park

The revocation of about 6.5 hectares of Murramarang National Park to become Crown land, covered in part 2 clause 11 of the bill, is to be undertaken to rationalise the management of the Merry Beach Caravan Park at Kioloa on the South Coast. At present the caravan park extends across two tenures—Crown land for the larger northern section of the park and national park for the southern section. It makes sense to bring the entire area under the single administration of the Land and Property Management Authority.

The caravan park has been developed over many years and the water, sewerage, road and power infrastructure is common across both tenures. In earlier years the then National Parks and Wildlife Service had considered the potential for a separate commercial arrangement for the national park area of the caravan park, but this proved not to be feasible, both logistically and economically. The end result is a caravan park under lease for the Crown land and licence for the national park land.

Honourable members should also understand that the caravan park is comprised predominantly of hard-standing caravan sites, together with a large number of vans permanently on-site. The caravan park is located at the very northern end of the national park and its excision simply adjusts the location of the national park's northern boundary, without loss of conservation value and without creating an inholding within the body of the park.

In order to create a workable management area for both the Land and Property Management Authority and the Parks and Wildlife Group of the Department of Environment, Climate Change and Water, the land to the east of the developed area of the caravan park to the national park boundary (which is the low water mark for Murramarang National Park) will also revert to Crown land, its prior tenure. Visitor and management access to the national park is provided for in the revocation, both through the caravan park itself and via the beach.

Clause 11 (3) that included a full survey of the excision area is yet to be carried out. The clause provides for the boundary to be adjusted to ensure that all caravans and parts of the caravan park that are lawful will be excised as a result of this bill.

The original caravan owners who remain within the national park area and who were advised in 1988 and again similarly in 2001 of continued occupancy, will be contacted regarding the change in the status of the land. The Land and Property Management Authority has committed to preserving the rights of the existing owners. The caravan park manager is well aware of the approvals provided to the original van owners in the national park section in 1988 and again in 2001.

An asset fire protection zone for the two sections of the caravan park is in place in Murramarang National Park and will be maintained by the department for that purpose. The asset protection zone was established through the Murramarang National Park Fire Management Strategy, which was developed in consultation with the Rural Fire Service and was publicly exhibited. The National Parks and Wildlife Service will continue to work with the Rural Fire Service and the Shoalhaven District Bushfire Committee on bushfire protection strategies for this part of Murramarang National Park and the caravan park.

The undeveloped, bushland area of Murramarang National Park already shares a common boundary with the main Crown land section of Merry Beach Caravan Park. There is of course also a common boundary, at least on paper, within the overall area developed as caravan park. As such, the use, management and development of the caravan park is a matter about which the Department of Environment, Climate Change and Water and the Land and Property Management Authority already have as matters of common interest. With the excision of the caravan park section from the national park the common boundary will essentially become one separating a developed area on the Crown land side and bushland on the national park side.

This is a significant point for several reasons. It will mean that the agency working arrangements are clear cut and it will allow the Land and Property Management Authority the ability to holistically manage what is essentially a single caravan park. However, that is not to say that there is free rein in the caravan park for further development that would impact on water quality and the environmental values of the national park.

Regulatory processes will continue to apply to effluent treatment and disposal and the Department of Environment, Climate Change and Water will maintain an unfettered role in reviewing any proposed development of the caravan park and ensure that any development is compatible with the environmental values of the adjoining national park.

In addition, the Land and Property Management Authority has committed to the land remaining in Crown lease tenure that there will be no increase in the number of sites and nor will there be a loss in the number of camping sites. The foreshore area in front of the existing caravan park will be maintained in order to provide public access to the full length of Merry Beach.

Consistent with departmental policy for the revocation of land from a national park, an offset area has been agreed to replace the area to be revoked. Ideally that area would be an addition to Murramarang National Park. Some land near South Durras was assessed for that purpose but was found not to be satisfactory as an offset for revocation, and in fact was considered low priority for a park addition anyway. In this case a departmental priority for offset land is in fact an addition to Meroo National Park. Meroo National Park is also on the South Coast, to the north of Murramarang National Park. The park addition consists of the bed of Meroo Lake, an area of about 85 hectares and so very much larger than the area of about 6.5 hectares to be revoked. The lake is 99 per cent surrounded by the national park and it has been a long-standing proposed park addition.

Meroo Lake is one of 16 lakes identified by the Healthy Rivers Commission in 2002 as priority protection lakes along the New South Wales coast. Meroo Lake is in near pristine condition and was recommended by the commission as clearly worthy of comprehensive protection. I am pleased to say that the addition of Meroo Lake to Meroo National Park will bring to 13 the number of lakes brought into the national park system, from the 16 identified, in line with the Government's Statement of Intent released in 2003.

Meroo Lake is a recreational fishing haven, with all commercial fishing licences acquired and retired using funds from recreational fishing licences. Recreational fishing will continue in the lake under the normal controls of the Fisheries Management Act.

General provisions

The bill contains a two-year provision that allows for the administrative adjustment of the boundaries of the new reserves, provided such adjustment is agreed between the relevant Ministers. It is primarily to enable the common boundaries between the new reserves and State forests or Crown land to be amended to more effectively manage the national park estate and State forest. There is to be no net loss of conservation value as a result. Any such boundary adjustments are usually quite small in area and this same provision has been applied in all previous State forest transfers to the national park estate.

Conclusion

This Government has always held as one of its proudest achievements the enlargement and improvement in the formal conservation reserve system in New South Wales. With the completion of the last forest decision in the south-western cypress forests, the addition of substantial areas to the Brigalow and Nandewar Community Conservation Area, the incorporation of the internationally significant Joulni property to the Mungo protected area system and the addition of the bed of Meroo Lake to Meroo National Park, this proud record has been continued. This bill will protect another 70,000 hectares of New South Wales.

I commend the bill to the House.

The Hon. CATHERINE CUSACK [2.43 p.m.]: The main purpose of the National Park Estate (South-Western Cypress Reservations) Bill 2010 is to convert 50 State forests in the reserve system mainly to national parks and also to four State parks. A total of 47,000 hectares of reserves will be established principally in what will be known as the new South-Western Woodland Nature Reserve. Our advice is that 5 per cent of the long-term timber supply of New South Wales will go into that reserve system. It will legalise forestry operations in the remaining State forests in south-western New South Wales in response to the suggestion that logging in these areas currently does not have the legal approval of the Commonwealth Government. I note that many of the areas covered in this bill affect logging operations that are subject to 20-year wood supply agreements following the earlier Brigalow-Nandewar decision.

The background to this matter is as follows. In August 2009 former Premier Nathan Rees requested the Natural Resources Commission to conduct an assessment of 197 south-west cypress State forests, totalling an area of 196,000 hectares. The report of the Natural Resources Commission, which was released in June this year, contained 10 recommendations, including that 29 eucalypt woodland forests be managed for conservation purposes, 24 as national parks and five as State parks, totalling 26,256 hectares. The remaining 169 white cypress State forests should be managed as multiuse forests subject to a system of regulation that had conservation as the major purpose. In addition to the recommendation of the Natural Resources Commission that 29 forests be included in the reserve system, the Keneally Government added another 20 forests totalling 20,609 hectares. As I understand it, the argument is that this is a better alternative to implementing complex and onerous regulation on the timber industry in the remaining forests.

The key proposals in the bill will provide for exit harvesting in parts of the reservation areas. In other words, from 1 January 2011, 41 forests totalling 41,000 hectares will be gazetted as conservation reserves, and from 1 January 2012 the remaining five forests totalling 5,700 hectares will be included in the reserve system. Forests NSW will conduct the exit harvest in such a way that it minimises impacts on the timber resource. That means logging will be subject to an interim approval until the end of June 2011 while updated approvals and arrangements are being negotiated. Under this bill an integrated forestry operations approval must be completed by 30 June 2011. Joulni Station at Willandra will be added to Mungo National Park or to Mungo State Conservation Area. This area, which falls within the Willandra Lakes World Heritage area, aims to protect the burial sites of Mungo Lady and Mungo Man, whose remains are dated at 26,000 years and 40,000 years respectively.

The bill will also protect land at Manna Mountain which has cultural significance to Aborigines. This will be done through the creation of a special no-logging management zone. As an ancillary issue the bill will adjust Murramarang National Park to excise Merry Beach Caravan Park, with the 85-hectare bed of Meroo Lake being added to the Meroo National Park as an offset. As I said earlier, this was not one of the major purposes of the bill. As I understand it, this is an attempt by the Government to try to resolve a longstanding issue involving Merry Beach Caravan Park, which inadvertently appears to be on a large area of land in the national park. For some time a boundary adjustment has been required—something to which this bill will give effect. Using the entire bed of Meroo Lake as an offset is a matter that was raised with me only today as a contentious issue. I understand that Meroo Lake currently is declared as a recreational fishing haven.

When the Minister replies to debate on this bill I seek advice as to what consultation was held with recreational users of that facility. As I said, that was not one of the main issues in this bill—it was slipped into the bill—but I am now concerned about it. While the Liberal-Nationals Coalition has no objection to the boundaries of the Meroo Beach Caravan Park being sorted out—as was done in the past with the caravan park at

Broken Head—in both cases these necessary changes to the land did not involve pristine bushland; rather it involved existing land that was in use as a caravan park. I refer, however, to the inclusion of the 85-hectare bed of Meroo Lake as an offset. How is that offset connected with the caravan park and what consultation has there been with other users, as this could have a major impact on people who ought to have been involved in this decision-making process?

The bill gives effect to many recommendations of the National Resources Commission report, which had broad stakeholder support. Correspondence from stakeholders, particularly in the timber industry, indicates that the acceptance and appreciation of this process was in stark contrast to previous exercises, particularly those involving Brigalow and the River Red Gum National Park. One stakeholder even commented that if this process had been followed for those other two matters the outcomes could have been very different and there could have been a lot more goodwill in the community. The fact this process appears to have proceeded better than past processes is good for local communities and gives me much optimism that management of these areas can be more beneficial because of the goodwill and cooperation that appears to have been established in the first place.

The reserves include substantial areas of endangered species, which we, of course, all want to see protected. The areas will have available 150,000 hectares for the timber industry. Although the transfer will cause some hardship for the timber industry, we have been advised that the affected mills will survive. Additionally, through good housekeeping by the Government, the bill resolves the uncertainty regarding the Merry Beach Caravan Park. We note that the bill does not allocate additional resources to support management of these new areas—national parks, State parks or nature reserves. Of immense concern to local communities is that the Government has not allocated appropriate resources to manage these new conservation areas, particularly given the nature of the timber. Some people describe cypress trees as a woody weed because they are prolific and require appropriate management, but that is not my description.

The Government's decision to add an extra 20 forests is a source of major angst. It completely lacks consultation and transparency and is in total contrast with the Natural Resource Commission report. This decision is an unfortunate abuse of the cooperation and spirit that enabled us to reach a successful point. It also impacts on the resource security in 7 of the 22 additional forests that are subject to this legislation. The biodiversity benefits of active management of forested areas, as an alternative to reservation, do not appear to have been considered when drafting this bill. White cypress pine silviculture depends on active thinning to maintain the health of stands and soil. In the absence of thinning, young pine seedlings regrow so densely that other vegetation is excluded and the soil is left exposed to erosion. This is referred to as a "locked stand", which can lead to significant degradation of soil and biodiversity.

The groups with which we have discussed this legislation—I appreciate their comments and advice—include the Nature Conservation Council, Wilderness Society, National Parks Association and Colong Foundation, all of which support this legislation. The Institute of Foresters of Australia considers that the Natural Resource Commission report was reasonable, but it was disappointed by the addition of 22 State forests. However, it agrees with the claim that 20-year wood supply agreements will still be met for the two affected mills. That advice was fairly influential in our decision to move an amendment to remove those seven forests that were unreasonably included by the Minister at one minute to midnight—at the end of the process. We otherwise do not oppose this legislation. I foreshadow that I will move that amendment during the Committee stage. At this stage we are considering the amendment foreshadowed by the Shooters and Fishers Party to delete the clause dealing with the Meroo Lake issue.

The Hon. ROBERT BROWN [2.54 p.m.]: On behalf of the Shooters and Fishers Party I foreshadow that we will oppose the National Park Estate (South-Western Cypress Reservations) Bill 2010—not that it will do much good. I foreshadow also that we will move one amendment relating to the issue raised by the Hon. Catherine Cusack, that is, the land grab for Meroo Lake, but I will deal with that later.

The Hon. Trevor Khan: When are you going to become the shooters, fishers and skydivers party?

The Hon. ROBERT BROWN: I will not get carried away.

The Hon. John Ajaka: Don't let him do that to you.

The Hon. ROBERT BROWN: No, I should not—particularly not Trevor. The Shooters and Fishers Party recognises this bill for what it is: another land grab to appease the Greens. Whilst the timber industry by now is used to being done over by such legislation, hidden in the back of this bill is similar treatment of

recreational fishers on the South Coast. Access to Meroo Lake, which is one of the most popular fishing spots on the South Coast and was created a recreational fishing haven by this Government in 2000, will be controlled by a gate and the key will be held by the National Parks and Wildlife Service, which will probably lose it for the duration of the holidays. I will have more to say on this little sleight of hand in the Committee stage.

The fact that this bill involved long-term negotiation between the Government, the Greens and green non-government organisations was confirmed when the National Parks Association could not help itself and rushed into print to welcome this latest land grab. This bill was slipped into the lower House on Friday two weeks ago basically unnoticed until the Monday morning when the National Parks Association released its press release, "New National Parks Welcomed". The association said:

> [it was] pleased to see the NSW Government making substantial additions to the reserve system in western NSW, and look forward to seeing the Bill passed quickly through the NSW Parliament.

Of course, there is nothing unusual about that statement, but I suppose it is Labor-Greens code for "so long as the Government does this for us before the end of the year, and before the end of the fifty-fourth Parliament, we will look at giving Labor our preferences in March." Apparently the association was not supposed to put out its press release on the Monday for fear of alerting people in the community about its latest "deal with the Government". However, as I said, the association could not help itself. After the March 2011 election we may well have a government of a different hue and, if I am returned to this House, I look forward to working with that government to review some of these ridiculous decisions. The National Parks Association said:

> [The ...] newest national parks will provide welcome protection for endangered ecological communities ...

I will refer to those endangered ecological communities shortly, but what about the endangered human communities? The Shooters and Fishers Party calls these sorts of land-grab bills town killer bills. Endangered human communities never get a mention in any of the green dogma. What consideration has been given to rural communities in all of these land grants and lockouts? I remind the House of the last big land grab: the river red gums involving 107,000-odd hectares. The Shooters and Fishers Party, at the behest of the Forest Products Association, which wanted $27 million, managed to screw an additional $17 million out of Frank Sartor for those local communities. Again, we will see just how well these communities survive. I acknowledge the comment by the Hon. Catherine Cusack that the group she consulted thought the consultation on this proposal was better than that regarding the river red gums. That would not be too hard to achieve, would it? Again I ask: What consideration was given to rural communities in all these land grabs and lockouts? It was very little, if any, just as with the river red gums. The Forest Products Association was not involved in any discussion about the national park estate the subject of the National Park Estate (South-Western Cypress Reservations) Bill 2010 before it suddenly surfaced two weeks ago.

One would have thought that industry should have been consulted about the bill ahead of the National Parks Association and its fellow travellers. It is a fact that the Forest Products Association represented the cypress timber industry throughout the Brigalow assessment and the more recent assessments of the south-western cypress State forests, but not in relation to the bill. Indeed, the association was surprised to find that the Government chose to qualify the findings of the Natural Resources Commission assessment report in legislation without further discussion with stakeholders. That is exactly what happened in relation to the river red gum debacle.

The Natural Resources Commission assessment was demonstrably incorrect in a number of aspects and poorly written in a number of others, but away it went. It was claimed during the agreement in principle speech in the other place that the Minister had been advised that the bill will not affect the existing 20-year cypress wood supply agreements. Can the Minister please tell us from where he obtained that advice? Why will the Minister not give a similarly unequivocal commitment to the companies that are involved in losing the cypress resource? If the Minister already has done so I would welcome confirmation of that during the Parliamentary Secretary's reply. Sadly, in that very same agreement in principle speech, the Government claimed that the bill will provide significant benefits to the forest industry by way of improved certainty, that the provisions mirror those that were approved earlier this year for the river red gum forests, and that they have been very successful. I doubt that the people of Deniliquin and the other four towns that will go down the gurgler over that decision would agree with that.

Success means different things to different people. In this case the Government was successful in virtually closing down the river red gum forest industry—that was the result of the river red gum decision.

Workers were displaced. Their assistance packages took months to arrive. Mills closed down. The much-vaunted regional development assistance apparently has not materialised—at least according to the people on the ground in the region. As I said, success means different things to different people.

While the Greens see the river red gum forests shutdown and no doubt the conversion of usable cypress forests to deserts as a success and while the Greens obviously have done a similar deal on the south-western cypress State forests with a compliant and dying Government, half the State, comprising those who have to live and work in areas that lie to the west of the stone curtain, disagrees. The Forest Products Association is rightly concerned that the bill will reserve another 22 of the south-western cypress State forests that are not recommended by the Natural Resources Commission assessment report. That is nothing new. We quite often see the Government receiving a scientific report or assessment and inexplicably adding to it. Who knows the reasons that could possibly underpin that—except perhaps green greed.

The Forest Products Association believes that the Government's decision to reserve the additional forests was made without due assessment of environmental or socioeconomic values and without consideration of the impact on resources or commitments under wood supply agreements. As the Hon. Catherine Cusack stated, when the cypress forests are not managed they become an environmental nightmare. I recall that when the Brigalow agreement was about to be declared Don Burke inspected some of the areas that had been locked up. Of course, the cameras were right beside him, and they showed ground that looked like this carpet only a different colour. Nothing was growing on it. Why? Because the silviculture process of managing the forests had been removed.

Importantly, the Forest Products Association believes that the Government's decision diminishes the credibility of sustainable forest management accreditation that supports not only the industry but also the international markets and the potential for ongoing development and contribution to regional communities. As I stated earlier, the Shooters and Fishers Party will oppose all bills that we describe as town killer bills. During the Committee stage we will attempt to scuttle the National Parks and Wildlife Service's sneaky move to acquire the Meroo Lake recreational fishing haven. We will probably do so without success, given that the deal has already been done. I reiterate that the Shooters and Fishers Party will oppose the bill, and when we are defeated in opposing the second reading of the bill we will move one amendment in Committee.

The Hon. RICK COLLESS [3.04 p.m.]: Members will be aware that I have spoken about the issue of cypress pine forests on many occasions in this Chamber. I have been critical of the Government's mentality of lock it up and leave it, and the Government's adoption of an overweening approach at the expense of all other industries. I do not resile from that view on the National Park Estate (South-Western Cypress Reservations) Bill 2010: I remain critical of the Government's approach and the process it has followed. In fact, the Government's approach to the south-western cypress State forests has been exacerbated and maybe made even worse by its having exceeded recommendations made by the Natural Resources Commission. That action demonstrates the supreme arrogance of a supremely arrogant Minister. The Minister has not accepted advice from a scientific body, the Natural Resources Commission. I am astounded that the Minister would go beyond the recommendations made by the Natural Resources Commission.

I am concerned about the adoption of a cut-and-run mentality in relation to a number of State forests. The Minister has stated that State forests will be revoked and included as national parks on 1 January 2011. Of 46,000 hectares, 5,700 hectares will be subject to what the Government refers to as transitional logging for one year. That is illustrative of a cut-and-run mentality. After that the conversions will be transferred and automatically gazetted on 1 January 2012. I ask members to seriously consider those dates in the context of what the current Minister will be doing. The Minister will be the Minister on 1 January 2011 but will he be the Minister on 1 January 2012? Even if the government does not change the answer to that question is: almost definitely not. The Minister is committing the people of New South Wales to a major step for which he will have no accountability in the future.

The area that is reserved is almost double the area recommended by the Natural Resources Commission. It is astounding to think that a Minister could apply his own value judgement and forsake recommendations that are based on evidence that has been scientifically assessed. Stakeholder groups have told the Opposition that although the process that has been undertaken was a vast improvement on what took place in relation to the Brigalow and the river red gum forest—and the Opposition accepts that—the stakeholder groups still are not comfortable with the process. The New South Wales Farmers Association has pointed out that the Natural Resources Advisory Council recommended conservation of 29 out of the 197 forests that were assessed. The Government intends to increase the number by 18, so a total of 47 forests will be conserved.

The real concern felt by everybody is the impact of this legislation on local timber industry operations in areas where State forests will be converted to national parks. The timber industry is based on four mills at Condobolin, Narrandera, Baradine and Gunnedah. As a result of the Brigalow process a number of mills were closed down and only two mills remain operative. All four mills have 20-year wood supply agreements and they are now extremely concerned that they will not be able to meet their agreements in the future. They are only five years into the term of the agreements but mill operators in Gunnedah and Baradine are saying that already they are experiencing difficulties in obtaining decent timber for their mill. The Hon. Trevor Khan would know that because that is his duty area.

The Hon. Trevor Khan: Absolutely.

The Hon. RICK COLLESS: They are able to find only smaller logs, which yield a much lower percentage of merchantable product. Consequently the costs increase while their profits and sustainability decrease. The timber they are cutting is increasingly of a smaller size, and the whole industry is very slowly but definitely spiralling downwards to oblivion.

The Hon. Robert Brown: And that, of course, is the plan.

The Hon. RICK COLLESS: I acknowledge that interjection. People in environmental movements want the timber industry to fail so that all the forests can be locked up. If that happens the timber industry will cease to exist. The Institute of Foresters of Australia did not take a specific position on this bill. However, it pointed out that the Minister had gone beyond the recommendations of the Natural Resources Commission [NRC]. Further reservations affect timber supply because a number of State forests contain commercial cypress timber. The Government is allowing NSW Forests to harvest the current crop of mature trees—the cut-and-run process—under various protocols, but that will have a long-term impact on timber supply. The institute also expressed disappointment that the Government has seen fit to make further reservations where commercial stands of cypress are contained.

The Government stated that further reservations will not affect the 20-year wood supply agreements. However, as I explained, they are already having an impact on wood supply in terms of smaller logs. The Government simply does not understand the impact that this will have on the sustainability of the New South Wales timber industry. Grants Holdings Co. Pty Ltd, which operates timber mills in southern New South Wales, said that it will survive the outcome but mainly because of the fear that the Department of Environment, Climate Change and Water will introduce much more severe restrictions and compliance regimes as punishment for obstructing the new national parks. That is not a good way to do business, and it will create all sorts of problems. Grants also pointed out that it did not have a problem with the Natural Resources Commission report. It stated:

> Science or not it came to a comfortable balance which has always been the objective of the NSW Labor governments forest reform package since 1996—

that is highly debatable—

> The problem here is simply that Sartor decided he wanted more so he made up his own "science". So why does he not have to justify that, how does he re-establish the balance? Surely providing "exist harvest" to silence the industry is not a solution.

How might the Greens tolerate such an outcome, or are they about to do a dirty election deal, as they did with the river red gum issue?

[*Interruption*]

I acknowledge the interjection of the Hon. Ian Cohen; he acknowledged that that happened. The Forest Products Association said that the decision revisits the basis of commitments that arose from the Brigalow process and created the contract of supply in the south-western forests. That places in jeopardy the value of the existing wood supply agreements, which are worth more than $75 million as compensation against the supply contract. The association pointed out that it is not a structural adjustment; it is compensation for the investments that have been made and the business that has been built, reliant on the wood supply agreements. The inevitable outcome will now be that eventually there will not be enough resource to meet the commitments. The Government is crucifying the timber industry in New South Wales. The timber industry will not survive, and that I suspect is the agreement that Frank Sartor has made with the Greens in order to secure preferences at the next election. At a meeting of timber mill workers in the Riverina the Minister said, "This is not about your

sustainability. This is not about the timber industry's sustainability. This is about politics. This is about getting Greens preferences for the Labor Government in the March 2011 election." That is what this is all about. Shame on the Government for introducing this bill.

The Hon. IAN COHEN [3.13 p.m.]: I speak on behalf of the Greens on the National Park Estate (South-Western Cypress Reservations) Bill 2010. I indicate from the outset that the Greens generally support the bill. However, we do not support the revocation of Murramarang National Park and reject this revocation for the extremely poor precedent that it sets. In May this year the Natural Resources Commission [NRC] handed down a regional forest assessment of the south-western cypress State forests. The forest assessment represents the final regional assessment required for New South Wales State Forests. Currently, harvesting operations by Forests NSW in south-western cypress State forests do not have legal approval under State or Federal environmental legislation. In order to obtain authorisation under the Forestry and National Park Estate Act 1998 and to establish an integrated forestry operations approval [IFOA], a forest assessment is required. This is similar to the process that Riverina red gum State forests were subjected to through 2009.

When talking about these forest assessments, it is important that we reflect on the probity and wisdom of signing wood supply agreements before regional assessments are undertaken. We should certainly ask the question: Why did the New South Wales Government lock in 20-year wood supply agreements in 2005 for the region in the absence of a forest assessment? The wisdom of guaranteeing the industry a particular level of supply when one does not understand the ecosystem stock is lost on me and on many people in the community—though it is not particularly surprising in light of the allegations that in 2009 the former Minister, the Hon. Ian Macdonald, signed five-year firewood supply agreements during the Natural Resources Commission forest assessment of the Riverina red gums. That former Minister Macdonald signed five-year wood supply agreements in 2009, prior to the Natural Resources Commission finalising its forest assessment for the river red gum forests, demonstrates some concerning behaviour. At this point I will not delve any deeper into that matter as I have placed questions on notice to gain some information about the contracts.

The forest assessment by the Natural Resources Commission looked at 197 south-western cypress State forests. Of the State forests assessed by the Natural Resources Commission, 29 State forests primarily containing eucalypt woodland were recommended to be managed for conservation values. Consistent with recommendation 5 of the Natural Resources Commission report, the bill will reserve 26,256 hectares of eucalypt woodland. Three of these State forests will be given State conservation area tenure as the Department of Industry and Investment does not know the mineral value of the sites. As such, the department wants to reserve the right to investigate the mineral value of the forests. If upon exploration within the proceeding 12-month period the department does not find significant mineral values, these forests will be declared national parks under proposed section 13 of the bill. While on the topic of mineral interests, it is relevant that we take note of proposed section 4 (5). It is anticipated that the gazettal of reservations will be limited to land below the surface to a depth of 100 metres.

I am advised that only one national park in New South Wales is reserved in this way. I find it particularly cute that certain people in the Department of Land and Industry and Investment think that they can authorise coal seam gas projects underneath national parks at a depth greater than 100 metres without impacting on the values of the national park. They are living in fairytale land if they think that they can select an arbitrary depth at which it will be satisfactory to undertake extractive industry projects.

Returning to the Natural Resources Commission south-western cypress forests assessment, the Natural Resources Commission did not recommend the reservation of any cypress State forests. However, it did acknowledge the high conservation values within the 169,486 hectares of white cypress State forests assessed. To protect these ecosystems, the Natural Resources Commission recommended that the white cypress forests be managed as multi-use forests with a specific regulatory overlay to protect conservation values. The regime proposed involved alternative management schemes for grazing in certain forests, a Department of Environment, Climate Change and Water review and regulatory supervision of pre-harvesting plans, forest management zoning and consideration of ecological sustainable forest management, or ESFM, plans. One of the difficulties with the Natural Resources Commission proposal is the level of regulatory complexity and enforcement challenges. I have a sense that the New South Wales Government is aware of the massive forest management problems that communities in northern New South Wales have recently witnessed. The communities and ecologists recording the gross and repeated contraventions of integrated forestry operations approvals and the provisions of the Protection of the Environment Operations Act have demonstrated the failure of Forests NSW to exercise sustainable forest management and stewardship.

These groups, including the Clarence Environments Centre, the North East Forest Alliance and the North Coast Environment Council, with the assistance of people such as Dailan Pugh, David Milladge, Susie Russell and John Edwards, have recorded significant breaches in Girard State Forest, Clouds Creek State Forest, Chaelundi State Forest, Grange State Forest, Yabbra State Forest and Doubleduke State Forest. Logging of old-growth forest, exclusion zones and habitat trees, as well as poorly supervised post harvest burns, are all part of the dossier that these dedicated North Coast residents have put together to help protect the North Coast environment. The worst of the contraventions and breaches of integrated forestry operations approvals have come about as a result of the actions of the former Minister, the Hon. Ian Macdonald, who was resolute in his determination to outsource the work of Forests NSW to inadequately trained private contractors.

The disappointing part of this whole saga is that the Department of Environment, Climate Change and Water has responded with regulatory action of the magnitude amounting to no more than a lashing with wet lettuce—a fine of $300 for the type of non-compliance for which, if undertaken by an individual, an individual would face thousands of dollars in fines. It is in this context that one can appreciate the New South Wales Government position that the Natural Resources Commission recommendation may lead to regulatory complexity. One could interpret the Government's decision on the south-western cypress forests to mean that it has no confidence in NSW Forests to engage in responsible forest stewardship that balances conservation values, Aboriginal heritage values, forestry production values and ecosystem function values.

The New South Wales Government in this bill proposes an alternative to the Natural Resources Commission recommendation. Of the 168 white cypress forests, excluding those predominately eucalypt forests, the bill proposes to reserve 18 whole State Forests and four part State Forests under the National Parks and Wildlife Act. This reservation totals 20,609 hectares. It amounts to a reservation of 12.1 per cent of all the white cypress State forests leaving almost 88 per cent of white cypress State Forest open for logging.

Before certain members get all hot under the collar about this bill, I ask them to consider a few matters. Firstly, harvesting of these south-west white cypress forests does not have the appropriate regulatory approvals. Logging in these forests is quite rightly subject to third-party challenges to prevent harvesting operations. The right of the community to seek legal redress through the courts where governments fail to comply with forestry approval processes is an important incentive for governments to reach conservation reservation outcomes. These outcomes are mandates in accordance with State, Federal and international law. Certainly, there will be greater protections for endangered ecological communities [EEC] and threatened species habitat with the formulation of an integrated forestry operations approval for the south-western cypress forests. However, the package in this bill does not protect some of the largest highest conservation value forests. It leaves 40 per cent of the vulnerable endangered ecological communities of Sandhill pine open to logging, and when one looks at the break down of figures, one sees it is not comprehensive in terms of CAR reservation principles.

The package in this bill will advance the conservation of the most underrepresented ecosystems in New South Wales. It is a necessary response from the New South Wales Government, and the Minister for Climate Change and the Environment should be acknowledged for responding to the Natural Resources Commission report. I am sure many would have been happy for the Natural Resources Commission assessment to sit on the shelf gathering dust without any further consideration, but the Minister has responded with a package that should be recognised as a small win for conservation in New South Wales.

In addition to responding to the Natural Resources Commission assessment, the bill also makes a number of miscellaneous reservations and establishes further conservation and heritage management initiatives. The declaration of a special management zone within Manna State Forest to prevent logging in areas of the forest identified by the Aboriginal community in the region as having cultural significance is a positive acknowledgement. Problematically, NSW Forests' record on complying with zoning management plans and respecting limitations on logging in special management zones is less than satisfactory. Bago State Forest certainly comes to mind in that regard. Declaring the relevant areas an Aboriginal place under the National Parks and Wildlife Act would probably be a better outcome for the Aboriginal community in that region.

The partial reservation of Joulni Station is a great addition to the World Heritage listed Mungo National Park. This reservation is an outstanding addition to the reserve estate system with very high conservation value and indigenous cultural heritage significance. As the Parliamentary Secretary noted in the Legislative Assembly, 50,000 people a year visit this World Heritage area. The travelling stock route that runs through Joulni will be replaced by the non-inclusion of the road through Joulni reservation allowing for a 60 metre wide corridor for stock. The bill creates a number of additional reserves to protect specific endangered ecological communities. The additions resulting from the Brigalow and Nandewar Community Conservation area will place, for the first

time, the Woodsreef Serpentinite community in the reserve system. A further 3,423 hectares will be reserved in the Tingha Plateau State Conservation Area to protect McKies Stringybark-Blackbutt Open Forest, Howell shrub lands and box gum woodlands.

Lastly I turn to the issue of the national park revocation. We recently discussed national park revocations in relation to the Gwydir and Beni State Conservation Area. This revocation involves 6.5 hectares of land falling within the boundaries of Murramarang National Park. The 6.5 hectares subject to the proposed revocation relates to an encroachment from the Merry Beach Caravan Park, which is located on the adjacent Crown lease and the beach foreshore which makes up 2.5 hectares. The physical encroachment is the result of landowners administrating the park in the late 1970s and early 1980s allowing caravans and park facilities to be developed within the national park. Currently there are 66 permanent caravans on the proposed revocation site. The highly disturbed area has been operating under a National Parks and Wildlife Service licence for the duration of the encroachment. The encroachment by Merry Beach Caravan Park on the national park is identified at page 26 of the Murramarang National Park Plan of Management. Merry Beach is identified at the northern boundary of the park and is considered to play an important park-entrance role. The plan of management states:

> In accordance with undertakings made previously to existing van owners they will be permitted to retain their vans on-site. As sites are vacated they will be revegetated to return the area to a natural setting.

In this case revocation of the land was not envisaged by the plan of management. Revegetation was the priority. However, someone had made a promise to the caravan leaseholders. I will come back to this point in a moment. At its November council meeting, the National Parks Association of New South Wales passed the following unratified motion:

> National Parks Association of NSW views with concern the proposed revocation of part of Murramarang National Park (the southern section of Merry Beach) and advises our representatives on the Regional Advisory Committee and Advisory Council to oppose that revocation.

This is a really poor precedent. It is totally unjustified. With the expiry of the national park licences in 2018, the site should be revegetated consistent with the plan of management. To rub salt into the wound we will have the Lands and Property Management Authority—which has been salivating at the prospect of the revocation for months on end—wanting to redevelop the site in much the same fashion as it is doing in Brunswick Heads and other areas along New South Wales's coast. The identified offset for the revocation is the inclusion into the reserve system of the 85 hectare river bed of Meroo Lake. Meroo Lake was recommended for protection in the Healthy Rivers Commission report and is of high cultural significance to the Aboriginal people of the South Coast. This is not a valid offset and does not meaningfully compensate the loss sustained through the revocation.

The reservation of Meroo Lake should have been undertaken on the basis of merit rather than as a trade-off for degradation of part of Murramarang National Park as a result of its use as a caravan park. Further, because the lake is virtually surrounded by national park it is in effect already protected. The compensatory habitat should provide for a genuinely new park addition elsewhere. The Greens do not support the revocation, which is undeniably the work of the Director General of the Lands and Property Management Authority, Warrick Watkins, and the Hon. Tony Kelly. However, the Greens strongly support the additional reservations of high conservation value land. Sadly, as the reservations are tainted by the dark shadow cast by the revocation, we cannot fully endorse the bill. However, that said, the Greens support the bill.

Dr JOHN KAYE [3.29 p.m.]: I wish to make a brief contribution to debate on the National Parks Estate (South-Western Cyprus Reservations) Bill 2010. I partly reiterate and emphasise some of the points made by my colleague Ian Cohen.

The Hon. Penny Sharpe: Do you have to?

Dr JOHN KAYE: The Parliamentary Secretary asks if I have to. I must say that I do because there is a crucial issue in this bill about the revocation of land at Murramarang National Park and the so-called offset of Meroo Lake, that is to say, the bed of Meroo Lake. I have a long-term connection with Murramarang National Park and Meroo Lake going back some 28 years, over which time I regularly visited the area. I have a keen sense of the unique significance of it and Murramarang National Park to the Aboriginal people and also as a reserve.

The Hon. Robert Borsak: Are you an indigenous owner?

Dr JOHN KAYE: No, I do not think the member was listening carefully; I did not say that. I mentioned its significance to Aboriginal people and their connection to the land, and the European community's connection to the land, which is strong. Those who have been to Murramarang National Park and to the lakes associated with it—Meroo Lake in particular—will understand the natural and recreational significance of that area. I am also privy to a lot of talk in the local community, particularly in respect of Meroo Lake and Merry Beach. It would be an underestimation to say that the local community is not happy about the revocation. The local community feels deeply ripped off by what has happened with the Merry Beach caravan park, and has done so for many years, and feels that that rip-off is being justified now in law by the supposed offset around the lake bed. The community does not feel that this is a fair trade-off. It feels that what ought to have been important national park lands have been effectively privatised with an offset that does not compensate for the loss of the land.

When crossbench members received our briefing on the bill yesterday, I had the strongest sense that even the National Parks and Wildlife Service and the Department of Environment, Climate Change and Water officers present were not happy about the revocation. It is hard to understand how the Department of Environment, Climate Change and Water could establish the precedent of allowing this type of revocation to occur and at the same time feel comfortable about the future of other similar land. Mr Ian Cohen pointed out that the plan of management for the park outlined the return of the area to the national park by 2018. That clearly will not happen once this revocation occurs.

It is hard to escape the conclusion that the overwhelming demand and desire for this revocation and offset are being driven by the Minister for Lands and the Lands and Property Management Authority. Specifically, what I am hearing and suspect to be true is that the lake bed of Meroo Lake was clearly selected by the Lands and Property Management Authority, and possibly even Minister Kelly, as I am not sure that the offset compensation technically complies with the National Parks and Wildlife Service revocation of lands policy. It looks like it has been driven from outside the National Parks and Wildlife Service, and the finger can therefore only point to the Lands and Property Management Authority and Minister Kelly.

I suggest that this is a revocation long sought by the Department of Lands and the Lands and Property Management Authority and I would like the Minister for Lands, or the Parliamentary Secretary on his behalf, to advise the House why the Lands and Property Management Authority has pushed so hard for this revocation at Murramarang National Park. Why this specific caravan park? Why this specific revocation? What is the real driving reason behind something that is deeply opposed by the local community? This revocation, savagely pursued by the Lands and Property Management Authority, is nothing more than a land grab dressed up as a national park revocation. I wonder what development plans have been concocted by the Lands and Property Management Authority? Are there going to be intrusive five-star hotel developments that exclude families that camp at Merry Beach every year?

The Hon. Penny Sharpe: No.

Dr JOHN KAYE: The Parliamentary Secretary says no and dismisses that suggestion. Let us see what instruments protect this land from such developments. It is very clear that Minister Kelly has offered up Meroo Lake to the Department of Environment, Climate Change and Water to pursue the caravan redevelopment agenda of the Director General of the Lands and Property Management Authority. It is no secret that the director general of that authority has been out to get caravan redevelopments across the State, and this appears to us to be just another of his roll-them-over activities. It looks to us like the Department of Environment, Climate Change and Water has been bullied into allowing the lake bed to be offered up as supposed compensation.

The Greens call on Minister Kelly to explain to the House the development proposal for Merry Beach caravan park. I call on the Minister for Lands to clarify that there are no issues of probity, pecuniary interests or conflicts of interest involved in this revocation. It is of the utmost importance that the Minister for Lands, the Hon. Tony Kelly, advise the House in this respect as the Minister responsible for the Lands and Property Management Authority. There is no question that the local community is concerned. There is no question that while protecting the lake bed is important and is strongly supported, it does not compensate for the loss of land that was supposed to revert to national park by 2018.

Reverend the Hon. FRED NILE [3.35 p.m.]: The National Park Estate (South-Western Cypress Reservations) Bill 2010 has a number of concerns for the Christian Democratic Party. However, we support some aspects of the bill that are strongly criticised by the Greens. We are particularly pleased that the Government has addressed a longstanding issue involving the Merry Beach caravan park on the south coast,

where I have stayed in previous years. I strongly support the provision of caravan parks along the coast of New South Wales and in other parts of the State where families, particularly working-class families, can enjoy seaside centres without having to stay at expensive hotels. I believe that should be allowed to continue. I know there is a campaign, which the Greens seem to be part of, to get rid of caravan parks.

[*Interruption*]

I do not agree with that. I believe that they should be allowed to continue and not be closed down.

[*Interruption*]

I am speaking about the fruit of the Greens policies, what they actually do, not some of the rhetoric spoken by the member in this Parliament. I can hear the Hon. Ian Cohen's interjections, but I will not dignify them with a response.

The Hon. Ian Cohen: That is okay; I will accept the indignity.

Reverend the Hon. FRED NILE: Yes, you should be ashamed of yourself. The other matter that concerns me with this legislation—

[*Interruption*]

DEPUTY-PRESIDENT (The Hon. Helen Westwood): Order! I remind honourable members that all interjections are disorderly. Members should allow the member with the call to make his contribution without interruption.

Reverend the Hon. FRED NILE: I agree they are disorderly, but sometimes they are also cowardly. The member has said things under his breath, but I can hear them. If he has the guts, then he should speak up. He does not have the courage of his convictions at all. He should be ashamed of himself.

In some ways this bill is a trick. On the one hand it has some positive aspects to it, but on the other hand it takes away some areas that were regarded as safe. The Natural Resources Commission gave consideration to 197 New South Wales State forests covering 196,000 hectares in south-western New South Wales. Its report contains 10 recommendations, one of which recommended that 29 eucalyptus woodland forests—approximately 26,000 hectares—should be managed for conservation and the remaining 168 white cypress State forests should be managed as multi-use forests within a strong and complex regulatory framework to protect conservation values. The Government has expanded the recommendation by incorporating another 22 forests, and that is causing concern. Because of submissions that have been received I find it difficult to support the bill.

The Hon. PENNY SHARPE (Parliamentary Secretary) [3.39 p.m.], in reply: The National Park Estate (South-Western Cypress Reservations) Bill 2010 demonstrates once again the commitment of the Government to the protection and conservation of the environment of New South Wales. It is significant for many reasons, not the least of which being that it is the completion of the long program of forests assessments and decisions that began with the interim forests assessment in 1995-96. The issues of forest conservation and sustainable resource use, and the balance between them, are vexing, with a broad range of opinion reflected in the community and, as we have seen today, in the Parliament. The community, and in particular those parts of New South Wales with a strong tradition of forestry, has always expressed strong views on the subject, and it has taken time to bring the assessments and related process to fruition. However, the evidence has shown that the decisions made and implemented since 1995 have stood up to ongoing scrutiny and have delivered ongoing benefits that will continue to flow to future generations.

A number of issues were raised during the debate and I will endeavour to address them. It is important that members understand that no towns will be affected by this bill. All wood supply contracts will be met and no timber jobs will be affected. Forests NSW advises that this will not impact upon wood supply contracts. More than half of the south-western forests are eucalypt woodlands and would not be used for logging. Some issues were also raised about the management of the cypress forests. The Natural Resources Commission report recommended a series of cypress management principles that were intended to be applied across all tenures. These principles included active and adaptive management of all cypress forests. The Department of Environment, Climate Change and Water supports the application of active and adaptive management of cypress

forest to ensure spatial and structural variability. These principles of active and adaptive management include the use of ecological thinning and fire to reduce stand lock-up. The Department of Environment, Climate Change and Water will carefully investigate the use of ecological thinning and fire within stands of cypress regeneration.

There has been much discussion about Merry Beach and Murramarang National Park. The reality is that after 40 years of occupation and use of the area as a caravan park the values of these 6.5 hectares are seriously compromised. That was the reason for the original reservation of the former Crown land as part of the national park. The bill deals with this reality. The issue of offsets in relation to Meroo Lake was also raised. The protection of Meroo Lake through its addition to Meroo National Park is a great conservation achievement. The lake is listed on the Directory of Important Wetlands in Australia and is one of the most pristine lakes on the New South Wales coast. The lake is extremely important for water birds, especially the black swan, and is known habitat as well for the endangered green and golden bell frog. From a tenure perspective, the land to be revoked will revert to Crown land and the offset land is Crown land. All other assessed or potential offsets were also Crown land, and the conservation values of Meroo Lake are superior to those other areas.

The bill resolves the longstanding matter of Murramarang National Park. It will rationalise the management of the park by bringing it entirely under the administration of the Land and Property Management Authority. I wish to emphasise the current condition of the area to be revoked. It is almost entirely cleared and occupied by caravans and other caravan park infrastructure. It does not look like what most people would envisage a national park to look like. This revocation will not impact on conservation values, nor will it affect current caravan owners in the national park portion of the caravan park, whose rights will be respected by the Land and Property Management Authority.

As an offset for the revocation, the bill will incorporate the bed of Meroo Lake into Meroo National Park. Meroo is a beautiful and significant coastal lake, and has long been recommended for protection. It includes important wetland habitat and the Government is proud to give it the recognition it deserves. The reservation will not affect current recreational fishing practices in Meroo Lake. That is in line with the Meroo National Park Plan of Management adopted on 16 September. I am pleased to have introduced this important bill, which will protect another 70,000 hectares for the current and future citizens of New South Wales. It is a fantastic conservation outcome. I note that both the Opposition and the Shooters and Fishers Party have indicated they will move amendments in Committee. The Government will not support those amendments. I commend the bill to the House.

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

The House divided.

Ayes, 31

Mr Ajaka	Mr Gay	Mr Primrose
Mr Catanzariti	Ms Griffin	Ms Robertson
Mr Clarke	Dr Kaye	Ms Sharpe
Mr Cohen	Mr Khan	Mr Shoebridge
Mr Colless	Mr Lynn	Mr Veitch
Ms Cotsis	Mr Mason-Cox	Ms Voltz
Ms Cusack	Mr Moselmane	Mr West
Ms Faehrmann	Mr Obeid	
Ms Ficarra	Ms Parker	*Tellers,*
Mr Foley	Mrs Pavey	Mr Donnelly
Miss Gardiner	Mr Pearce	Mr Harwin

Noes, 4

Mr Borsak
Reverend Dr Moyes

Tellers,
Mr Brown
Reverend Nile

Question resolved in the affirmative.

Motion agreed to.

Bill read a second time.

In Committee

The CHAIR (The Hon. Kayee Griffin): With the consent of the Committee I propose to deal with the bill in parts.

Parts 1 and 2 agreed to.

The Hon. CATHERINE CUSACK [3.54 p.m.], by leave: I move Opposition amendments Nos 1 to 10 in globo:

No. 1 Page 11, clause 16 (1), lines 13-15. Omit "and the State forests of Wilbertroy, Blow Clear West, Yathong and Banandra".

No. 2 Page 14, schedule 1, lines 18-24. Omit all words on those lines.

No. 3 Page 14, schedule 1, lines 26-32. Omit all words on those lines.

No. 4 Pages 14 and 15, schedule 1, line 37 on page 14 to line 2 on page 15. Omit all words on those lines.

No. 5 Page 15, schedule 1, lines 4-6. Omit all words on those lines.

No. 6 Page 15, schedule 1, lines 10-16. Omit all words on those lines.

No. 7 Page 18, schedule 1, lines 4-7. Omit all words on those lines.

No. 8 Page 18, schedule 1, lines 20-26. Omit all words on those lines.

No. 9 Page 19, schedule 2, lines 10-38. Omit all words on those lines.

No. 10 Page 24, schedule 6, lines 10-12. Omit all words on those lines.

The substance of the amendments moved by the Liberal-Nationals Coalition is to provide certainty to the timber industry and certainty to the jobs and communities that the industry supports. The New South Wales Liberal-Nationals Coalition acknowledges the regional forest assessment of south-western cypress State forests undertaken by the Natural Resources Commission. We believe that this far more balanced report sought to find agreement between the needs of industry and conservation. The Liberal-Nationals Coalition is concerned about the plan to reserve an additional 22 south-western cypress forests that appear to have been thrown in by the Minister at the last minute. Opposition members are not clear about the justification for the reservation of these additional forests and we have not seen the report that presumably was generated by the department to justify it.

In response to representations from industry—and I thank Russ Ainley for the advice he provided to us in relation to these issues—we are concerned about Banandra State Forest, Berrigan State Forest, Blow Clear West State Forest, Boona State Forest, Jimberoo State Forest, Wilbertroy State Forest and Yathong State Forest. We understand that currently those State forests are included in the plans of operations within the requirements of wood supply agreements. In good faith, businesses have made investments in equipment and training on the basis that they would have access to those forests. It would be wrong for the Government to remove access to those forests, in particular, without full and open consultation with industry and the affected company.

The decision to reserve these forests now was apparently taken without due assessment and environmental or socioeconomic values, and without consideration being given to the impacts on resources and commitments under the wood supply agreements. I note that all these matters would have been addressed by the Natural Resources Commission inquiry. It was the job of the Natural Resources Commission to recommend what should go into this national park area, but this area was not part of its recommendation. It is unfortunate that the Minister disregarded that process, which highlights the spirit in which these reserves were established. The Opposition's amendments seek to exclude those forests from reservation.

The Hon. ROBERT BROWN [3.57 p.m.]: The Shooters and Fishers Party supports the amendments moved by the Opposition. I do not understand why the Hon. Catherine Cusack cannot see any justification for 22 forests being included in this bill as a result of the report of the Natural Resources Commission. The justification for their inclusion is Greens preferences.

The Hon. IAN COHEN [3.57 p.m.]: The effect of Opposition amendments Nos 1 to 10 will be to prevent the preservation of Banandra State Forest, Berrigan State Forest, Blow Clear West State Forest, Boona State Forest, Jimberoo State Forest, Wilbertroy State Forest and Yathong State Forest. The total area proposed to be removed from the reservation amounts to almost one-third of the cypress State forest areas in the bill. I place on record some of the details about State forests that the Liberal Party of New South Wales wants to remain unprotected and outside the reservation system. Boona and Banandra are both important large remnants in the heavily cleared Coleambally Irrigation Area south of Murrumbidgee River and west of Darlington Point. They are predominantly cypress forests and their importance to the survival of wildlife in this area cannot be overstated.

Threatened species that have been recorded in or adjacent to these forests include the painted honeyeater and the grey-crowned babbler. On an occasion in the past I called former Treasurer Michael Egan a grey-crowned babbler, which he took as a compliment. We are now discussing the preservation of the grey-crowned babbler, the superb parrot and the painted snipe. Berrigan State Forest is a significant remnant in the eastern Riverina in the vicinity of Berrigan township. The landscape in this region has been heavily cleared and very few remnants on public land are available for reserves. It is an incredibly important stepping stone for wildlife in a region that is expected to face major declines in biodiversity due to a warming climate, and it contains likely habitat for a substantial number of threatened species. It is a very substantial distance from the nearest cypress mill, and it is clearly a far higher priority for environment protection than timber extraction.

Jimberoo is one of the most important core areas for addition to the reserve system. It is an incredibly important large remnant and stepping stone between Yathong Nature Reserve and Cocoparra National Park. The Natural Resource Commission identified Jimberoo as having high landscape function value, and the analysis conducted by Ecological Australia for the Natural Resource Commission identified this area as having one of the highest ecological value scores in the region. A total of 10 threatened species have been recorded in or immediately adjacent to Jimberoo, and it is particularly important for declining woodland birds such as the hooded robin, grey-crowned babbler, diamond firetail and speckled warbler.

Blow Clear West State Forest is located north west of Forbes and is a known habitat for the vulnerable pine donkey orchid. The Natural Resources Commission estimates that 94 per cent of the forest comprises endangered ecological communities. It is interesting to hear members laughing at that. The analysis conducted by Ecological Australia for the Natural Resource Commission identified this area as being among the most significant areas of ecological value scores. At least six threatened animal species have been recorded in Blow Clear West, including a number of declining woodland bird species. Wilbertroy is located south west of Forbes and is an example of a forest with important remnants of riverine woodland of river red gum, threatened grey box and belah. This forest is an important part of the flood plain from the Lachlan River to Lake Cowal. It is a very significant forest remnant surrounded by the heavily cleared Jemalong Irrigation Area, and was recognised by the Natural Resource Commission as having high landscape function value.

The inland grey box woodland in Wilbertroy is listed as an endangered ecological community in New South Wales, with the Natural Resource Commission report estimating that 56 per cent of the forest qualifies as endangered ecological community. Wilbertroy contains diverse vegetation types and is recognised as one of the highest priority additions to the reserve system due to its high conservation significance. Yathong is considered to be one of the most important core reserves in the region because of its size and because it provides a substantial and important consolidation of Yathong Nature Reserve. The Natural Resource Commission recognised it as having high landscape value function. It is considered likely habitat for the endangered malleefowl.

This area should have been part of the Yathong Nature Reserve, and it represents a very important addition that is long overdue. Its location on the boundary between bioregions highlights its importance as a linkage between regions and underscores the diversity of species it covers. The Natural Resource Commission report indicates that 24 threatened fauna species have been recorded in Yathong and its surrounds. In particular, Yathong is a known habitat for the threatened little pied bat and Major Mitchell cockatoo. Having reflected upon what this bill actually seeks to protect and what the Liberal Party seeks to exclude from the national park estate, we are left with a sense that the Liberal Party has very little capacity to actually balance conservation and ecosystem management objectives with extractive uses, particularly forestry.

The Hon. Rick Colless: That is not true.

The Hon. IAN COHEN: I acknowledge the interjection. The lists I have read regarding the importance of these areas speak for themselves. As I highlighted in my second reading speech, this is a modest

conservation proposal. It is not comprehensive, yet we have the almost automated response from members opposite to reject managing our unique ecosystems for future generations. The Greens oppose the Opposition amendments, not for a Labor Party-Greens deal but for the preservation of incredibly important endangered species in our much under-representative western ecosystems.

The Hon. RICK COLLESS [4.03 p.m.]: I support the amendments moved by the Hon. Catherine Cusack. In doing so I point out, as I did in my second reading speech, that Minister Frank Sartor wanted to include 18 extra sites, or some 20,000 hectares, over and above what the Natural Resources Commission recommended. All we want to do through these amendments is remove just seven of those 18 sites, as they will have the most impact on the wood supply agreements for the Grants mills in the southern part of New South Wales. The amendments are not about destroying or having disregard for the environment, as the previous speaker attempted to accuse us of doing. I point out also that those forests have been logged for decades.

The Hon. Robert Brown: Sixty years.

The Hon. RICK COLLESS: They have been logged for at least 60 years—probably in excess of that; I am not sure. Certainly the Brigalow areas have been logged for in excess of 100 years. If a forest has within it that list of threatened species the Hon. Ian Cohen mentioned and they have been living in concert with a sustainable logging industry. The area is now in a condition good enough for it to be converted into a national park. What damage has the logging been doing?

Reverend the Hon. Dr Gordon Moyes: None.

The Hon. RICK COLLESS: None. That is exactly right. Those forests will be locked up and there will be no control of undergrowth, no control of weeds and no fire control because all the fire trails will be shut down, as they were in the Brigalow and in every other national park. In three or four years a massive fire will go through, as happened in the Brigalow and every other national park, which will result in mass extinction of those threatened species that the member is trying to protect. That is why I say that this legislation is wrongly designed. I am not opposed to conservation. I have worked in conservation all my life. I am acutely aware of the balance of nature in natural ecosystems. I have done countless hours of training in those areas over the years. The design of this bill is wrong.

Putting a fence around a forest, locking it up and saying, "Everybody keep out of there"—except the babblers, the warblers, the Major Mitchell cockatoos and all the other species the the Hon. Ian Cohen mentioned—will not achieve conservation. I fully support his comments about making sure those species are looked after, but this bill is the wrong design. The result will be the extinction or destruction of those species rather than their conservation. We need to think carefully about how this forest is managed. Locking up land does not necessarily mean it is conserved. Allareas, whether it is private farmland, agricultural land, grazing land, national parks, forestry, whatever—

The Hon. Duncan Gay: Fisheries.

The Hon. RICK COLLESS: Yes, fisheries—has to be managed and looked after. I have had countless arguments about this issue, particularly in relation to the Brigalow with which I am more familiar because it is similar type of country to the area we are talking about. Areas not managed and locked up are degraded. Areas looked after and managed by foresters allow selective logging and look after the wildlife. Locking up these areas will not protect those species; it will degrade them. That is why I oppose this legislation. I do not oppose it because I have a dislike for native wildlife. That is not the case at all. I oppose this bill because I respect the needs of our native wildlife and also the needs for a dynamic and actively managed system and environment for them to live in.

The Hon. ROBERT BROWN [4.08 p.m.]: Following the contribution of my colleague the Hon. Ian Cohen, I should say a few extra words. I fully support the ideas put forward by the Hon. Rick Colless. A locked-up forest, one of the cypress forests that has not been attended to, will be barren and no birds will be heard—exactly as I pointed out earlier on the camera with the gardening guy. The grey-crowned warbler, the curlew and these other ground-dwelling and low-brush dwelling birds are merely cat and fox food in those areas. These particular forests, including Yathong, are declared under the Gaming and Feral Animal Control Act. Volunteers kill the cats and foxes, and protect the birds. The minute they go into the national park, which is

not declared, the cats and foxes are left. From reading forestry reports and talking to people who know what they are talking about, we know that looking after those particular types of ecosystems is exactly the same as looking after the river red gum. This proposal is not the right method by which to protect those birds.

The correct way to protect those birds is to do it the way that State governments of various political hues have been protecting them over the past 60 years. I support comments made by the Hon. Rick Colless. This is not about the non-greens and non-government political parties not liking native species and the Greens loving native species. It is just that the methodology proposed by the State Government in this legislation and in previous legislation—methodology that is supported by the Greens—will not achieve the desired conservation outcomes. Those areas need human intervention.

The Hon. PENNY SHARPE (Parliamentary Secretary) [4.10 p.m.]: I reiterate that there will be no impact on the current wood supply contracts as a consequence of this legislation. Given that the south-western cypress industry soon will have formal legislative approval and certainty provided by the integrated forestry operations approval, the industry will be better off. There has been a great deal of discussion about the Natural Resources Commission's assessment report. It is important to state for the record that the Natural Resources Commission's assessment was undertaken on a landscape scale. The assessment focused on how cypress forests previously have been managed and how they should be managed across the New South Wales landscape. The commission's assessment did not assess the biodiversity and conservation values of each forest on an individual scale that included the presence of endangered ecological communities and threatened species. The commission's report did not consider the principles of a comprehensive, adequate and representative system. Therefore, the report does not need the requirements of a forest agreement.

Instead the commission developed different protection measures that will be included within the integrated forestry operations approval. This approach was considered to be an inefficient and expensive way in which to manage environmental values. Additionally, it did not provide additional certainty for the industry. The Government negotiated an increase in the forests that will be reserved to ensure adequate protection is provided to endangered ecological communities. We heard about some of those during debate, such as the inland grey box and the sandhill pine endangered ecological communities, and threatened species, such as the grey-crowned babbler and the superb parrot.

I will deal specifically with some of the issues associated with seven forests that are the subject of Opposition amendments. More than half the Wilbertroy and Yathong forests will be subject to exit harvesting, provided for in the bill, but will allow access to the timber resource. In Banandra 194 hectares will be harvested under the provisions of the bill. This forest has large areas of the sandhill pine woodland endangered ecological community. The harvesting potential of this forest is limited by the presence of the endangered ecological community. Blow Clear West already has been significantly harvested. The 189 hectares that have been designated for exit harvest by the bill is the remaining area of harvestable timber in the forest.

Jimberoo has significant areas of environmental protection under forest management zoning and that limits the amount of timber that is available for harvest. That forest was offered by Forests New South Wales with an indication that it would have no impact on wood supply. Berrigan also is a forest that is dominated by a sandhill pine woodland endangered ecological community. Harvesting of this forest is limited by the presence of the endangered ecological community. Finally, in relation to Boona, the area to be reserved in this forest is an area of environmental protection under forest management zoning 3. This area was unavailable for harvesting under Forests New South Wales' forest management zoning. The reservation of this area therefore has no impact on the current wood supply agreement.

The reservation of these areas has been designed to ensure that there will be no impact on the current wood supply agreements. Due consideration has been given to that matter. In total, the reserve package delivers representativeness and connectivity across significant cleared landscape. The Government does not support the Opposition's amendment.

The Hon. CATHERINE CUSACK [4.13 p.m.]: I thank the Hon. Rick Colless for his comments and his elucidation of the reason we are particularly interested in seven forests. As he said, they are all subject to wood supply agreements arising from the Brigalow Assistance Fund. That fund encouraged mills in the area to invest in value adding and modernising of mill equipment. The Government provided $15 million to assist businesses that chose to remain in the industry. Those businesses also invested their funds on the basis of the security of the wood supply agreements.

The business affected particularly by the seven forests is Grants Holdings, which received approximately $1 million of taxpayer assistance in the first year. It invested approximately $3 million of its own funds. The business integrates very high-value production from mills at Narrandera and Condobolin with ongoing development and investment, and is a model of the way the Opposition would like to see the small-scale timber industry develop throughout Australia. The amounts to which I have referred are the investments that have been jeopardised by the last-minute decision outside the National Resources Commission report to include the seven forests in the agreement.

If I recall correctly, the Hon. Ian Cohen concluded the Green's contribution to the debate by accusing the Liberals-Nationals of an automated response to reject conservation management. I tried to write down what he said at the time, and I seek confirmation that he said that the Coalition has an automated response to reject conservation management. That was his criticism of the Liberals-Nationals.

The Hon. Ian Cohen: I would have to get my speech back to make sure. I do not have it with me.

The Hon. CATHERINE CUSACK: The Hon. Ian Cohen is not sure.

The Hon. Greg Donnelly: It was meant to be complimentary!

The Hon. CATHERINE CUSACK: It was not a complimentary remark. Because the Hon. Ian Cohen is very harsh in his criticism of the Liberals-Nationals—in my opinion extreme in his criticism—I point out that the Coalition has just voted with the Greens and the Government for the bill to pass the second reading stage. We have expressed support on the record for the Natural Resources Commission's report cited by him, and we support the package that the commission has recommended. Moreover, we voted in favour of establishment of the south-western woodlands nature reserves and we are not auto rejecting all of the 22 additional parks that have been proposed by the Minister outside the process. We have a specific issue in relation to seven forests about agreements with industry that we believe should be honoured.

The Greens are incorrect in their assertion that we wish those State forests to be unprotected. As the seven State forests are within what is defined as the south-western area depicted on page 3 of the bill and included as part of clause 3, they will fall within the definitions of south-western forest and south-western forestry operations as defined by the bill. Therefore, integrated forestry operations procedures will apply under part 3 of the bill, which is what was recommended by the Natural Resources Commission's report cited by the Hon. Ian Cohen. I make the point that the Natural Resources Commission does not regard conservation as the exclusive preserve of the national parks system. The commission is finding ways to assist the achievement of conservation outcomes in our State forests.

I will comment on the way that matters are negotiated with people in communities that are affected by conservation legislation. In the river red gum forests debate, to which the Hon. Robert Brown referred, the communities were in a high state of distress because of the way they were treated. They felt they were being treated as criminals. One lady at Barham said, "I feel like I have been charged, tried and convicted of crimes that I did not commit, and I have never even had the opportunity to know what these crimes have been, let alone how they make a case against me." The meeting was characterised by a high state of emotion. The attitude of "You people over there—the Liberals-Nationals or the people of Barham—are just auto rejecting conservation outcomes. You don't care, and this is the only model that can be pursued." is so destructive to the goodwill that is vital to obtaining good outcomes for the environment and for communities.

I urge people to moderate their inclination to reject people who might have a different perspective because often that other perspective can add value to the debate as a whole. I believe much can be achieved through negotiation. At a meeting with the conservation movement this morning I saw an agenda that they are launching for the State election and the approach they wish to adopt. It is an approach of negotiated outcomes in respectful dialogue while always relentlessly seeking the attainment of better conservation objectives. Having stated those matters for the record, I hasten to add that the Coalition believes there is a middle course. The winner-takes-all approach that has so dominated this issue up until now has been incredibly destructive of relationships that are needed in our communities to ensure that these areas are loved and respected, irrespective of whether they are national parks or State forests.

Question—That Opposition amendments Nos 1 to 10 be agreed to—put.

The Committee divided.

Ayes, 19

Mr Ajaka	Miss Gardiner	Ms Parker
Mr Borsak	Mr Gay	Mrs Pavey
Mr Brown	Mr Khan	Mr Pearce
Mr Clarke	Mr Lynn	
Ms Cusack	Mr Mason-Cox	*Tellers,*
Ms Ficarra	Reverend Dr Moyes	Mr Colless
Mr Gallacher	Reverend Nile	Mr Harwin

Noes, 21

Mr Catanzariti	Mr Moselmane	Mr Veitch
Mr Cohen	Mr Obeid	Mr West
Ms Cotsis	Mr Primrose	Ms Westwood
Ms Faehrmann	Mr Robertson	
Ms Fazio	Ms Robertson	
Mr Foley	Mr Roozendaal	*Tellers,*
Mr Hatzistergos	Ms Sharpe	Mr Donnelly
Dr Kaye	Mr Shoebridge	Ms Voltz

Question resolved in the negative.

Opposition amendments Nos 1 to 10 negatived.

Part 3 agreed to.

Part 4 agreed to.

Schedules 1 to 3 agreed to.

The Hon. ROBERT BROWN [4.27 p.m.]: I move Shooters and Fishers Party amendment No. 1:

No. 1 Pages 21 and 22, schedule 4, line 5 on page 21 and lines 5–11 on page 22. Omit all words on those lines.

This amendment will delete all references to the land swap for the Merry Beach Caravan Park. Before I speak on the amendment in detail I will correct a few statements made earlier in the debate that relate to the Meroo Lake issue. Currently Meroo Lake is a recreational fishing haven. The Hon. Ian Cohen suggested that perhaps this was an eager give up by the Land and Property Management Authority; that the Land and Property Management Authority was behind the offer of Meroo Lake as an offset for the revocation of the caravan park. I draw the member's attention to the speech of the Parliamentary Secretary in the other place, Ms Angela D'Amore, in which she said:

> The park addition consists of the bed of Meroo Lake, an area of about 85 hectares and so very much larger than the area of about 6.5 hectares to be revoked.

In fact, it is more than 10 times the area. She continued:

> The lake is 99 per cent surrounded by the national park and it has been a longstanding proposed park addition. Meroo Lake is one of 16 lakes identified by the Healthy Rivers Commission in 2002 as priority protection lakes along the New South Wales coast. Meroo Lake is in near pristine condition and was recommended by the commission as clearly worthy of comprehensive protection. I am pleased to say that the addition of Meroo Lake to Meroo National Park will bring it to 13 lakes brought into the national park system, from the 16 identified, in line with the Government's statement of intent released in 2003.

That is clear evidence that the Government, through the National Parks and Wildlife Service, has coveted Meroo Lake at least since 2002. I also want to bring to the fore the question of consultation with affected groups. The Hon. Catherine Cusack said she was unaware of consultation. In fact, consultation on this issue goes back to the draft plan of management for Meroo National Park. In October 2007 opponents to Meroo Lake being locked up in the Meroo National Park met with the National Parks and Wildlife Service local office and put forward a whole lot of proposals that they believed the service should adopt in lieu of simply locking up this area. The National Parks and Wildlife Service proposed gating the only access road and leaving a key for a recreational fishing haven at Ulladulla. Is that smart?

The Hon. Duncan Gay: That's easy access!

The Hon. ROBERT BROWN: That's easy access! It seems that recreational fishing and New South Wales fishers once again have been had by the Government and the Greens. This recreational fishing haven was one of dozens set up by this Government in 2000 at an eventual cost of about $32 million paid for out of the recreational fishing licence fees. The locking up of access to the park will make it virtually impossible for anybody who is not able bodied to get access to the lake, or if they do get access it will force them to act in a fashion that is not in the best interests of the environment to get around the lake. Unless this amendment gets up, for example, Meroo Lake Road will be controlled with a gate and with a key at Ulladulla. Vehicular access to the lake will be permitted only by the use of that key.

This plan of management for Meroo National Park, which was obviously set up with a view to this particular bill going through, and this sneaky little bit in the back getting up, is not in the best interests of recreational fishers, nor is it in the best interests of the protection of the area. Meroo Lake is protected with a great deal of enthusiasm by local fishing clubs and the fishers who go there. They are proud of the recreational fishing haven. They are proud of its pristine condition and the only thing that a swap of 85 hectares of the bed of that lake for 6.5 hectares of the caravan park will do is alienate those fishers even more. The fishers say they are used to being bashed up by the Government. They have come to us for help. We are going to try to help them but I doubt the amendment will get up. We commend the amendment to the Committee.

The Hon. CATHERINE CUSACK [6.33 p.m.]: The Liberals and The Nationals have considered this amendment and will support it. We thank the Hon. Robert Brown for introducing it. As I said earlier, it is the way in which this offset has been determined and slipped through in a very underhanded way without consultation with the affected parties that is of concern. I thank the Hon. Robert Brown for his discussion of the consultation that took place. My concern was whether there was any consultation in relation to this bill.

The Hon. Robert Brown: None.

The Hon. CATHERINE CUSACK: And the answer is that there was absolutely none. It is absolutely unacceptable for a matter of this significance to have zero consultation with directly affected parties. We support the Merry Beach Caravan Park boundary adjustment. The caravan park is cleared land that has been in use as a caravan park for 40 years but it has the difficulty, because of the split boundary, of operating with two landlords at a cost not only to it but also at a cost to the National Parks and Wildlife Service and Land and Property Management. Having the land on a single lease is obviously sensible housekeeping to which there can be very little objection. It is all Crown land and the usage does not change. The land to be revoked has zero conservation value. It has been used as a caravan park for 40 years so there is no loss of conservation land to the national park. I believe it involves 6 hectares of land.

I will try to understand how Meroo has become an offset for that 6 hectare consolidation of a caravan park lease. The 6 hectares of caravan park land is in Murramarang National Park and the offset of 85 hectares is seagrass underneath the Meroo Lake in Meroo National Park. Where is the analogy between a caravan park and 85 hectares under water? The Liberals-Nationals do not believe that the offset is excessive. It may well be argued that the land that is proposed to go into the national park is of high conservation value. Indeed, my understanding is that the water in the lake is pristine. The lake has been closed to commercial fishing, it has been declared a recreational fishing haven and it is being beautifully looked after by the people who use it.

Given the extraordinary condition that it is in, the Government has not raised a single conservation benefit involved in changing the status of this lake. The Government has not stated what the threat is that will be averted. The Hon. Penny Sharpe said that the lake will continue to be used for recreational purposes under the Fishing Management Act, which I presume is a reassurance to users, but I find that very unusual. The Government is clearly not going to change anything about that lake, simply the standing of the land. The Liberals-Nationals cannot see the conservation improvement or benefit in this proposal. We see great offence caused to the major stakeholders who have used and looked after this lake for so long. We will oppose this offset.

The Hon. PENNY SHARPE (Parliamentary Secretary) [4.37 p.m.]: The Government does not support this amendment. The Government wants to add the bed of Meroo Lake to the national park because it implements the Government's statement of intent in relation to the Healthy Rivers Commission report into coastal lakes and the commission's recommendations in that report. Reserving the bed of the lake as part of the park gives due recognition to the conservation values of the area and brings the whole of the lake bed and the

surrounding park into one tenure for conservation management. For example, Meroo Lake has very high conservation value fringing wetlands that straddle the lake bed and adjoining low-lying areas that are habitat for nationally listed threatened species. It makes sense to have a single authority manage these areas under a single management plan.

It is important to note that fishing can continue as normal with the addition of the bed of Meroo Lake to the national park. The fact that the lake is a recreational fishing area does not mean that the management and character of the surrounding land must be compromised. The national park area surrounding the lake was in place before the lake became a designated recreational fishing area, and the Department of Environment, Climate Change and Water has a responsibility to manage the park in ways that protect its values. The park's plan of management has only recently been finalised. There has been extensive consultation into the plan of management, as identified by the Hon. Robert Brown.

Nevertheless, the park's plan of management provides for vehicular access to the lake, but in a controlled way so as to protect both the land area of the park and the access track to the lake, as well as to help retain the character of the lake. The Hon. Robert Brown raised the issue of the key and suggested that people have to go to Ulladulla to get the key and then come back and drop it off, but that is not the case. Basically, you go to Ulladulla and pick up a key, which then becomes your key and you can have access at any time that you want. It is wrong to suggest that a difficult plan of management has been put in place to protect this highly sensitive area.

The Hon. Rick Colless: You keep the key?

The Hon. PENNY SHARPE: Yes. Meroo Lake is one of 30 recreational fishing havens in New South Wales. This lake, however, offers the rare opportunity of providing a different type of fishing and recreation experience where there is unrestricted boating access. The Government does not support the amendment.

The Hon. IAN COHEN [4.39 p.m.]: The Greens do not support the amendment. The arguments that have been advanced highlight decisions that have been made in this Chamber with regard to like legislation. Members have been alienated from the reality of inspecting and assessing the lake, which a committee of this Chamber may have been able to do had time permitted. I was certainly interested to hear that fishing will still be allowed. I have acknowledged that the Shooters Party has said that there are access issues—

The Hon. Robert Brown: The Shooters and Fishers Party.

The Hon. IAN COHEN: My apologies. The Shooters and Fishers Party, of course, has said that access would be difficult for many—which again highlights the fact that members are asked to make decisions on matters about which they lack sufficient information. I believe that the lake was identified by Minister Kelly and Lands and Property Management Authority director general, Warwick Watkins, as an appropriate offset for the authority, which is primarily interested in securing Merry Beach caravan park for the department's redevelopment purposes and seeking extensive redevelopment of the site, thereby taking away the opportunity for New South Wales families to enjoy affordable and low environmental impact holidays. It would seem that Minister Kelly, one of the remaining supporters of the Shooters and Fishers Party in Cabinet, is handing over Meroo Lake in order to get Merry Beach for the Lands and Property Management Authority to satisfy its ambitious development aspirations. In the absence in the Chamber of Minister Kelly I ask the Parliamentary Secretary what guarantee will be given in terms of development of a site that is being taken from the national parks.

The Opposition has said that the area—and I know the area; I was there some time ago—has no conservation value, but I make the observation that Merry Beach is a headland site in a very dominant position. I agree with the Hon. Catherine Cusack that the area does not have vegetation conservation values, but we know from experience that development by the Department of Lands—for example in the Illawarra at the "Old Farm", as I know it—can impact massively on the general nature of an area. Currently there is a low-key caravan park on this land. If it could be guaranteed that it continue to operate as a low-key caravan park, and that when its tenure expires the small dwellings or caravans on the site would be broken down and revegetation could gradually take place, I would not be complaining. However, I have real concerns that there are plans for development of this particular site. It is a prominent site; it is situated right on the coast. I seek a response from the Parliamentary Secretary about that, if possible, because the site is not suitable for large-scale tourism development.

I do not believe that technically the offset compensation complies with the revocation of lands policy of the National Parks and Wildlife Service. However, unfortunately this is all that is offered in this bill. There must

be some sort of offset for the unjustified revocation of Murramarang National Park at Merry Beach. The general conservation movement takes this very seriously. I do not want to say, "I told you so", but I have some very real fears that the Department of Lands will develop the site. Legislation relating to intense tourist development and other uses to which these types of areas can be put have passed through this House. Caravan parks are essential to enable average families to enjoy low-key holidays on the coast, and they are becoming fewer because of the value of the property and the types of development proposed for such property That said, the Greens oppose the amendment, in the understanding that various discussions are being undertaken. I would like some sort of guarantee that there will not be inappropriate development of the site that is being excised.

The Hon. PENNY SHARPE (Parliamentary Secretary) [4.45 p.m.]: To address the issue raised by the Hon. Ian Cohen, the Land and Property Management Authority has advised that there will be no increase in the number of sites and no decrease in the number of casual camping and caravan sites. The Department of Environment, Climate Change and Water will continue to play a role across the wider responsibilities of its portfolio regarding future use and development of the site. This will be done in conjunction with the Shoalhaven City Council and will ensure that park management and other park values are not adversely affected in the future.

Question—That Shooters and Fishers Party amendment No. 1 be agreed to—put.

The Committee divided.

Ayes, 19

Mr Ajaka	Miss Gardiner	Ms Parker
Mr Borsak	Mr Gay	Mrs Pavey
Mr Brown	Mr Khan	Mr Pearce
Mr Clarke	Mr Lynn	
Ms Cusack	Mr Mason-Cox	*Tellers,*
Ms Ficarra	Reverend Dr Moyes	Mr Colless
Mr Gallacher	Reverend Nile	Mr Harwin

Noes, 22

Mr Catanzariti	Mr Kelly	Mr Shoebridge
Mr Cohen	Mr Moselmane	Mr Veitch
Ms Cotsis	Mr Obeid	Mr West
Ms Faehrmann	Mr Primrose	Ms Westwood
Ms Fazio	Mr Robertson	
Mr Foley	Ms Robertson	*Tellers,*
Mr Hatzistergos	Mr Roozendaal	Mr Donnelly
Dr Kaye	Ms Sharpe	Ms Voltz

Question resolved in the negative.

Shooters and Fishers Party amendment No. 1 negatived.

Schedule 4 agreed to.

Schedules 5 to 9 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.

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Order of the Day No. 2 postponed on motion by the Hon. Mick Veitch.

LOCAL GOVERNMENT AMENDMENT (ENVIRONMENTAL UPGRADE AGREEMENTS) BILL 2010

Second Reading

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [4.54 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.

Improving energy efficiency in the building sector offers the most cost-effective greenhouse gas emission reduction opportunities of any sector in the economy. That is why I am introducing this bill, as a climate change measure.

However, improving energy efficiency in the building sector also makes good economic sense. This bill should be supported even if it did not reduce one tonne of greenhouse gas emissions. This bill will directly help reduce the impact of growing power demand on our electricity network and on power prices.

A recent report by the policy research body ClimateWorks using McKinsey and Company data, found that investing in energy efficiency projects in commercial buildings would deliver a total potential benefit to the NSW economy of over $560 million each year. And rather than costing money to reduce carbon, each tonne of carbon reduced would be equivalent to a $100 benefit.

However, these potential savings opportunities in commercial buildings are not being implemented at anywhere near the scale that the financial analysis shows that they should. There are two large barriers to action, and this bill provides a path through each.

The first barrier is access to capital. Currently, building owners may be able to obtain a loan of around three years duration for an energy efficiency upgrade. This will allow the owner to implement some small to medium-sized projects, such as a lighting upgrade. But this type of loan is too short and potentially too small to implement larger projects which deliver the biggest savings.

Unlocking the full energy efficiency potential in large buildings requires investment in more comprehensive measures, including upgrades to air-conditioning, heating and ventilation, lighting and building management systems. Whilst the projects will vary, with some taking longer to implement, some having high upfront cost and others having longer payback periods, the projects that we want to see implemented are the ones that will lead to the greatest net energy and bill savings and environmental benefit.

This bill enables the establishment of an innovative financing mechanism, environmental upgrade agreements, to assist building owners to gain access to commercial finance, potentially at lower cost and certainly at the scale and in the time frames needed to progress cost-effective environmental upgrade works.

The bill amends the Local Government Act to enable local councils to enter voluntarily into environmental upgrade agreements with a building owner and a finance provider to upgrade a building's environmental performance. Under the agreement, the lender provides funds to the owner, who then upgrades the building. The owner then makes regular loan repayments to the local council in the form of a special charge. Once the repayment has been received by the council, the council forwards it to the lender to repay the debt.

The environmental upgrade agreement will specify what works are to be carried out, the amount of money to be provided in total and the repayment arrangements.

Participation is completely voluntary. No building owner, council or lender would be required to participate. Officers of my department have, however, already received strong indications of support and interest from representatives of the property sector, the banks and leading local councils.

Buildings last for a long time, but owners can come and go. Energy efficiency upgrades may be up to 10-year projects, which is longer than many businesses' usual investment horizons. Because the loan becomes a charge fixed to the land which is very secure, rather than the building owner's business, longer term loans at lower interest rates can be provided.

This brings me to the second barrier to energy efficiency that the bill will overcome. This is known in the industry as the "split incentive" between landlords and tenants.

In leased properties, the building owner makes the decisions about implementing energy efficiency upgrades, but the tenants would often receive the most benefits through lower power bills. Because the tenant pays the power bill, there is little incentive for building owners to invest.

Environmental upgrade agreements can overcome this because most leases provide for proportional pass through of local council rates and charges. In most agreements under this bill, instead of paying a large power bill, the tenant will pay for a smaller power bill and a contribution to repaying the costs of the upgrade works. Once the upgrade cost is repaid, the tenant will experience an ongoing benefit in the form of lower outgoings.

The bill provides an important protection for tenants. It requires that no tenant can be required to pay more than they would had the agreement not been put in place, unless otherwise agreed by the tenant and building owner. This ensures that tenants will not be disadvantaged as a result of EUAs.

Overcoming the split incentive will, however, improve cash flow and return on investment for the building owner, which is also attractive to the lenders, and will further support longer loan periods. Tenants will benefit from the reduced electricity bills from energy efficiency upgrades that otherwise would have been unlikely to happen.

The combination of the above benefits means that the finance provider can potentially offer building retrofit finance at a lower cost and with longer terms than other loans, enabling bigger projects with greater savings to be undertaken.

I want to emphasise that participation in environmental upgrade agreements by property owners, lending institutions and local councils is completely voluntary. Interested councils will be able to opt-in to enable the use of the agreements within their area. It is expected that this will be of most interest to urban councils with large stocks of commercial or large multi-unit residential buildings within their area.

The bill allows councils that decide to participate to recover their administrative costs through a service charge on the participating building owner.

Importantly, councils will not be liable for repayments in the event that a building owner does not make required repayments. If building owners do not make their payment, councils are required to make best endeavours on behalf of lenders to recover unpaid monies, utilising the range of recovery options that is already available to councils in the Act.

The Minister for Climate Change and the Environment in consultation with local government and other stakeholders will develop guidelines for the operation of the environmental upgrade agreements. This will include specific information on the calculation and recovery of contributions by tenants, arrangements for reporting on progress of agreements, prerequisites for councils to participate, template agreements and other procedures required for use.

In addition to the environmental benefit, this mechanism will help building owners and tenants reduce their electricity bills. The overall reduction in demand for electricity that will result from these upgrades will benefit the whole community. The commercial property sector in New South Wales consumes around 16,000 gigawatt hours annually of electricity, and this continues to grow. The growth in energy use has primarily resulted from growth in total square metres of commercial building space, growth in use of computing and other office equipment, changed behaviour, such as extended shopping hours, and increased service levels, such as greater use of air conditioning, lighting and electronic equipment of all kinds.

Increased demand for electricity is one of the main drivers of recent price rises for electricity in New South Wales. Electricity network infrastructure needs to be augmented to meet this increasing demand, pushing up prices. Thus, measures like the environmental upgrade agreements provided for in this bill that have the potential to significantly reduce demand for electricity will benefit the whole community, as reduction in demand is ultimately a saving for all electricity consumers.

The introduction of this bill is timely. On 1 November this year, the Commonwealth Government's Commercial Building Disclosure program commenced. Under the program, owners of office space of 2,000 square metres or more will be required to obtain and disclose an up-to-date NABERS energy efficiency rating to their prospective buyers or tenants.

NABERS is a national building rating tool, developed by the New South Wales Government. The purpose is to provide buyers and tenants with information on the energy performance of a building so operating costs can be considered in purchasing or leasing decisions.

By increasing awareness of the energy performance of buildings, this program is expected to help drive the market for "greener" buildings. Building owners with low energy performance ratings will be competing for tenants and buyers with buildings that perform better, and are therefore cheaper to occupy.

More buildings than ever will have NABERS energy ratings as a result of the new Commonwealth program. It follows that more buildings than ever will be interested in taking action to improve their energy performance. The establishment of environmental upgrade agreements will enable the owners of these buildings to take more action sooner to reduce their energy consumption.

The measure is doubly timely, because the Commonwealth Government intends to commence additional tax benefits for building owners who upgrade buildings' environmental performance from 1 July 2011.

This proposal has been developed in consultation with the Local Government and Shires Associations, and representatives of key local councils with large areas of commercial property, the property industry and banks with an interest in funding energy efficiency projects in commercial buildings.

The consultations have been very constructive and have produced a bill with a workable and practical approach which balances the range of stakeholder interests.

I have been advised that two major banks have indicated support. The National Australia Bank indicates this approach will assist the commercial sector unlock the market barriers that have traditionally held back investment in building retrofits. One estimate for the sector is that new investment in the New South Wales property sector could exceed $2 billion.

This measure was initially developed as part of the Government's ongoing efforts to promote uptake of energy efficiency. However, this model can also be used for other kinds of environmental upgrades for buildings. As a result, the bill defines an environmental upgrade works as works to improve the energy, water or environmental efficiency or sustainability of a building. The bill also enables owners corporations of large strata titled residential buildings to participate if they so desire.

The New South Wales Government leads the nation in its energy efficiency programs, with our $150 million five-year strategy and our Energy Savings Scheme, with a legislated electricity consumption reduction target which will reach 4 per cent in 2014.

This new measure will build on this by specifically addressing the "split incentive" and "access to finance" barriers in commercial buildings.

With this new legislation, New South Wales can look forward to substantial new investment in upgrading existing large buildings. This will generate significant new employment and activity in the construction sector over the next five years and substantial improvements in the economic performance of the State, reduce occupancy costs for tenants and reduced pressure on power bills for all customers over the next five to ten years.

I commend the bill to the House.

The Hon. CATHERINE CUSACK [4.55 p.m.]: The Local Government Amendment (Environmental Upgrade Agreements) Bill 2010 amends the Local Government Act 1993 to allow councils to enter into voluntary environmental upgrade agreements with building owners and finance providers. The commercial property sector consumes approximately one-fifth of Australia's electricity and accounts for approximately 13 per cent of Australia's greenhouse gas emissions. Rising demand for electricity flows on to higher network charges, and increasing network charges are a major cause of rising electricity bills. Energy efficiency improvements, therefore, reduce demand for electricity, reduce greenhouse gas emissions and decrease costs to businesses and consumers as a whole.

Similar schemes have been introduced in the United States of America, where they are known as property assessed clean energy [PACE] schemes. I understand a similar scheme has been introduced in Melbourne, and we have received advice from one stakeholder that the New South Wales Minister for Climate Change and the Environment, Frank Sartor, encountered the PACE program in the United States during a recent visit and returned to Australia with this key issue in mind. I think it is fair to say that stakeholder groups are desperate to see some action taken in this area. Retrofitting is widely acknowledged as one of the most difficult nuts to crack in energy efficiency because the decision-making process involves so many stakeholders, everybody's rights have to be respected and the money involved can be very significant. Retrofitting has enormous scope; even a small increase in the amount of retrofitting would make an enormous improvement to energy efficiency as a whole. We understand that is where the idea has come from.

Under an environment upgrade agreement the finance provider provides capital to a building owner to implement environmental upgrades. This capital is repaid through environmental upgrade charges issued by a council. Once the repayment has been received by the council it is forwarded to the financier. Environmental upgrade charges are on the land, therefore if building ownership changes, the new owner assumes liability for the environmental upgrade charge. Local councils will not become liable for any unpaid environmental upgrade charges. It is understood that repayments will be made through a dedicated account in council trust funds and will not be considered as income to councils.

One of the benefits of the bill is that it will enable capital to be provided to building owners specifically for environmental upgrades at a lower rate of interest due to the increased level of security. If successful, it will reduce power consumption and, therefore, demand on the distribution system, and reduce greenhouse gas emissions. It will reduce the cost of doing business through the passing on of lower electricity charges and it will resolve the split incentives problem whereby the owner pays for the retrofit but the tenant reaps the rewards.

The Liberal-Nationals Coalition does not oppose this bill. However, it believes there are some challenges, in particular, in the process that led to its introduction, which is described almost universally by everyone involved as being incredibly rushed. Many amendments involving complicated issues could be made

to this bill but they cannot be addressed because of its rushed nature. I understand that the department commenced its consultation with affected stakeholders only two weeks ago. This is another example of half-baked and unfinished legislation that should not be implemented. I am sure that this bill, which will have to be reviewed by the Government almost as soon as it is passed, is destined for amendments before its proclamation. Let me give members some examples. The Shopping Centre Council of Australia wrote to me in the following terms:

> We substantially support the Bill, however we have proposed a handful of amendments to the Government that we believe are consistent with the Government's intentions and objectives for the Bill and will improve the take up of "environmental upgrade agreements" within the shopping centre industry. We have been discussing these amendments with officers from the Department of Environment, Climate Change and Water, and have requested that the Government makes these amendments to improve the Bill and its operation.

Clearly these people were not aware that the Government would be addressing this matter as early as 24 November. When we are dealing with complex financial and legal matters, two weeks is not a sufficient time within which to get it right. The Local Government and Shires Associations stated:

> The Associations have been briefed by officers of DECCW on this Bill and our issues/concerns were communicated to them, as per the point form list below. Some of these issues have been addressed or clarified in the Bill, while some remain unaddressed. It has been a particularly rushed process and we believe such a Bill with significant implications on the parties involved really needs to be methodically developed and consulted on in a more considered fashion.

I have a seven-page email that asks questions and raises issues, and that is significant given that councils are meant to be administering this legislation. Stocklands expressed support for this legislation. I will not go into the detail of those matters now but will refer to them only briefly. One tenant abstaining from participation could mean that the entire agreement could fall over. Councils have the power to set the administration fee for the program. It is possible that this could be somewhat arbitrary and costly, depending on the council and the relationship that that council has with industry. In general, the reaction in the community is that this legislation will not be able to be implemented by smaller councils. However, I do not believe that to be a fatal argument against the bill.

With regard to the retrofitting of larger buildings in council areas such as the City of Sydney, Willoughby, Strathfield and Parramatta, large councils have the resources and the wherewithal to enter into agreements or to reduce our carbon footprint by implementing these agreements. That might not be true for every council, but this is a worthwhile project. The Liberal-Nationals Coalition does not oppose the bill.

The Hon. IAN COHEN [5.03 p.m.]: On behalf of the Greens I contribute to debate on the Local Government Amendment (Environmental Upgrade Agreements) Bill 2010, of which the Greens are generally supportive. A few elements will require close departmental monitoring to ensure that we have a balanced and equitable approach to encouraging green building retrofits. The bill is one of a small handful of considered and empirically grounded policy approaches to increasing energy efficiency and reducing greenhouse gas emissions. Addressing commercial and large residential building retrofits is a policy no-brainer, supported by strong studies on cost-effectiveness and income generation potential. Those who have stood in the way of these types of reform are either policy laggards divorced from global reality and sound economic policy development or individuals who remain unconvinced of the science of anthropogenic climate change.

To understand the bill and its significance, it is helpful to start with the barriers to up-scaling commercial and strata building retrofits that reduce energy and water consumption and greenhouse gas emissions. For the most part these barriers to increasing the adoption of this climate change mitigation and energy efficiency option are structural. The first barrier is the lessee-lessor relationship. There are challenges in both the commercial building and residential housing sectors to sharing the initial investment costs and ongoing financial savings associated with energy and water efficiency upgrades. Why would a landlord or owner outlay the capital to upgrade energy efficiency when the tenant would receive all the energy cost reductions through lower electricity bills? There is a total imbalance between the lessee and lessor in the capital investment and the return on investment.

The nature of the lessee and lessor and landlord and tenant relationships poses challenges to the rollout of energy efficiency and water savings measures, though resolving these challenges equitably is not insurmountable. The second barrier restricting increased installation and adoption of energy efficiency programs in commercial buildings is the disparity between the short-term financial capital products available and the long-term investment time frames required for energy efficiency upgrades of commercial buildings. Often the time frames required for upgrades extend beyond the potential ownership of a particular commercial building.

This means the incentives for commercial building energy efficiency retrofits are minimal. The removal of these barriers is an important step because commercial building energy efficiency has repeatedly demonstrated a strong cost-effectiveness profile in climate change mitigation strategy analysis. More importantly, buildings will account for 18 per cent of Australia's greenhouse gas emissions in 2010, with residential buildings accounting for 58 per cent of these, and commercial buildings responsible for the remaining 42 per cent—according to the McKinsey ClimateWorks report.

Commercial building retrofits are one of those mitigation strategies within the portfolio that has a net income generation potential rather than a cost-reduction value. It sits on the income generation side of the mitigation cost-effectiveness ledger with other strategies, such as petrol car and light commercial efficiency improvement, industry energy efficiency, and residential appliances and electronics. These are only a sample of the low-hanging fruit in the climate change mitigation smorgasbord available to governments of all persuasions. Why has the New South Wales Government, in pure prioritisation of government expenditure terms, not focused on the low-hanging fruit? How is it that we have a $100 million clean coal industry slush fund supporting a mitigation option with a greenhouse gas reduction cost-effective value of approximately $120 per tonne of reduced greenhouse gases, yet we have not adopted all the income generation mitigation options identified in all manner of national and international reports?

The Hon. Ian Macdonald loved this corporate welfare slush fund and implemented it with great enthusiasm. Where was Treasurer Eric Roozendaal, a man so ruthlessly governed by cost-effectiveness and prioritisation of government expenditure? Was he tapping Cabinet members on the shoulder and reminding them of the mitigation strategies that would generate economic activity in New South Wales, adding to his overwhelming economic rationalist garden, or the green shoots for the economic recovery of New South Wales? If the Treasurer were serious, he would cancel the Clean Coal Fund and redirect that revenue to mitigation strategies that generate income for this State. This bill should be viewed as a small step away from the economic and environmental irrationality of the New South Wales Government's track record on climate change mitigation.

Turning to the substantive provisions of the bill, a new part 2A will be inserted into chapter 6 of the Local Government Act. There are three key components to the amendments in proposed part 2A—environmental upgrade agreements, environmental upgrade charges and environmental upgrade works. Proposed section 54D will enable councils voluntarily to enter into an environmental upgrade agreement with a building owner and a finance provider in relation to a building or strata building, as defined in proposed section 54F. The basic nuts and bolts of the agreement allow for the building owner to carry out environmental upgrade works with the finance provider advancing funds for the works.

The role of the local council is to recover the debt repayments for the loan as a charge on the land—called an environmental upgrade charge—and advance the payment to the finance company. New section 54E attempts to set out what environmental upgrade works actually are, although it is rather general and could be improved by the inclusion of more specificity. This bill defines these works as works that improve the energy, water or environmental efficiency or sustainability of the building covered by the agreement. It is a good starting point, but we could also take some guidance from section 15 of the Victoria Energy Efficiency Target Act 2007, which specified and described activities as actions that could lead to greenhouse reductions by:

(a) modifying or replacing an appliance, a structure or any equipment so as to reduce consumption of electricity or gas where there is no negative effect on output;

(b) replacing any equipment or system that uses electricity or gas and emits relatively high levels of greenhouse gases with an energy source that emits relatively low levels of greenhouse gases;

(c) purchasing an appliance or any equipment for the purpose of being installed which has an efficiency rating prescribed as a high efficiency rating for an appliance or equipment of that kind or class;

(d) installing an appliance or any equipment which has an efficiency rating prescribed as a high efficiency rating for an appliance or equipment of that kind or class.

The advantage is that the Victorian provisions make it clear that purchase, installation, modification or replacement must be predicated on clear evidence that it will lead to a reduction in greenhouse gas emissions. The Victorian model has a stronger requirement to establish the business-as-usual baseline in order to demonstrate savings and reductions. In some respects it may be slightly prescriptive, but it is a better approach than the one in the bill, which leaves it to regulation to further define what is considered an environmental upgrade work and what is not. This is an important point because there needs to be a clear line between capital

works undertaken by a landlord or lessor consistent with their obligations under various tenancy and occupancy leases and environmental upgrade works where there is a sharing of the capital costs between the landlord and tenant. There are circumstances, particularly in the context of retail leases in large shopping centres and water management works, when environmental upgrade agreements may be used to rebrand maintenance works that should be the 100 per cent liability of the landlord as environmental upgrade works in order to secure a sharing of costs with tenants.

New section 54G outlines the contents of an environmental upgrade agreement and elaborates on the mechanics of that agreement. This includes the agreed repayment arrangements that may require a council to levy a charge so that it can discharge its responsibilities relating to the building owner's obligation to repay the financial advances or other advances, including any interest or other charges that may be payable. Council will be responsible for passing on the money received from the building owner to the financial provider. The repayment arrangements need to specify the amount of the environmental upgrade charge or charges that council will levy or a method for calculating this amount. The date or dates on which the repayments are due must also be included, along with any adjustments that will be made in the event of a late payment.

Other contents of an agreement could be clauses allowing for early repayment and other provisions as agreed to by the parties. Variation or termination of the agreement must also be facilitated by a further agreement between the building owner, council and the financial provider. These new sections provide for flexibility in the way the agreement is executed by the parties, although there is perhaps potential for disagreements if one or two of the parties want to vary part of the agreement but the third party does not. In terms of increased repayment costs resulting from variable interest rates, it might be of assistance if the Parliamentary Secretary can indicate the mechanics of how charges can be increased and whether this will be specified in the agreed repayment arrangements. New section 54I specifies the role of local councils to levy an environmental upgrade charge and make it clear that the charge is levied on the land on which the building is erected or the land to which a strata building is subject to a relevant strata scheme.

New section 54L requires a building owner or strata body to pay an environmental upgrade charge within 28 days. The environmental upgrade fee is to be paid into a separate account in a council's trust fund and the moneys recovered do not form part of council's general income. New sections 54H and 54M should be noted especially. New section 54H enables councils to recover a fee in addition to the repayment charge agreed to under the environmental upgrade agreement. This fee may be for services or late payment, the calculation of which is specified in the agreement. Existing provisions under section 610D of the Act, which sets out parameters for setting fees, will apply. This means that local councils have a cost-recovery provision in the administration of these agreements and the bill does not represent a cost burden on local councils.

New section 54M makes clear the liability of councils to recover the environmental upgrade charge. Subsections (2) and (3) make it clear that councils are not liable for the default of a building owner or strata scheme to pay the environmental upgrade charge. The only obligation placed on local council is to use its best endeavours to recover the charge in accordance with any requirements imposed in the environmental upgrade agreement. This means local councils can tailor the expectations in respect of recovery options in the event of default. Consistent with the agreements being voluntary, as highlighted in new section 540 local councils have the freedom to define their responsibility in this respect. New section 54N outlines the process for recovery of environmental upgrade charges from lessees. It is important that lessees have full knowledge of the environmental upgrade agreement and access to independent cost-savings calculations. Subsection (6) requires the lessor to give the lessee a copy of the agreement before they are entitled to recover a contribution; however, it might have been more satisfactory to involve lessees prior to the signing of an environmental upgrade agreement.

While I understand the need to "turn off" section 23 of the Retail Leases Act 1994, which prevents lessors recovering the capital costs of a building from a lessee, there could be potential abuse of environmental upgrade agreements by larger shopping mall owners in New South Wales. I have made mention already of this concern and I seek an assurance from the Parliamentary Secretary that the use of environmental upgrade agreements by large shopping centre owners will be monitored to ensure that general maintenance and repairs are not rebranded as environmental upgrade works. I seek a further assurance that the regulatory power in subsection 10 will be used to prevent any inappropriate use of environmental upgrade agreements to pass on costs to retail tenants that would otherwise be the sole responsibility of the owner. Similar provisions also apply to strata buildings as under new section 54K, which state that an owner's corporation can decide whether the environmental upgrade charges come out of its sinking fund or administrative fund. This section also states that owners' corporations must provide a copy of an environmental upgrade agreement to any lot owner that asks for one.

My concern with this new section is that it does not afford the owners of lots within the strata building adequate protection against the owners' corporation charging owners above the agreed repayment amount, adjusted proportionally. Given the history of conflict and litigation between owners' corporations and lot owners, this may be problematic. Reporting requirements under new section 54P will help provide important information to the director general on the uptake and success of this scheme, so we will be able to see whether some of the flaws mentioned have played out in practice. Additionally, the new provisions in section 54Q hopefully will go some way to plugging the gaps in the bill as they will enable the Minister to make guidelines on environmental upgrade agreements and the functions of councils. My preference is that these details are not contained in guidelines but instead are regulations to help strengthen the scheme. However, it is better than nothing that the guidelines have a specified role to play. The Greens support the bill.

Reverend the Hon. FRED NILE [5.18 p.m.]: On behalf of the Christian Democratic Party I am pleased to support the Local Government Amendment (Environmental Upgrade Agreements) Bill 2010. This is one of the positive bills we have dealt with in this parliamentary session. This bill will accelerate energy efficiency improvements in commercial and large multi-unit residential buildings by improving access to project finance for upgrades, and by removing the split-incentive barrier that deters landlords from investing in energy-savings measures that benefit tenants. This is a completely voluntary scheme that does not compel councils to participate. Participation is completely voluntary. If councils choose to enter the environmental upgrade agreements, their administrative costs will be recovered through a service fee. The Department of Environment, Climate Change and Water will provide support to councils and property owners that includes guidelines and template agreements.

The bill is important because the commercial property sector consumes approximately one-fifth of Australian electricity and accounts for approximately 13 per cent of Australia's greenhouse gas emissions. Greenhouse gas emissions have been increasing in Australia by more than 3 per cent a year. Increasing demand for electricity in this sector is directly related to higher network charges, which is one of the main drivers of increasing power costs. We all know about the recent increases in the cost of electricity: one of the main contributors is that many units and houses are installing air conditioners that consume a great deal of electricity, especially if they operate all day and all night.

Energy-efficiency improvements can reduce demand and consequently will reduce emissions. That saves money for both building occupants and electricity customers. Modelling for New South Wales indicates that improving the energy efficiency of commercial buildings could save the economy more than $560 million a year and reduce greenhouse emissions by approximately 6 million tonnes a year by 2020. Improvements in the efficiency of energy consumption in commercial and large multiunit residential buildings are highly cost effective.

One of the barriers to achieving improvements is difficulty in obtaining project finance for upgrades. The bill will provide access to low-cost loan funds. Currently loans are made to companies that own buildings. As a result of the global financial crisis, many landlords are not in a position to take on more debt and have many competing priorities for the use of scarce capital. By the provision of low-cost loan funds, the legislation will enable them to participate in improvements in energy efficiency.

The bill also enables energy-saving measures to benefit tenants as well as landlords through the provision of a split incentive. Currently a landlord cannot pass on costs of energy-savings measures that directly benefit tenants through savings in energy costs. The bill includes a provision to ensure that no tenant will pay more as a result of an agreement, unless that is a consensual arrangement. The Christian Democratic Party is pleased to support the bill because we believe it will benefit all the people of this State.

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [5.21 p.m.], in reply: The Local Government Amendment (Environmental Upgrade Agreements) Bill 2010 is an essential step towards unlocking action on energy efficiency in large city buildings. We know that there are lots of actions that building owners could take—actions that would save them and their tenants money on electricity bills and actions that would benefit the whole community in reducing greenhouse emissions as well as reduce pressure on the electricity system. Currently much of that action stalls because of a lack of access to finance and because of incentives being split between landlords and tenants. The bill is designed to overcome both barriers.

The finance sector tells us that at least $2 billion worth of energy efficiency upgrades could be unlocked as a result of this legislative measure. The additional economic benefit will be welcomed by the building and construction industry and the environmental services market. The legislation also improves our

credentials as a low-carbon economy because it will increase the number of construction industry professionals and tradespeople who have skills, knowledge and experience in implementing energy-efficiency actions. In the development of this proposal, the Government consulted with local government, the property industry and the finance industry. That valuable feedback has helped the Government to develop the legislation that members are deliberating on currently. As a result of that feedback, the bill has a number of important protections.

First, in the interests of abundant caution, the bill makes it completely clear that local councils will not be liable under any circumstances for any unpaid debts of building owners. Councils are responsible for levying and collecting environmental upgrade charges that have been agreed as part of environmental upgrade agreements. The bill provides that local councils and, by extension, ratepayers will not be liable if the building owner fails to make repayments; nor will the council be liable to pay the outstanding amount to the finance provider. Secondly, the bill includes protections for tenants. To protect tenants, the environmental upgrade charge may be passed on under an existing lease when a tenant's overall costs will not increase as a result of the change, unless that has been agreed upon.

New South Wales will continue to demonstrate leadership on energy efficiency and will continue its efforts to overcome barriers to implementation of measures to increase energy efficiency and reduce greenhouse emissions. The environmental and economic benefits are simply too great to ignore. During debate, the Hon. Ian Cohen requested clarification or assurances in relation to three matters. I advise him that the fees will be included on council rate notices. The amount will be indicated separately from any other rates and charges. In relation to the schedule of payments, the agreements will set out a schedule of repayments. Any adjustments will have to be reflected in the payments, in accordance with the agreement. I assure the Hon. Ian Cohen that regular maintenance works cannot be rebadged as retrofitting work. 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.

TABLING OF PAPERS

The Hon. Michael Veitch tabled the following paper:

Privacy and Personal Information Protection Act 1990—Report of Privacy NSW for the year ended 30 June 2010

Ordered to be printed on motion by the Hon. Michael Veitch.

STATE EMERGENCY AND RESCUE MANAGEMENT AMENDMENT BILL 2010

Second Reading

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [5.26 p.m.], on behalf of the Hon. Tony Kelly: I move:

That this bill be now read a second time.

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

Leave granted.

As members are no doubt aware, the State Emeregency and Rescue Management Act provides the legislative foundation for the overall coordination of disasters and emergencies across New South Wales.

The main purpose of the Act is to establish the emergency bodies and plans to guide the State and the Government in the management of emergencies and disasters.

The key body is the State Emergency Management Committee, the SEMC, which is responsible for coordinated planning and policy development for emergency management in New South Wales.

As you would expect from our peak emergency body, the SEMC comprises the most skilled, experienced and recognised emergency officials in this State.

It includes the heads or other senior executive officers from each of our emergency services:

- the NSW Police Force
- New South Wales Fire Brigades
- Rural Fire Service
- State Emergency Service
- Ambulance Service of New South Wales and
- Volunteer Rescue Association

along with other relevant agencies

- Department of Human Services—Community Services
- Transport New South Wales
- New South Wales Health
- Industry and Investment New South Wales
- Department of Premier and Cabinet
- New South Wales Maritime
- Treasury and
- Department of Services Technology and Administration

These experts are responsible for the development and maintenance of the principle guiding emergency plan, the State Disaster Plan—or Displan—which sets out the arrangements for the cohesive, coordinated response by all relevant services and supporting agencies in the event of an emergency.

The positions of two of the State's most important emergency officials also are established under the State Emergency and Rescue Management Act: the State Emergency Operations Controller—or SEOCon—and the State Emergency Recovery Controller—or SERCon.

The SEOCon's role is to coordinate support to combat agencies—such as the New South Wales Police, Fire Brigades, Rural Fire Service or State Emergency Service—during emergency response operations and to control the response for events for which there is no designated combat agency.

The SERCon's role is to oversee the planning for, and management of, emergency recovery in New South Wales, helping communities battered by natural disasters or other emergencies to return to normal.

The amendments outlined in this bill before the House will ensure that the Act reflects contemporary emergency management policy and practices and supports our emergency services in meeting the challenges that may lie ahead.

The devastating Victorian bushfires of 2009 destroyed whole communities and cost 170 lives. Thankfully, New South Wales has not been tested with a disaster on this scale but with a changing climate, we must be prepared for the risk of such an event to increase.

In recognition of this risk and to reflect on what could be learned from the Victorian experience, the State Emergency Management Committee commissioned a strategic review of the State Emergency and Rescue Act.

This review provided a number of clear insights into how the Act could be refocused and updated in alignment with ever-developing best practice emergency management arrangements.

The bill before the House now implements the key recommendations of this review in relation to the core roles and responsibilities of the SEMC, the appointment of members and other emergency management officials and practical expert assistance to members of the NSW Police Force in emergency situations. It also includes a number of administrative and consequential amendments.

The bill clarifies that the Minister for Emergency Services of the day can appoint either an independent or an agency official as the Chair of the State Emergency Management Committee and ensures that the committee's strategic policy roles and responsibilities are in keeping with current emergency management practices.

It also clarifies the ex officio nature of the positions of the State Emergency Operations Controller and the State Emergency Recovery Controller and the respective Deputy Controller positions. This includes streamlining the appointment processes and clarifying the role of State, District and Local Emergency Operations Controllers in providing support to combat agencies during emergency response operations.

The new appointment process—by position, rather than by individual—removes the necessity for a cumbersome administrative appointment process in the event of casual vacancies when the office holder is, for example, on leave.

Importantly, the Act enables police officers to be aided or accompanied by assistants when taking safety measures in danger areas affected by an emergency.

This is a welcome advance for community safety during emergencies, allowing, for example, an officer to be accompanied by an electrician to turn off power in a danger area.

This bill refreshes the roles and responsibilities of the SEMC, especially by ensuring that it is not replicating duties that have over time been overtaken by developing technology or increased combat agency participation.

These include the emergence of the new Emergency Alert warning system—which sends warning messages directly to the landlines and mobile phones of people in the path of potential danger—and new community bushfire alert and warning systems introduced in the wake of the Victorian bushfires.

These sophisticated warning systems and the numerous advantages of technology not dreamt of at the time of the Act's creation in 1989 obviate SEMC participation in these vital communications activities.

By concentrating the SEMC's core functions on ensuring the highest level of efficient inter-agency coordination and strategic policy development, these amendments remove the risk of confusion and duplication in operational decision-making best left to individual combat agencies with the requisite resources and expertise.

The bill also includes a number of further miscellaneous improvements to administrative processes associated with the State's emergency management arrangements.

These improvements include simple steps to enhance the timely distribution of State Disaster Plan updates and enabling the SEMC Annual Report to be tabled out of the parliamentary session so it is publicly available as soon as possible, rather than waiting for the Parliament to resume sitting.

A number of other minor administrative or consequential amendments also are included, ensuring that other sections of the Act reflect current practice.

These include ensuring that the Chair of each Local Emergency Management Committee represents that local area on the respective District Emergency Management Committee and assigning Ambulance Officers of the rank of Station Officer or above the same authority as their counterparts in other emergency services in the case of a declared State of Emergency.

These amendments, as I have outlined to House, are designed to enhance and streamline the State Emergency and Rescue Management Amendment Act.

They have been fully endorsed by the SEMC after consultation with relevant stakeholders.

I commend the bill to the House.

The Hon. MELINDA PAVEY [5.26 p.m.]: As the shadow Minister for Emergency Services, I welcome the opportunity to contribute to this debate and indicate at the outset that the Opposition will not oppose the bill. It was pleasing to see the Minister for Emergency Services in the Chamber today, after all that he and his family have been through. It is great to hear that his son is recovering from what was obviously a terrible accident. I thank emergency service personnel who were involved in extricating and saving the Minister's son and his friend.

I take the opportunity of this debate to make some general comments about emergency management arrangements in the State. The background to the Act has been dealt with extensively by my colleagues in the other place and I will not reiterate those comments. This morning during the Minister's concluding remarks in the other place, he indicated that the bill is very minor and largely is a case of legislation catching up with practice. The bill is to be welcomed on that basis. The Minister outlined a number of areas in which New South Wales leads the country in terms of emergency management. He cited the one-stop-shop for State Emergency Service management of floods and the command structures of the Rural Fire Service, which indeed are superior to those of other States.

In response to comments made by my colleagues that the last major review of emergency management arrangements in New South Wales occurred in 1988, the Minister argued that in fact arrangements are reviewed

regularly. While there may be regular internal reviews, very few of them have been made public. That has been confirmed by the Minister's answer to a question on notice I asked earlier this year. I asked the Minister how many inquiries, reviews or white and green policy papers have been carried out into the provision of emergency rescue services for the New South Wales Government or any of its agencies since the completion of the "Review of Rescue Policy in New South Wales" report by Major General R. A. Grey in 1989. I also asked for the names of those inquiries, reviews and white and green policy papers and for the Minister to briefly state the Government's response to each of those inquiries, reviews and policy papers. The Minister's response was:

> 1. There have been two formal reviews of the provision of rescue services since the 1989 review conducted by Major General Grey.
>
> 2. The reviews were named "Performance Audit: coordination of rescue services: State Rescue Board" and "Review of the structure, adequacy and sustainability of NSW Volunteer Marine Rescue Organisations". In response to the "Review of Volunteer Marine Rescue" the Government has supported the formation of a single unified volunteer rescue organisation, Marine Rescue NSW.

Although I do not wish to become trapped in semantics, I suggest to the House that two public reviews since 1988 hardly constitutes regular review, particularly as one covered only the broad scope of emergency arrangements. In the 2005 performance audit the Auditor-General asked the rhetorical question:

> Are rescue services arranged so as to perform effectively and in the most economical way? It may be that they are. But at present the [State Rescue] Board is not in a position to be confident about this, as it is not provided with enough detailed information on how to best to arrange rescue and on rescue performance …We also believe that the Board should be able to assure the Government that arrangements for rescue in NSW are optimal. Although several reviews over a number of years have recommended a reduction in the number of rescue providers in metropolitan areas, a lack of information has meant that the Board has been unable to settle the issue. This should be done.

This theme has been reiterated to me by a number of my correspondents, who generously provide me with their advice on various matters relating to emergency management. One of those correspondents said:

> The Government has failed to identify the key strategic issues and instead is found playing in the margins of policy.
>
> … in 2010 there is still no immediate prospect of achieving common or interoperable command and communications systems between the combat agencies and that means there is no prospect of achieving a common operating environment in emergency management that has the potential to revolutionise emergency management.

The people caught up in the F3 debacle on the Pacific Highway some months ago would attest to the inoperability between emergency combat agencies in New South Wales. I do not think I need to detail the inconvenience suffered by many people during that incident, but it highlighted the difficulties within emergency management in New South Wales. I turn now to the provisions of the bill. Item [1] in schedule 1 amends the definition of "government agency" to be consistent with other legislation. Item [2] updates the definitions of "State Emergency Operations Controller" and "State Emergency Recovery Controller". Item [3] amends the Minister's role from initiating a review of the State Disaster Plan to merely approving any alterations. This appears to be an appropriate demarcation between policy and operations.

Items [4] and [5] remove the chairperson of the State Emergency Management Committee as an ex officio member of the State Disasters Council, providing the Minister with the option of appointing that person. Item [6] puts the onus of publishing and distributing any new State Disaster Plan on the Chief Executive of Emergency Management NSW, not the Minister. Item [7] enables the Minister to appoint other persons to the State Emergency Management Committee. Item [8] simplifies the process by which a person is appointed as chair of the State Emergency Management Committee. In the words of one of my correspondents on the bill:

> This is a cop-out and fails to adequately resource the committee's work. It reinforces the current arrangement where the DGEMNSW is focussed solely on recovery, leaving the Chair to manage the rest of the work—this has never worked!

Item [9] amends the functions of the State Emergency Management Committee. Prima facie, this amendment appears to replace the tactical functions set out for the State Emergency Management Committee with broader strategic roles. However, the correspondent I referred to earlier argued persuasively that the amendment:

> … gives away the critical role of the SEMC in facilitating emergency planning. There is now nobody to act as the centre of excellence in planning (which was the key role of the Committee). The role is too "light" and there is no clarity about what EMNSW does to support the Committee.

Item [10] makes some minor amendments in relation to the preparation of the State Emergency Management Committee annual report. Item [11] clarifies the ex officio nature of the positions of the State Emergency

Operations Controller and the State Emergency Recovery controller, and the respective deputy controller positions. I understand that the agreement in principle speech in the other place was the first time the role of the State Emergency Operations Controller has been properly and clearly articulated in the Parliament, that is, to "coordinate support to combat agencies during emergency response operations and to control the response for events for which there is no designated combat agency".

It has been suggested to me that the amendment does not remove the ambiguity inherent in the title of the "Emergency Operations Controller". Indeed, lead agencies for the vast majority of emergencies are set out in the State Disaster Plan and the role of the State Emergency Operations Controller is therefore a supporting one. It is certainly not the controlling role suggested by the title. This is demonstrated by item [12], which attempts to clarify the controller's role but only serves to emphasise how little controlling that person actually does—see, for example, sections 19 (1) and 19 (1A) of the Act. In the words of my correspondent:

> This doesn't really clear up the ambiguity about the SEOCon's role. It's the wrong name—the officer doesn't control anything (except in the rarest of circumstances). The proper role is to be an independent referee for setting priorities when the State's resources are overwhelmed.

Item [13] stipulates that the State Emergency Recovery Controller is to be the Chief Executive of Emergency Management NSW. My oft-quoted correspondent, who has background in emergency management, has argued against this, saying that it means that Emergency Management NSW only concentrates on recovery, leaving nobody to take an overall prevention, preparedness, response, recovery view of emergency management. I point out that Emergency Management NSW has done a very good job during the recovery stage following the devastating floods on the mid North Coast. However, we are talking about what happens to prevent, prepare and respond directly as an event takes place. This matter was raised in my briefing with the Chief Executive of Emergency Management NSW who, to be fair, is comfortable with that demarcation at the moment.

Item [14] requires the chairperson of each local emergency management committee to attend district emergency management committee meetings, rather than a senior representative of the council of each local government area in the district. I discussed this matter with the Chief Executive of Emergency Management NSW, and he commented on how the retention of corporate knowledge at a local level, particularly in rural and regional New South Wales, was an issue. Obviously the issue cannot be addressed by legislation but it needs to be a focus. Senior personnel in western New South Wales have told me about their concerns to the changes to the regional and district zones, which will result in greater travel times for representatives of the local emergency management committee.

The Chief Executive of Emergency Management NSW confirmed that the zones are on the agenda and that configuration of the zones will be done via regulation. However, I highlight the difficulties for some people travelling expansive distances. I was given the example of people travelling, for example, from Condobolin to Lithgow for quarterly meetings, which is an enormous distance and a cost impost for local organisations. On the whole, the Opposition does not oppose the bill, and we welcome the opportunity to contribute to the debate.

The Hon. IAN COHEN [5.36 p.m.]: I speak on behalf of the Greens on the State Emergency and Rescue Management Bill 2010. After the devastation of the 2009 Victorian bushfires, the New South Wales State Emergency Management Committee commissioned a review of the State Emergency and Rescue Management Act to incorporate the lessons learnt from the Victorian bushfire tragedy. The recommendations of that review provide the foundation for the administrative and procedural amendments contained in this bill, particularly in relation to emergency and incident management, and coordination between agencies. Some of the key operational changes to the New South Wales State Emergency Services contained in this bill re-focus the functions of the State Emergency Management Committee.

Item [9] in schedule 1 deletes the current section 15 in the Act and inserts a new section outlining the functions of the State Emergency Management Committee. The amendments to the functions of the committee are aimed at reiterating the overarching interagency coordination and strategic policy development role for the committee. The intention in these amendments appears to be to reduce the capacity for confusion and duplication in responsibilities and roles. The amendment to the committee's functions coincides with changes to the responsibilities of the State Emergency Operations Controller, who may act upon requests from combat agencies with principal responsibility for emergency response to carry out certain actions. Similar provisions will be introduced for the District Emergency Operations Controller and the Local Emergency Operations Controller.

Additional amendments to the delegation of responsibility and operational management include defining members of the Ambulance Service of NSW of or above the rank of station officer as emergency

services officers, notification of rescue incidents to the New South Wales Police Force, and the provision for police officers to use assistants, for example, electricians and engineers, to aid in the establishment of safety measures. Administrative process and information provision will be slightly improved by amendments in item [6], which requires the publication of the State Disaster Plan or any amendments to the plan once approved by the Minister for Emergency Services. Item [10] requires the State Emergency Management Committee to provide the Minister with an annual report before 31 December each year, and item [26] provides for out-of-parliamentary-session reporting of State Emergency Management Committee annual reports. Hopefully, these changes will facilitate appropriate on-ground action and help to prevent the catastrophic loss of property and life such as that experienced in Victoria. The Greens support the bill.

Reverend the Hon. FRED NILE [5.40 p.m.]: On behalf of the Christian Democratic Party I am pleased to support the State Emergency and Rescue Management Amendment Bill 2010. Following the Victorian bushfires the State Emergency Management Committee [SEMC] resolved to undertake a review of the State Emergency and Rescue Management Act 1989. As a result of that review this bill will amend the Act to clarify the strategic intent of the State's emergency management arrangements and streamline administrative processes. I am pleased that the Minister instigated this review. The royal commission into the Victorian bushfires revealed so much confusion about the lines of authority, who was in charge and the roles of people—together with the absence of key personnel that day, for example, the police commissioner and even the senior fire controller. It is hard to believe how that could happen during such a massive disaster which led to such a huge loss of life. This bill will prevent that occurring by having clear lines of authority to ensure that key people are available 24 hours a day, seven days a week to deal with an emergency.

The bill will modify the membership of the State Emergency Management Committee. It will also clarify the appointment of the chair and either an independent or agency official. It will amend the responsibilities and functions of that committee. The bill clarifies the ex officio nature of the positions of State Emergency Operations Controller and the State Emergency Recovery Controller and the respective deputy controller positions. The bill also streamlines the appointment processes and will clarify the role of the State district and local emergency operations controllers in providing support to combat agencies during emergency response operations. I assume the committee will have flow charts to show how the organisation is structured so that everybody is quite clear about their position and their roles.

The bill also makes amendments to the administrative processes associated with the State's emergency management arrangements, for example, the distribution of the State Disaster Plan update, production and approval and publication of annual reports. Previously the Minister arranged for the preparation and review of the State Disaster Plan, which will now be the responsibility of the committee with the Minister approving. The bill also has an important practical aspect, that is, it will enable police officers to be aided or accompanied by assistants when taking safety measures in danger areas affected by an emergency, for example, being able to be accompanied by an electrician to turn off power, as appropriate. The committee has very important roles that are spelt out in the legislation in section 15:

> (a) to review, monitor and advise the Minister on the adequacy of the provisions of this Act relating to emergency management,
>
> (b) to provide strategic policy advice to the Minister in relation to emergency management—

That means there must be frequent communication between the Minister and this committee. The Minister must listen to the committee as well—

> (c) to review, monitor and develop emergency management policy and practice at a State level and to disseminate information in relation to any such policy and practice,
>
> (d) to review Displan [State Disaster Plan] and to recommend alternations to it

We have changing conditions in New South Wales with the growth of our cities, suburbs and regional centres. It is important that the State Disaster Plan be constantly reviewed and updated where necessary and is not left in a drawer, so to speak, and pulled out in an emergency. The plan should be a living document that is practical and workable. I am pleased to support this bill.

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [5.44 p.m.], in reply: I thank all members for their positive contributions and constructive approach to this debate. As speakers have outlined, the amendments to the State Emergency and Rescue Management Act 1989 will refresh and refine the legislative foundation for the overall coordination of disasters and emergencies across New South Wales. Our peak

emergency coordination and policy body, the State Emergency Management Committee [SEMC], is a valuable repository of skill, experience and commitment. The committee's members are among the highest ranking emergency management officials in this State and their commitment to the safety and wellbeing of our community is beyond question.

These experts are responsible for the development and maintenance of the principal guiding emergency plan, the State Disaster Plan [Displan], which sets out the arrangements for the cohesive, coordinated response by all relevant services and supporting agencies in the event of an emergency. This is an exacting task and one which requires cool heads exercising great forethought and detailed planning. The amendments outlined in the bill ensure that the Act reflects contemporary emergency management policy and practices and supports the committee in its vital work to coordinate and plan the optimal response to any natural disasters or other emergencies that may strike our State.

These amendments will refocus on and update the roles and responsibilities of the committee in keeping with the challenges that lie ahead in a world still facing climate change and geopolitical conflict. The amendments implement the key recommendations of a State Emergency Management Committee review in relation to its core roles and responsibilities, the appointment of members and other emergency management officials and practical expert assistance to members of the Police Force in emergency situations. It also includes a number of administrative and consequential amendments. It refines its roles and responsibilities helping to ensure that it is not replicating duties that have over time been overtaken by developing technology or increased combat agency participation. These amendments are designed to enhance and streamline the State Emergency and Rescue Management Amendment Act. I again thank all members for their thoughtful contributions and support for the bill.

As we are well into the summer bushfire and storm seasons, I place on record our thanks and appreciation for the committed efforts of all our emergency service personnel as they go about their vital work to assist and protect our community. They are renowned for their skill, training and dedication and I am sure all members will join me in expressing the Parliament's great gratitude and thanks. The Hon. Melinda Pavey spoke with a great deal of compassion about the Minister's recent issues with his family. It is important to put on the record the support of this House for Minister Whan in what must have been an extremely difficult situation.

A couple of weeks ago at Parramatta, when I was opening the SES controllers conference I said that one never knows when one will need to call on emergency services personnel. In July 2009 a truck accident occurred at Sandy Beach north of Coffs Harbour. The emergency services personnel took four hours to cut out of the wreckage the driver of that truck. A surgeon had to be flown in to the site. Because of the efforts of those emergency services personnel my brother is still alive today.

The Hon. Melinda Pavey: Thanks to Bob White and his team.

The Hon. MICHAEL VEITCH: Thanks to Bob White and his team. It is important not only to put on the record our sentiments and thoughts for Minister Whan but also to thank all our emergency services personnel for their hard work. 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.

CRIMES (SERIOUS SEX OFFENDERS) AMENDMENT BILL 2010

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

Second Reading

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Citizenship, Minister for Regulatory Reform, and Vice-President of the Executive Council) [5.49 p.m.]: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Crimes (Serious Sex Offenders) Amendment Bill 2010. The bill amends the Crimes (Serious Sex Offenders) Act 2006 in response to recommendations made by the Sentencing Council and the recently completed statutory review of the Act. In April 2006 the Crimes (Serious Sex Offenders) Act 2006 came into force in New South Wales. This Act provided a new mechanism for the management of serious sex offenders who have completed their sentence, but who remain a serious risk to the community by providing for their extended supervision or continuing detention to ensure the safety and protection of the community and to encourage serious sex offenders to undertake rehabilitation. Briefly, continuing detention orders may be sought whilst an offender is in custody. Extended supervision orders may be sought when an offender is serving a sentence, even if the offender has recently been released to parole. However, before the court makes either order it must be established that there is a high degree of probability that the offender is likely to commit a further serious sex offence.

In 2009 the New South Wales Sentencing Council conducted a detailed examination of the Crimes (Serious Sex Offenders) Act 2006. This was due to a request from the then Attorney General in 2007 to conduct a review of the current penalties attached to sexual offences. As part of this review, the New South Wales Sentencing Council considered the use of alternative sentence regimes incorporating community protection, such as the schemes used in Canada, the United Kingdom and New Zealand; possible responses to address repeat offending committed by serious sexual offenders; and, in particular, whether second and subsequent serious sex offences should attract higher standard minimum and maximum penalties in order to help protect the community.

The New South Wales Sentencing Council, in its report released in July 2009 titled, "Penalties Relating to Sexual Assault Offences in New South Wales (Volume 3)", found that the scheme for the making of continuing detention orders and extended supervision orders as currently exist in New South Wales in relation to serious sex offenders provided an appropriate structure, in principle, for responding to the need to protect the community from such offenders. The New South Wales Sentencing Council noted that the Crimes (Serious Sex Offenders) Act 2006 provided a preferable model of responding to serious sex offenders than indefinite or disproportionate sentencing and that it occupied a proper place within the range of available strategies for protecting the community from serious sex offenders which it surveyed.

The New South Wales Sentencing Council made 24 recommendations in relation to the treatment and management of serious sex offenders. The Government indicated its immediate support for four of the legislative recommendations, whilst four others were referred to the statutory review of the Crimes (Serious Sex Offenders) Act 2006 which commenced in July 2009 and which was undertaken by the Department of Justice and Attorney General. The statutory review found that the policy objectives of the Act remained valid whilst also making numerous recommendations to improve the operation of the Act based on submissions received by stakeholders as part of the statutory review.

The bill implements the majority of the legislative recommendations made by the New South Wales Sentencing Council as well as the recommendations arising from the statutory review. Members of the House should be aware that, as at 1 September 2010, 27 offenders were the subject of extended supervision orders and two offenders were the subject of continuing detention orders under the Act. These figures demonstrate just how important this piece of legislation is in the treatment and management of serious sex offenders, and the consequent safety of our community.

I will now turn to the detail of the bill. Schedule 1 amends the Crimes (Serious Sex Offenders) Act 2006. The first item that requires explanation is item [3]. This item extends the definition of "serious sex offence" to include an offence that was not a serious sex offence at the time it was committed, but which was committed in such circumstances that it would be such an offence were it committed in those circumstances at

the time an order is sought under the Act. The jurisdiction of the Act is enlivened when a person has a conviction for a serious sex offence in accordance with section 5 (1) of the Act. This includes an offence committed against an adult victim punishable by imprisonment for seven years or more in circumstances of aggravation. Prior to 1989 the Crimes Act 1900 did not contain aggravated versions of offences. A submission to the statutory review noted that, because of this, there are a number of serious sex offenders who may fall outside of the scope of the Act; that is, the Act's definition of "serious sex offence" covers specified serious criminal conduct if it was committed after 1989, but not if the same conduct was committed prior to 1989. The amendment to item [3] rectifies this anomaly.

Item [5] amends sections 9 and 17 of the Act, which set out the test that the Supreme Court must apply when it is considering an application for an order under the Act. Currently sections 9 (2) and 17 (2) provide that the Supreme Court may impose an extended supervision order or continuing detention order if it is satisfied to a high degree of probability that the offender is likely to commit a further serious sex offence if he or she is not kept under supervision. There has been considerable case law on the meaning of the word "likely" in this State and in Victoria, which used the same test in relation to a similar piece of legislation, the Victorian Serious Sex Offenders Monitoring Act 2005. The interpretation that is currently applied in New South Wales courts is that the word "likely" should be construed as meaning probable, in the sense of a high degree of probability, but not necessarily involving a degree of probability that is more than 50 percent. The authority for this interpretation is *Tillman v Attorney General (New South Wales)* [2007] New South Wales Court of Appeal 327, reported also at 70 *New South Wales Law Reports* 448 and 178 *Australian Criminal Reports* 133.

Subsequent legislative activity in Victoria, including the repeal of the Serious Sex Offenders Monitoring Act 2005 and the introduction of the Serious Sex Offenders (Detention and Supervision) Act 2009, has resulted in the introduction of an unacceptable risk test. In the second reading speech to the Serious Sex Offenders (Detention and Supervision) Act 2009 the Victorian Minister for Corrections, the Hon. Bob Cameron, noted that the new test invites courts to consider not only the risk of sexual reoffending of the particular offender but also the nature and gravity of the offences the offender may commit in the future.

As part of the statutory review of the Crimes (Serious Sex Offenders) Act 2006, many stakeholders acknowledged difficulties with the word "likely" and called for clarification. The statutory review also noted that recent decisions of the Supreme Court of New South Wales confirm that there is a need to clarify the use of the word "likely", and accordingly the requisite degree to which a court must be satisfied of risk before making an order. The statutory review recommended that one way of achieving this clarity was not to simply define the word "likely" but also to clarify the test that is being met; that is, to adopt the unacceptable risk test adopted in Victoria. It is noted that the equivalent Queensland piece of legislation, the Dangerous Prisoners (Sexual Offenders) Act 2003, contains a similar test and was upheld by the High Court in *Fardon v Attorney-General for the State of Queensland* [2004] High Court of Australia 46.

The statutory review of the New South Wales Act found that the arguments that preceded the change in Victoria were equally applicable to New South Wales. In addition, it was acknowledged that there was merit in the test in the Crimes (Serious Sex Offenders) Act 2006 being consistent with the tests used in Victoria and Queensland given that the schemes set up by each of the three States are similar in nature and are designed to achieve the same aim; that is, the protection of the community through the management of serious sex offenders. There are also advantages in having a cross-jurisdictional body of case law being developed. As such, item [5] amends the test to require the court to be satisfied that there is an unacceptable risk replacing the likelihood test with a test of unacceptable risk of the offender committing a serious sex offence if he or she is not kept under supervision.

Item [6] goes further to clarify the extent to which the court must be satisfied. It provides that the Supreme Court is not required to determine that the risk of a person committing a serious sex offence is more likely than not in order to determine that the person poses an unacceptable risk of committing a serious sex offence. Item [7] introduces a new requirement that must be considered by the Supreme Court when it is determining an application under the Act. This is any report prepared by Corrective Services New South Wales as to the extent to which the offender can reasonably and practicably be managed in the community. This amendment is in response to a recommendation made by the statutory review. It recognises that when determining the conditions that will be imposed under an extended supervision order it is appropriate for the court to have regard to what can reasonably and practicably be done for the offender.

Item [8] also introduces a requirement for the Supreme Court to consider the views of the sentencing court at the time the sentence of imprisonment was imposed on the offender when it is determining an

application under the Act. What is meant by the sentencing court is defined in item [1] and includes the court by which the sentence was imposed and any court that heard an appeal in respect of that sentence. This amendment was recommended by the Sentencing Council, which noted that the observations of the sentencing judge were often based on the material presented at the time of sentence, which may include a presentence report and reports from psychiatrists or psychologists as to the factors behind the offending and the offender's rehabilitation prospects. In particular, the sentencing court's views on the offender's rehabilitation prospects and the need for community protection are not irrelevant considerations to the Supreme Court's consideration of whether an application should be granted.

Items [9] and [10] implement a recommendation made by the statutory review that the term of an extended supervision order be extended to account for any time that the order is suspended because the offender is in lawful custody. Item [11] codifies a condition that is currently already commonly imposed by the Supreme Court under section 11 of the Act as part of an extended supervision order. It specifies that the Supreme Court may impose a condition that the offender must permit any corrective services officer to access any computer or related equipment that is at the offender's residential address or in the possession of the offender.

As the viewing of child pornography material, now known as child abuse material, is already an offence, it is not necessary to specifically refer to the viewing of such material in the statutory condition. If a serious sex offender is found in possession of child abuse material then he or she will be liable to prosecution for that offence. Rather, item [11] is a broad forensic interrogation power that codifies that the offender's computer usage is an appropriate behaviour to be monitored and that the offender must provide access to the relevant officers, such as through the provision of passwords, login details or user names, in order for this usage to be monitored. The auditing or forensic investigation of the offender's computer or related equipment would also be an appropriate condition for the Supreme Court to make if required.

Under section 11 the Supreme Court has a broad power to make "appropriate" conditions on an extended supervision order and the codification of this particular condition should not be seen as fettering this broad discretion. Indeed, the section makes it clear that the Supreme Court's power is specifically not limited by the statutory conditions, and further conditions as to the offender's computer usage may be imposed as they commonly are now. Item [12] prescribes that the power of the Supreme Court to vary an interim or extended supervision order under section 13, and an interim or continuing detention order under section 19, does not allow the order to be varied so that the period is greater than that otherwise permitted under this part. This amendment also has the effect of clarifying that the power under sections 13 and 19 to vary an order includes the power to extend it.

Item [13] amends section 14, which prescribes the criteria that must be met in order for the State to apply to the Supreme Court for a continuing detention order in relation to a sex offender. Currently it provides that an application can be made when the offender is in custody in a correctional centre whilst serving a sentence of imprisonment by way of full-time detention for a serious sex offence or for an offence of a sexual nature, or pursuant to an existing continuing detention order. Section 14A also allows an application for a continuing detention order to be made if an offender is found guilty of the offence of breaching an extended supervision order or interim supervision order whether or not the person is in custody.

The Sentencing Council noted in its report that there may be cases where a serious sex offender has practical difficulties in the continued compliance with a condition of the order in circumstances not amounting to a breach. An example of such a difficulty was that of a condition of an order requiring the offender to use psychiatric or anti-libidinal medication, which is having adverse side effects to the point where the offender cannot reasonably be expected to continue taking that medication, or where a prescribing medical practitioner decides to stop prescribing it. Stakeholders suggested to the Sentencing Council that in cases where there are practical difficulties in the continued compliance with a condition of an order there should be a provision allowing the matter to be taken back to the court for a variation or a rescission of the order and for its replacement by a continuing detention order or interim detention order to ensure that the community continues to be protected.

The Sentencing Council agreed and considered that in such circumstances the power to vary or revoke an extended supervision order under section 13 of the Act should also include, in the case of a revocation, an express power to substitute a continuing detention order or an interim detention order. The council noted that the criterion for intervention would rest upon the court being satisfied that, by reason of altered circumstances, adequate supervision would not be provided by allowing the offender to remain in the community subject to the extended supervision order.

Item [13] implements the Sentencing Council's recommendation, albeit in a different form; that is, under the new subsection (2), the State of New South Wales will now be able to apply for a continuing detention order against a person who is subject to an extended supervision order or an interim supervision order if, because of altered circumstances, adequate supervision of the person cannot be provided under an extended supervision order or an interim supervision order. Item [19] requires the Supreme Court to be satisfied that circumstances have altered since the making of the extended supervision order or interim supervision order and those altered circumstances mean that adequate supervision of the person cannot be provided under an extended supervision order or an interim supervision order. Subsection (2) has also been broadened to include the existing power to make an application for a continuing detention order where the person has been found guilty of breaching a supervision order.

In addition, the phrase "last six months of the of the offender's current custody", which is currently found in subsection (2), is replaced in the new subsection (2A) by the following: an "application may not be made more than six months before the end of the offender's total sentence or the expiry of the existing continuing detention order". This amendment clarifies that the phrase "last six months of the offender's current custody or supervision" refers to the final six months of the offender's head or total sentence, as was recommended by the Sentencing Council and confirmed in the statutory review. The new subsection (2B) allows an application under section (2) to be made at any time, that is, whether the offender is in custody or not. However, if the offender is serving a sentence of imprisonment by way of full-time detention, then an application may not be made more than six months before the end of the person's total sentence.

Items [15], [18] and [21] are consequential amendments. Item [17] requires the Supreme Court to have regard to the level of an offender's compliance with any interim supervision order when determining an application for a continuing detention order. Item [20] omits a provision that deals with the interaction of parole orders and orders under the Crimes (Serious Sex Offenders) Act 2006, which will be included in the Crimes (Administration of Sentences) Act 1999 by schedule 2.

Item [22] provides that, on the making of a continuing detention order in respect of a person, any interim supervision order or extended supervision order in respect of the person expires and ceases to have effect. It also provides that on the making of an interim detention order in respect of a person, any interim supervision order or extended supervision order in respect of the person is suspended and ceases to have effect until such time as the interim detention order expires. This section clarifies what is to occur in situations where the Supreme Court replaces an extended supervision order or interim supervision order with a continuing detention order.

Item [23] is a consequential amendment. Item [24] is an important reform which will allow victims of the offender to make a statement in relation to an application under the Act. This reform was recommended by the NSW Sentencing Council, which considered that there would be merit in allowing victims' views to be considered by the court, particularly in circumstances where they might be aware of events not known to the authorities of relevance to any ongoing danger to themselves or other members of the community. In recognition that some victims may not want to be made aware of such an application, only victims who are recorded on the Victim's Register in respect of the offender and who are a victim of an offence committed by the offender for which the offender is currently serving, or most recently served, a sentence of imprisonment will be notified.

Under subsection (2) the statement may contain the person's views about the order and any conditions to which the order may be subject, or any other matters prescribed by the regulations. The provision of such a statement is optional, and under subsection (5) the victim may amend or withdraw the statement. Under subsection (6) provision is made for the victim to have a say in whether or not the statement is disclosed to the offender.

Item [25] provides, in section 25A, for proceedings for an offence under the Act to be dealt with summarily before the Local Court, and in the case of an offence under section 12, which is the offence of breaching an interim or extended supervision order, these matters will now be capable of being prosecuted in the Supreme Court in its summary jurisdiction. This was recommended by the statutory review, which noted that such a power may be useful in circumstances where the State is of the view that the breach, if proven, is of such a serious nature that it will also be seeking the revocation of the order and be making an application for a continuing detention order. In these circumstances the breach proceedings could proceed in the Supreme Court and the matters could be dealt with concurrently, although it is noted that the amendments to the Act made by item [13] now mean that an application for a continuing detention order in such circumstances is not necessarily contingent on proving the breach.

Item [25] creates a new section 25B. This section enables the Supreme Court to make an extended supervision order in respect of a person at the same time that it makes a continuing detention order in respect of the person. The extended supervision order will commence at the end of the continuing detention order. This amendment was recommended by the New South Wales Sentencing Council and provides an alternative to the State being required to make a separate application for an extended supervision order upon the expiry of a continuing detention order, and would not be dependent on the need for any separate assessment by the court. The Sentencing Council made this recommendation as it was of the view that it would help to encourage offenders to complete sex offender treatment programs whilst in custody whilst also providing appropriate external controls on the offender's return to the community, including participation in a maintenance program.

Item [27] provides for a further review of the Act to be undertaken by the Attorney General three years after the commencement of the proposed Act. This is as per the recommendation of the Sentencing Council, which was endorsed by the statutory review. Schedule 2 amends the Crimes (Administration of Sentences) Act 1999 in relation to the interaction of parole orders and orders under the Crimes (Serious Sex Offenders) Act 2006. Dealing with serious sex offenders living in the community is one of the most challenging issues facing governments today. New South Wales is one of several jurisdictions that has chosen to respond to the need to protect the community from such offenders by introducing a legislative scheme for the making of continuing detention orders and extended supervision orders under the New South Wales Crimes (Serious Sex Offenders) Act 2006.

The New South Wales Sentencing Council and the statutory review of the Act have confirmed that this piece of legislation provides an appropriate and effective means of protecting the community from these offenders. The reforms that this bill makes to the principal Act will ensure that this State's serious sex offender regime continues to meet its objectives. I commend the bill to the House.

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

SHOP TRADING AMENDMENT BILL 2010

PUBLIC HOLIDAYS BILL 2010

Second Readings

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [6.11 p.m.], on behalf of the Hon. John Robertson: I move:

That these bills be now read a second time.

The amendment to the Public Holidays Bill 2010 in the other place is designed to do no more than preserve the well-publicised and relied upon proclamation of Monday 3 January 2011 as a public holiday, in addition to the New Year's Day holiday on Saturday 1 January. The intention of this amendment is to make clear that despite the repeal of the Banks and Bank Holidays Act 1912, Monday 3 January 2011 will still be a public holiday. The Government would like also to reiterate that the Sydney Trading Precinct in the Shop Trading Amendment Bill is never intended to be extended beyond its original boundaries as it encompasses all those areas that have traditionally traded on Boxing Day in Sydney. The precinct is designed to ensure that those areas in and directly around the central business district are able to trade without the yearly confusion that had surrounded previous Boxing Day sales. Further, it is worth noting that it is not the intent of the Shop Trading Act that the Sydney Trading Precinct would ever extend to metropolitan centres such as those found at Parramatta, Chatswood, Burwood, North Ryde or Miranda. I seek leave to incorporate the remainder of my second reading speech in *Hansard*.

Leave granted.

I rise today to seek agreement to two related bills:

—the Public Holidays Bill 2010 and

—the Shop Trading Amendment Bill 2010.

Although public holidays and shop trading are distinct issues dealt with by separate Acts of Parliament, there is some overlap between each policy issue.

This is because the days that are restricted trading days are by and large public holidays also.

Further, concerns about the operation of both public holiday and shop trading legislation have been recently raised by a number of parties in New South Wales.

On this basis, proposals for amendment have been developed together and are now presented to Parliament as package of proposals for consideration.

PUBLIC HOLIDAYS

I will deal firstly with the Public Holidays bill 2010 which will ensure the modern, clear and consistent determination of public holidays in New South Wales.

In 2009 the New South Wales Government commissioned a review by Professor Joellen Riley into the *Banks and Bank Holidays Act 1912*, requesting that the Professor provide a report and recommend 'changes to modernise the operation of legislation and other instruments which affect the creation and operation of public holidays and bank holidays in New South Wales'.

While the 1912 Act's primary concern was bank trading hours it also became the means by which workers in New South Wales came to enjoy the benefit of public holidays. This was largely because industrial awards, and later enterprise agreements, adopted the nomination of 'bank holidays' under the Act as days upon which workers were entitled to paid days off or penalty rates.

This adaptation of the Act has operated well enough through most of the century since its enactment. However, the commencement of the Howard Government's Work Choices legislation in 2006 and the forcible transfer of many New South Wales businesses and their workers into the Commonwealth workplace relations system caused widespread confusion about how the State public holiday scheme interacted with new industrial rights and obligations under Commonwealth law.

The commencement of new public holiday entitlements on 1 January 2010, as part of the *Fair Work Act's* National Employment Standards, coupled with the progressive relaxation of restrictions on trading by banks, provides an opportune time for New South Wales to reassess and clarify the operation and effect of its public holiday regime.

To ensure any new scheme reflects community expectations, a full independent review of public and bank holidays was undertaken by Professor Joellen Riley from the University of Sydney between May and October 2009.

To effectively gauge the views of the community, Professor Riley released a Discussion Paper and later an Options Paper. A total of 49 public submissions were received in response. A further 222 submissions were received from members of the public, primarily those who work in the retail and banking sectors in New South Wales, indicating how widely and deeply the issue of public holidays is felt in the community.

Professor Riley also met with a number of organisations during two rounds of consultations.

I would like to thank Professor Riley for her efforts in undertaking the review and providing a comprehensive report of her findings to the New South Wales Government.

The primary purpose of the Public Holidays Bill 2010 is to make predictable and transparent, the provisions identifying days of cultural, social and religious significance to the New South Wales community.

While the clear and certain identification of the days that are public holidays in this State will assist employers and employees to understand when and how various rights and duties attaching to public holidays will arise, it is essential to emphasise that the State's power over public holidays is limited to only providing for the days on which they occur.

The Fair Work Act 2009 makes it very clear that providing for the rights and obligations of employers and employees is not a matter that State law can deal with. The industrial consequences of public holidays are matters dealt with under the Fair Work Act—both under the National Employment Standard relating to public holidays, and under modern awards and enterprise agreements made under that Act.

Given that the focus of this bill is on public holidays, the provisions of the *Banks and Bank Holidays Act* relating to the requirement to keep banks closed on certain days will be transferred to the *Shop Trading Amendment Bill 2010*, which I will address after I have provided members with an overview of the intended operation and effect of this Public Holidays Bill.

Public holidays are recognised throughout the world as days of commemoration and celebration.

The practice in New South Wales is to recognise six periods, encompassing 10 days, of such significance each year to warrant observation with public holidays. Apart from the Christmas/New Year and Easter periods where several holidays are recognised, each within a period of one week, there are 4 single day occasions, Australia Day, Anzac Day, Queen's Birthday and Labour Day that are interspersed throughout the calendar year.

Under this bill, the Government will ensure the most important occasions for a holiday will be observed on whichever day of the week they occur—including a Sunday. This will apply to Sunday occurrences of Christmas and Boxing Day, New Year's and Anzac Days and Easter Sunday.

The fact that Easter Sunday is not currently a holiday may come as a surprise to many in the community who work in businesses that never operate on Sundays. The current public holiday law was passed in times before the liberalisation of Sunday trading, when it was assumed business would not be conducted on a Sunday.

Apart from the requirement for general shops to remain closed on a Sunday that from time to time is also Christmas Day, Boxing Day, Anzac Day or at Easter, contemporary working patterns have resulted in Sundays routinely becoming ordinary working days in various industries, particularly the services sector, public transport and emergency workers, and hospital staff and the like.

In conducting her review Professor Riley received many submissions on the impact on family life of the inability of some workers in the services sector to access the long break for Easter available to so many other workers.

It is clear that the absence of public holiday status for Easter Sunday and indeed, a Sunday occurring Anzac Day, Christmas Day and New Year's Day, is a historical anomaly.

The current legislation dictates that Sunday occurrences of named holidays are automatically substituted to the next available weekday—usually the Monday.

In recognition of the importance of traditional family celebrations over the Christmas—New Year period, Christmas Day, Boxing Day and New Year's Day will, from 2012, be recognised as a holiday whenever coinciding with a Sunday. The customary practice of providing a subsequent week day holiday for such occasions will be retained to ensure all workers enjoy the benefit of a holiday on those occasions.

It has also been long standing practice to grant an additional day when Christmas Day falls on a Saturday. A similar approach was applied to Saturday occurring Boxing Days on six of eight occasions since 1959 and to eight occasions since 1955 for New Years Day. That customary practice will be retained in the new legislation.

In practice, that will mean that, from 2012, when Christmas Day falls on a Saturday or Sunday that day will be a holiday as will the following Monday or Tuesday respectively. Similarly when Boxing Day falls on a Saturday or Sunday that day will be a holiday as will the following Monday or Tuesday respectively.

The bill proposes a 12 month period before new practice regarding the addition or substitution of weekend occurrences of standard holidays. A new schedule of standard public holidays is programmed to commence on 31 December 2011. The first weekend occurrence of a standard public holiday will be the following day, 1 January 2012 which is a Sunday. Both the Sunday and following Monday will be public holidays.

Boxing Day in 2015 coincides with a Saturday and under this bill, will result in an additional holiday on the following Monday.

The delayed commencement of the new practices means that for this forthcoming 2010/11 Christmas/New Year period, the public holidays will be as follows: Saturday 25 December, Monday 27 December, Tuesday 28 December, Saturday 1 January and Monday 3 January.

Members should note that only the actual Christmas Day and Boxing Day remain mandatory Bank Close Days without exception and a restricted trading day under the Shop Trading Act.

The new legislation will provide clarity and certainty so that all residents, workers and businesses in New South Wales know when public holidays will fall. This is a useful piece of law reform.

It ensures that employers and employees can prepare for their responsibilities and understand their obligations and entitlements about work on those days.

I now turn to detail the major provisions contained within this bill.

The enactment of this bill will mean that the *Banks and Bank Holidays Act 1912* will be repealed, to be replaced by a new Public Holidays Act 2010.

The bill at clause4, names eleven occasions to be observed by a public holiday in New South Wales. Apart from the Easter period in any given year, which is determined by reference to ecclesiastical tables, the bill fixes relevant occasions to the day of the year on which the holidays are to occur. Further, when certain of the holidays coincide with a Saturday or Sunday, the bill provides for an automatic additional or substitute day in the following week.

The eleven occasions are: New Years Day, Australia Day, Good Friday, Easter Saturday, Easter Sunday, Easter Monday, Anzac Day, the Queen's Birthday, Labour Day, Christmas Day and Boxing Day.

These days include the eight nominated days provided for under the relevant National Employment Standard. The extra days not specifically provided for in the National Employment Standard are Easter Saturday, Easter Sunday and Labour Day.

However, because the National Employment Standard recognises public holidays declared or prescribed under a State law to be observed generally as public holidays, the rights and obligations set out under the Standard will apply to all of these days.

Clause 5 of the bill provides procedures for the appointment by the Minister of an additional public holiday in a particular year for the whole or a specified part of the State. The Minister will be able to declare public holidays other than those specifically named, including a public holiday for a defined locality or region within the State. A recent example of such a day was the APEC public holiday for local government areas within the greater Sydney region in 2007.

Clause 6 of the Public Holidays Bill allows the Minister to substitute another day for any public holiday in a particular year.

To ensure consistency across the whole New South Wales workforce, clause seven of the bill proposes to apply, as laws of New South Wales, section 114 and section 116 of the Commonwealth *Fair Work Act 2009*.

This will mean that State industrial relations system employees will have the same rights to be absent with pay on a public holiday consistent with those employees under the national industrial relations system.

The extension of these particular public holiday entitlements under the Fair Work Act conforms to the principle of harmonising arrangements, where possible.

Clause 8 of the bill provides for the Minister to declare a local event day or part day in an area of the State at the request of the local council. This declaration does not confer the status of a public holiday to that occasion.

Since 2006, federal workplace relations laws have created obligations on all federal system employers in a region in which a public holiday is declared to allow their employees paid time off on those holidays and more recently under modern awards, penalty rates if work is undertaken on those occasions.

As revealed in the Riley review, federal law has disturbed customary practices in a way that has created considerable confusion and legal expense.

Many local and regional areas have traditionally observed whole or half day holidays specific to a particular region or community. While the proposed legislation will preserve the capacity of communities through consultation with their local councils to recognise those occasions with a public holiday, the introduction of local event days provides an option to return, as far as possible, the industrial arrangements for these occasions to that existing prior to 2006.

This legislation will provide for the declaration of certain days for local events (such as show days or race days) for certain localities, without calling them "public holidays". This prevents those days from attracting the rights and entitlements on public holidays that are provided for under the Fair Work Act. Where an enterprise agreement or contract specifies employee rights to time off or penalties for the particular local event, those requirements will still apply.

Clause 12 provides for a review of the proposed Act, five years after the date of assent. This will ensure that the proposed Act remains relevant and does not wait another 98 years to be reviewed.

The legislation will maintain holiday declarations that are already in place for 2011. This includes appointed local holidays and the special arrangements for the coincidence next year of Anzac Day and Easter Monday agreed at the Council for the Australian Federation in 2008. Anzac Day will be commemorated on the Monday and the Easter Monday holiday will be observed on Tuesday 26 April.

Businesses in New South Wales will welcome this bill. This bill will provide all businesses and employers with the ability to plan with certainty.

That is, rather than having to wait until the proclamation of public holidays by the Governor, businesses will be able to reliably predict when public holidays will occur and when an additional or substitute day will apply.

Employees are protected under this bill. As I have already mentioned, employees will continue to enjoy customary public holidays and be able to plan their family and community activities with confidence.

This was not secured in New South Wales legislation until now. The community will benefit from this bill by continuing to enjoy the commemoration of public holidays.

This bill is good for business, good for employees and good for the community.

I feel this bill strikes the right balance.

It establishes a public holiday framework that provides businesses with predictability, employees with protections in employment and the community with an opportunity to share in days of celebration as well as family and community activities.

SHOP TRADING AMENDMENT BILL 2010

I now turn to the Shop Trading Amendment Bill which is being introduced together with the Public Holidays Bill.

The main purpose of this bill is to make amendments to the *Shop Trading Act 2008* to address a range of issues that have arisen with regard to its operation, particularly in relation to Boxing Day trading in the inner areas of Sydney.

The other major aspect of the bill is that it incorporates provisions about bank trading that were previously provided for in the Banks and Bank Holidays Act 1912.

As a result, the Shop Trading Act will be renamed the Retail Trading Act 2008.

Turning first to Boxing Day …

Members will recall that under the *Shop Trading Act 2008*, four and a half days per year are named as being restricted trading days. These days are Good Friday, Easter Sunday, Anzac Day until 1.00 p.m., Christmas Day and Boxing Day.

Last year, the Act was amended to clarify that an exemption for a shop to trade on any of these restricted days would not be granted unless the Director-General of the Department of Services, Technology and Administration was satisfied that it is in the exceptional circumstances of the case in the public interest to do so.

On this basis, very few exemptions have been granted under section 10 of the Act.

Shops are also permitted to trade on a restricted day if they have a relevant exemption that was made under the former *Shops and Industries Act 1962*. These exemptions were preserved under a special provision of the *Shop Trading Act 2008*.

In December 2009, a transitional regulation was made carrying forward the effect of a Ministerial order made in 2007 which provided that Boxing Day trading was permitted for shops in an area called the Sydney commercial business district. This was consistent with the intention of the preservation provisions that exemptions under the old Act should be preserved.

However, that regulation was transitional in nature and it expired on 1 July 2010.

Thus, without amendment, the current State of the law would be that only those shops with specific exemptions, either preserved from the old Act or granted under section 10 of the 2008 Act, would be allowed to trade on Boxing Day 2010 (and in any year thereafter).

Given the exceptional circumstances requirement of section 10 of the Act, it is likely that very few shops would be able to obtain future exemptions.

Members will be aware of the tradition that has developed of Boxing Day sales in the Sydney CBD and surrounding areas.

A range of actions including Ministerial orders such as the one made in 2007 and other orders and declarations made in earlier years, the transitional regulation made in 2009, as well as specific shop exemptions, have led to the general practice of many shops in the CBD and surrounding areas opening on Boxing Day.

Boxing Day sales are a well-known and accepted feature of life in inner Sydney. Consumer expectation that these sales will continue is high.

On the basis of developed expectation and practice in relation to Boxing Day trading, the Government has decided that it is now time to put this matter beyond doubt and to provide for a new Sydney Trading Precinct, within which all shops that wish to open on Boxing Day will be free to do so.

This amendment in clause 5 of the bill will provide certainty to retailers, their employees and to the community at large about the right of shops within the new precinct to open on Boxing Day and for the tradition of Boxing Day sales to continue.

The boundaries of the precinct will be provided for by way of regulation. Schedule 2 of the bill sets out the provisions of that regulation, identifying the boundaries of the area within which Boxing Day trade will be permitted.

The regulation contains a map which clearly identifies the boundaries of the new Sydney trading precinct.

To provide maximum certainty and continuity, the boundary is the same as the boundary that was set out in the 2009 transitional regulation that I referred to earlier.

I emphasise that the provision only relates to Boxing Day and only relates to the area within the prescribed boundary.

Shops outside the Sydney trading precinct wishing to trade on Boxing Day will still be required to apply for an exemption under the Act.

And any shop within the Sydney trading precinct that wishes to trade on any other restricted trading day will also be required to apply for an exemption under section 10.

Before turning to the bank trading amendments, I wish to also advise members of the other shop trading elements of the bill.

Clause 6 of the bill seeks to clarify that nothing in the Liquor Act 2007, or in a packaged liquor licence under that Act, operates to exempt a shop from a requirement in the Shop Trading Act to be kept closed. This amendment gives legislative effect to the finding of the Supreme Court in *Chambers Pty Limited v State of New South Wales* ([2010] New South Wales SC 271) where it was held that a packaged liquor store had to apply for an exemption to open on a restricted day under the *Shop Trading Act*, notwithstanding any provisions of the *Liquor Act 2007*.

Of course, any packaged liquor stores within the Sydney trading precinct will, like other shops in that area, be able to open on Boxing Day.

Under clause 8 of the bill, the voluntary work conditions that already apply to any exemptions granted or preserved under the Act, will be extended to apply to employees in shops that are exempt from the Act. These include, but are not limited to, shops such as newsagents, chemists, take-away food outlets, restaurants and cafes, video shops and so on. Under the Act, these shops are not required to be kept closed on restricted trading days.

The Government feels that it is appropriate and equitable that the employees of these exempt shops, like the employees of shops that have to apply for an exemption, should be able to freely elect whether to work on a restricted trading day. Restricted trading days are generally days of celebration on which many employees prefer to spend time with their friends and family. Staff who want to work on such a day will of course be able to freely elect to work.

This right will not, however, be extended to the employees of small shops. Small shops are basically shops with four or fewer employees. It would be unrealistic for small shop keepers to find alternative staff if their employees chose not to work on a restricted day. The amendment represents an appropriate balance between ensuring that as many employees as is reasonable are able to freely elect whether to work on a restricted day, with the right of small shops to open and continue to provide the community with essentials like bread and milk and other basics.

Clause 10 of the bill will allow an industrial organisation of employees that has members who are employed or engaged in shops to apply to the Administrative Decisions Tribunal for reviews of decisions relating to exemptions granted under the *Shop Trading Act*. At present, that organisation would of course be the Shop, Distributive and Allied Employees' Association New South Wales.

This amendment would bring the rights of this union into line with the rights of the union representing workers in banks and other financial institutions, that is the Finance Sector Union, under the bank trading provisions that have been in place under the *Banks and Bank Holidays Act* for some years.

Clause 14 specifies further circumstances in which shops are taken not to be closed. Shops will not be able to call their staff in to undertake the receipt, unpacking or other preparation of goods for sale, or stocktaking in respect of goods for sale, on days that are restricted trading days. This addresses a not-uncommon practice that is of great concern as it amounts to an evasion of the right of shop employees to not work on a restricted trading day unless the shop has an exemption under the Act.

Finally, clause 16 of the bill provides that compensation is not payable by or on behalf of the State arising from certain matters relating to the operation of the principal Act.

As noted earlier, the other significant change proposed by this bill is the movement of the bank trading provisions that have been a part of the *Banks and Bank Holidays Act 1912* for many years to the *Shop Trading Act 2008*, which will, as a consequence of that movement, be renamed the *Retail Trading Act 2008*.

This change arises out of the Government's response to the review of the *Banks and Bank Holidays Act 1912* undertaken by Professor Riley in 2009, about which I have spoken earlier. That review provided an opportunity to consider the best location for the bank trading provisions.

Therefore, while the Public Holidays Bill will provide for public holidays, the new *Retail Trading Act 2008* will provide for retail trading by both shops and banks.

This is logical and rational.

The broad scheme of the bank trading provisions remains similar to what it was when the provisions were located in the *Banks and Bank Holidays Act*.

The provisions clarify the days on which banks must be kept closed. These are Saturdays, Sundays, the Bank Holiday (which is the first Monday in August), and public holidays.

In the past, banks have been able to apply for exemption from the requirement to be kept closed on Saturdays and/or Sundays. A major change made by this bill is to extend that right to apply for an exemption to the August Bank Holiday and to some of the public holidays.

However, no bank will be able to apply for an exemption to trade on Good Friday, Easter Sunday, Anzac Day before 1.00 p.m., Christmas Day or Boxing Day. These days will always be closed days for banks.

In relation to August Bank Holiday, the Government is concerned that changes in national workplace relations regulation have meant that many non-bank financial institutions that previously observed the August Bank Holiday under awards or industrial agreements have ceased to do so.

Significantly, August Bank Holiday is not identified as a public holiday in the Finance Sector Modern Award. This means that many employees in the broader financial sector who have been accustomed to enjoying the August Bank Holiday are no longer able to do so.

While the NSW Government is not able to affect the industrial arrangements between financial institutions and their staff, it is able to regulate trading hours.

Therefore, an important feature of this bill is the extension of the August Bank Holiday provisions to non-bank financial institutions. Like banks, these institutions will be required to close on August Bank Holiday, thereby continuing a practice that most have observed for many years.

This requirement will not apply to financial institutions that provide for an extra or substitute holiday for their staff, or to very small financial institutions.

Like banks, however, financial institutions to whom the August Bank Holiday applies will also be able to apply for an exemption from those provisions.

Any institution that obtains such an exemption will be required to observe the requirement that staff working on a day to which an exemption applies have freely elected to work on that day.

The Government believes that these changes will provide continuity and certainty for employees at financial institutions who have long enjoyed a day off for August Bank Holidays.

Taken together, these two pieces of legislation will provide a clearer and more logical approach to the declaration of public holidays on the one hand, and appropriate restrictions on retail trading by shops and banks on the other.

I commend both the Public Holidays Bill and the Shop Trading Amendment Bill to the House.

The Hon. GREG PEARCE [6.13 p.m.]: In a sense the Shop Trading Amendment Bill 2010 and the Public Holidays Bill 2010 codify what has been the practice in many respects. However, they go further in relation to public holidays and the benefits that are paid on those days. Legitimate concerns have been expressed by some business groups about the potential for additional costs as a result of these changes and the potential to prevent casuals and young people in particular from working on those days. Some difficulties arise as a result of the strengthening of requirements that no work at all be done in shops on some of these public holidays. The

owners and, in particular, supermarkets which now trade on the basis of providing fresh food and being stocked up only to the extent that they need to be will not have access for cleaning and restocking, and that might cause some disruption to the public and have the reverse effect that is intended by the Government.

The Public Holidays Bill is intended to replace the Banks and Bank Holidays Act 1912 and to formalise public holiday arrangements by providing from 2012 an extra weekday public holiday when Christmas Day, Boxing Day or New Year's Day falls on a weekend. The bill also recognises from 2011 Easter Sunday as a public holiday. I, like many other members, was surprised when I discovered that under the arrangements that are currently in place Easter Sunday is not a public holiday. The bill provides procedures for additional public holidays to be appointed by the Minister in a particular year or for the whole or part of the State. It provides also for the Minister to declare a local event day, or part day, without conferring the status of public holiday in an area of the State at the request of the local council.

The bill will maintain existing provisions dealing with bank trading days and it will give employees the choice to work on restricted trading days rather than being compelled to work on those days. In 2009 the New South Wales Government commissioned a review of the Banks and Bank Holidays Act 1912. The Government now claims that submissions from the general public, employers and industry groups conveyed strong support for the modernisation of New South Wales public holiday legislation. It is a mystery why the Government, in its dying days, decided to introduce this legislation. If there were such a demand for it, one would have thought that it might have been looked at a little earlier. In any event, the proposed legislation is before us now. The modernisation of the legislation is said to be required to provide greater clarity and consistency around public holiday arrangements. It is ironic that the Government is suggesting that that is one of the reasons for this legislation, when now there is even greater disparity rather than greater consistency between public holidays and the arrangements for public holidays between various States and Territories.

The Government's arguments in favour of this bill include: that the changes will formalise public holiday arrangements and deliver certainty for businesses and individuals; and that the changes will protect the rights of workers who elect not to work on public holidays. Those principles were considered late last year when we debated legislation dealing with public holidays, and the New South Wales Liberal-Nationals Coalition accepted that those principles applied. However, as I mentioned earlier, there are some concerns relating to public holidays. The changes clearly are a concession to the unions by creating an extra public holiday when Christmas Day, Boxing Day or New Year's Day falls on a weekend.

[*Interruption*]

I am simply stating fact. We know that this debate will continue after the dinner break so that officials from the Shop, Distributive and Allied Employees Union can be present to take advantage of the opportunity to cheer on a former member of their union who is now a member of this House.

[*Interruption*]

I am referring to the arguments against this legislation. These changes will place a potential extra cost on businesses by guaranteeing an Easter Sunday public holiday, which means that workers will be paid double time rather than time and a half penalty rates. We cannot ignore the fact that that is an extra expense. Apparently, the changes are intended to head off moves by the Australian Industry Group in the Fair Work Tribunal to stop paying penalty rates twice—that is, where penalty rates are payable for a weekend public holiday and for the extra public holiday when Christmas Day, Boxing Day or New Year's Day falls on a weekend.

The Shop Trading Amendment Bill aims to provide for a new Sydney trading precinct across central Sydney within which all shops that wish to open on Boxing Day will be free to do so. We are all aware of the Boxing Day sales that have become a welcome part of public activity in that holiday period. There is a great deal of support for the Boxing Day sales and for this bill to make provision for those sales. The bill incorporates provisions covering bank trading into the renamed Retail Trading Act, and it will extend voluntary work conditions that apply already under the Shop Trading Act to employees in shops exempt from the Act, for example, newsagents, cafés and take-away food shops, but not small shops defined as those with four employees or fewer.

The bill will extend to unions with members employed in shops a right to apply to the Administrative Decisions Tribunal for reviews of decisions relating to exemptions granted to retailers under the Shop Trading

Act to allow them to trade on a restricted trading day. It specifies further circumstances in which shops are taken not to be closed, thereby preventing shops from stocktaking and the like on restricted trading days—which I mentioned at the commencement of my contribution to this debate. In 2009 the Shop Trading Act was amended to establish a general presumption against trading on restricted days and to set out how requests for exemptions could be made. Those amendments also provided that all staffing must be voluntary with no-one forced to work on public holidays. As I said earlier, when that legislation came before this Chamber the Liberals and The Nationals accepted those principles.

The Shop Trading Amendment Bill addresses a range of issues that have arisen in respect of the 2009 regulations. I understand that one of the unintended consequences was that a business had to actually exist in 2009 when the legislation was passed for it to apply for an exemption. That has now been corrected. The bill provides greater certainty to business and consumers regarding Boxing Day trading and the rights of employees to refuse to work on restricted trading days if the shop in which they work is allowed to work on a restricted day. The Shop Trading Amendment Bill addresses an anomaly in the 2009 regulations: when retailer sought an exemption to trade, the exemption applied only to existing businesses at the time the regulation was made. That anomaly meant that because centres were not trading in 2009 they could never gain an exemption. The Government quite sensibly has moved to correct that problem.

The bill extends voluntary work conditions to most retail employees, providing employees with the right to refuse to work if the shop in which they work is allowed to open on a restricted day. Larger shops within the Sydney trading precinct will be able to trade without the cost, delay and uncertainty of applying to the Office of Industrial Relations for an exemption to trade. Concerns similar to those expressed about the Public Holidays Bill 2010 have been expressed also about the Shop Trading Bill 2010. The special trading precincts model used in the bill is considered by some to be unfair and may confer an economic advantage to businesses in the inner city area, which are allowed to trade on Boxing Day whilst businesses outside that area are not. Concern has been expressed also that Boxing Day trading could have been extended to the rest of Sydney and New South Wales in line with the practice in Victoria, Tasmania, Perth, the Australian Capital Territory and south-eastern Queensland.

Concern has have been raised that the effect of this bill will be that retailers may be prevented from stocktaking and undertaking cleaning and administrative work et cetera on restricted trading days, and that that may impact adversely on shoppers and consumers generally. The National Retail Association has raised a concern about whether the bill conflicts with various sections of the Fair Work Act. I raise that simply as an issue, and perhaps the Parliamentary Secretary or the Minister will clarify that. The New South Wales Liberals and The Nationals do not oppose the bill.

The Hon. GREG DONNELLY [6.25 p.m.]: I support the Shop Trading Amendment Bill 2010 and the Public Holidays Bill 2010. I do not intend to comment in detail on the bills. Anyone interested in establishing what the bills achieve can read the Minister's agreement in principle speech given in the other place on 10 November 2010. My comments relate to thanking the Minister and his predecessor Ministers for their work with the Shop, Distributive and Allied Employees Association [SDA]—the shop assistants' union—New South Wales and Newcastle branches in bringing this matter to conclusion. The retail industry is the largest employer in the State of New South Wales, employing around 15 per cent of the work force. If my memory serves me correctly, that is probably now almost half a million employees across the industry. Around two-thirds of that work force are women, many of whom are employed on a part-time or casual basis. The industry employs a number of young people. Indeed, for many people—perhaps even many in this Chamber—their first job was in a shop working at a cash register or behind a counter.

On the complexity of the industry and the nature of its employees, it goes without saying that a number of employees in part-time and casual positions are women with children. A vitally important aspect for them as mothers is to have certainty over their rosters, hours of work across the week and certainty over work on or around public holidays. The New South Wales legislation creates some significant certainty that I would argue was not present in the retail industry on issues of shop trading and public holidays. I digress briefly to say that with respect to public holidays, in determining which days are specific public holidays one must have regard to the various industrial instruments that apply to the industry—be they awards, enterprise agreements or other instruments—as well as Commonwealth legislation in regard to minimal entitlements and public holidays.

Nonetheless, the shop trading and public holidays issue is enormously important for employees, employers and, of course, members of the general public, who need certainty about when they can secure

purchases from shops. The provision of certainty around these matters from year to year, given that obviously the days on which some restricted days fall change over time—weekdays or weekends—is important. This legislation assists enormously to achieve that certainty.

Providing certainty for retail employees over their public holidays and public holiday breaks is not just fair, it is also the right thing to do. I use the plural term "breaks" because at Easter and Christmas there are back-to-back breaks—there are four days at Easter and at Christmas there are public holidays for Christmas Day and Boxing Day as well as other substituted days off. Certainty about whether or not retail employees will have breaks and that rosters will reflect that certainty is very important. Members of this House, who are not required to work on certain public holidays, take that for granted. We would be wise to bear in mind that people in the retail industry have a genuine need for certainty and protection.

To employees in the retail industry, who work particularly hard, especially during the busy Easter and Christmas breaks, certainty in respect of their working hours and public holidays is vitally important. It is important also for their families. I congratulate the New South Wales branch secretary of the Shop, Distributive and Allied Employees' Association, Gerard Dwyer, and the Newcastle and northern branch secretary of the association, Barbara Nebart, on working so diligently over a period to achieve this outcome. I also express my thanks to the Secretary of Union's New South Wales, Mr Mark Lennon, for his support and assistance in securing this result for retail industry workers throughout the State. I commend the bills to the House.

[*Deputy-President (the Hon. Helen Westwood) left the chair at 6.30 p.m. The House resumed at 8.00 p.m.*]

Reverend the Hon. Dr GORDON MOYES [8.00 p.m.]: On behalf of the Family First Party, I indicate support for the Shop Trading Amendment Bill 2010 and Public Holidays Bill 2010. The object of the Shop Trading Amendment Bill 2010 is to:

(a) to exempt shops within a certain precinct (the Sydney Trading Precinct) from the requirement to be kept closed on Boxing Day, and

(b) to clarify that nothing in the Liquor Act 2007, or in a packaged liquor licence under that Act, operates to exempt a shop from a requirement in the Principal Act to be kept closed, and

(c) to allow certain industrial organisations of employees to apply to the Administrative Decisions Tribunal for reviews of decisions relating to exemptions granted under the Principal Act, and

(d) to specify further circumstances in which shops are taken not to be closed, and

(e) to provide that the exemption for certain specified shops to open on a restricted trading day is subject to a condition that they be staffed by persons who have freely elected to work, and

(f) to provide that compensation is not payable by or on behalf of the State arising from certain matters relating to the operation of the Principal Act, and

(g) to include provisions for bank trading days as a consequence of the proposed repeal of the Banks and Bank Holidays Act 1912 by the Public Holidays Bill 2010, and

(h) to extend Bank Holiday (the first Monday in August) to certain other financial institutions so as to require them to be closed for retail business on that day, and

(i) to make other amendments of a minor or consequential nature.

The bill also amends the Shop Trading Regulation 2009, which is referred to as the principal regulation, to prescribe the Sydney trading precinct.

The Public Holidays Bill 2010 will repeal the Banks and Bank Holidays Act 1912, which provides for additional and substituted holidays and local event days in any year for the State. This bill will come into effect during the 2011 calendar year and will specify how public holidays, from 2012 onwards, will be determined thereby influencing New South Wales workers industrial entitlements in regard to public holidays. This bill aims to protect and give certainty to employees by the principal Act making it a condition of an exemption for a shop carrying on business specified in the principal Act to open on a restricted trading day and by stipulating that the shop must be staffed on that day only by persons who have freely elected to work on that day. It will also make some amendments in regard to the closure of financial institutions on a bank holiday.

In the past, when a public holiday fell on a weekend, most retail workers usually lost the benefit of that public holiday. Therefore this bill aims to legislate for Saturday or Sunday occurrences of the named holidays to

be automatically substituted to the next available weekday, which is usually a Monday. If the named holidays fall on a Saturday and Sunday respectively, then the following Monday and Tuesday respectively will be granted as public holidays. If I recall correctly, approximately nine years ago the very first question I addressed to a Minister in this House—I asked very few questions in those days—requested an explanation for inadequate remuneration paid to retail sector employees when Christmas Day fell on a Sunday. As the Hon. Greg Donnelly mentioned earlier, the Shop, Distributive and Allied Employees Association raised concerns regarding penalty rates on public holidays.

Currently on a public holiday most retail workers are paid only the normal Sunday rate of 150 per cent instead of the public holiday rate of 250 per cent. As the Hon. Greg Pearce stated earlier, at some point in the future the higher rates may encourage employees to substitute junior rates for lower rates. It is equally possible that Easter Sunday, which will attract public holiday rates, might discourage some stores from trading—and if that is the case, I would be quite appreciative. When a store remains closed, staff often are rostered to work behind closed doors. That is a matter of concern to me, so I took up the issue with the Shop, Distributive and Allied Employees Association. Staff are sometimes engaged in packing shelves, stocktaking or shifting stock, or are asked to take a day of their annual or unpaid leave, thereby destroying what should be a four-day break over the Easter period for them and their families. Consequently they suffer financially. Fortunately the bill will correct that anomaly.

There are no restrictions on trading with respect to tourist destinations, where we all seem to go for holidays or weekends. Allowances are made for 365 days of trading to cater for tourists. Tourist destinations must be included in the bill to ensure that all retail employees gain the same benefits and protection. We are always anxious to change our laws to suit tourists. I remember the very first public speech I made as a 17-year-old. It related to the then forthcoming Melbourne Olympic Games and how changes would be made to the liquor laws to allow clubs to open after 6.00 p.m. The campaign was called "Stick to 6 in '56". It is a long time ago but the principle is exactly the same.

The Hon. Catherine Cusack: I wish they'd go home from work on time today.

Reverend the Hon. Dr GORDON MOYES: That is a go home to work on time today.

The Hon. Catherine Cusack: Yes, it is that day today.

Reverend the Hon. Dr GORDON MOYES: Yes it is, but like members of many other organisations parliamentarians are exempt not only from jury service but also from going home on time. Currently New South Wales has 11 public holidays: New Year's Day, Australia Day, Good Friday, Easter Sunday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day and Boxing Day. I am sure that next year we will have a full day for Prince William's wedding day, which will take place in Westminster Abbey. These days are set aside as public holidays in recognition of the importance of traditional family celebrations but they should also be provided for the necessary and well-deserved rest and recuperation of all workers. In an article titled "Let's go shopping on Anzac Day" in the *Daily Telegraph* this year it was reported that Kmart had applied to the New South Wales Government for permission to trade before 1.00 p.m. on Anzac Day, contrary to present regulation. The Australian Retailers Association, which represents small retailers, indicated that the move is out of touch with community values. Other big retailers such as David Jones, Myer and Officeworks indicated that they wanted to trade on Easter Sunday. The President of the Australian Retailers Association, Scott Driscoll, said:

> The notion of shopping being a recreational activity to replace the recognition and respect of the Anzac tradition is absolutely disgusting.

He added that Kmart was morally bereft. It is of grave concern that Australian companies built on Australian traditions should disrespectfully try to make a buck on such important remembrance and religious observance days. I am pleased that these amendments will enable individuals and their families collectively to celebrate their Christian beliefs on respective religious holidays, which apply to Christians, and give them the opportunity to spend quality family time together as opposed to being forced to work on these days. If it is important for them to be at work they will be properly remunerated. As parliamentary leader of Family First New South Wales, and considering the best interests of workers and their families, I strongly support these bills.

Reverend the Hon. FRED NILE [8.12 p.m.]: On behalf of the Christian Democratic Party I am pleased to support the Public Holidays Bill 2010, which will repeal and replace the Banks and Bank Holidays Act 1912 with the Public Holidays Act. The bill seeks to establish clarity, consistency with community values

and, where possible, national harmony in the governing of public holidays in New South Wales. I support the bill because it recognises community values and national harmony. Australia was founded as a Christian nation and I do not believe there has been a referendum to change that. People have not voted to make Australia a non-Christian, secular or pagan country. Sir John Downer was one of those who drafted the Australian Constitution. When the Constitution Act was passed by the Federal Parliament he said, "This Commonwealth from its very beginning will be a Christian Commonwealth". The then members of the Commonwealth Parliament had no doubt about that, although there may have been some non-believers or atheists among the group.

The majority believed that they were founding a Christian nation, and that is why our Constitution contains the important words that acknowledge Almighty God. The introduction to the Constitution states, "… humbly relying on the blessing of Almighty God". Those words were deliberately included after a debate in society. The words were not included accidentally or put in by a clerk. There was a debate in Australia because of a fear that the Commonwealth Constitution would not mention God or Jesus Christ. Out of that debate the politicians realised that if they did not include a reference to God or Jesus Christ the churches would organise a campaign for a no vote and Australia would not have been formed. That is how strongly the churches felt, and rightly so. Their concern was reflected in the words:

> Whereas the people of New South Wales, Victoria, South Australia, Queensland and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite … under the Crown …

The Hon. Luke Foley: What does this have to do with holidays?

Reverend the Hon. FRED NILE: The purpose of the bill is to make public holidays consistent with community values and national harmony, and I am indicating what those community values and national harmony are all about. I am pleased that the Public Holidays Bill will establish standard public holidays in New South Wales for New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Sunday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day and Boxing Day. If the Greens were running the Parliament I imagine they would probably delete Good Friday, Easter Sunday and Christmas Day, judging by the anti-Christian views they reveal so often in parliamentary debates, and their constantly attacking the church and church leaders, and our regular daily prayers.

Commencing in 2012, public holiday status will be applied to a Sunday that is also New Year's Day; 1 January; Anzac Day, 25 April; Christmas Day, 25 December; and Boxing Day, 26 December thereby ensuring that those dates will be public holidays no matter which day of the week they fall on. Commencing in 2012, predictable arrangements will be established for additional holidays on the next available week day for New Year's Day, Christmas Day and Boxing Day when any of those holidays coincide with a Saturday or a Sunday; and for each occasion both days are to be public holidays. I am pleased the bill provides that detail so that there is no doubt about what will happen in the future. Also commencing in 2012, predictable arrangements will be established for substitute holidays on the next available week day for Australia Day when that occasion coincides with a Saturday or a Sunday.

Under the new legislation, the public holiday status of Tuesday 26 April 2011 will be retained as a substitute holiday for Easter Monday, which on this occasion coincides with the Anzac Day public holiday. That was the subject of an agreement reached between the Premier and Chief Ministers at the meeting of the Council for the Australian Federation in 2008. The bill provides the Minister for Industrial Relations with the power to declare an additional or substitute public holiday in a particular year for the whole or part of the State such as a locality or region when required. I am pleased to support the Public Holidays Bill. I had lengthy discussions with union leaders from the shop assistants union, which is one of the largest unions in Australia and they indicated their wholehearted support and that of their membership for this legislation.

When I was a teenager I worked as a shop assistant and I graduated to assistant manager. Therefore I have great sympathy for shop assistants. When I was a boy my father had a mixed business, and I often served in the shop and helped him deliver orders to our customers at Mascot. I have a warm relationship with those who serve society as shop assistants in the retail industry. I am pleased to support these bills.

The Hon. CHRISTINE ROBERTSON [8.19 p.m.]: I am pleased to support the clarity, consistency and harmonisation that will be achieved with the Public Holidays Bill 2010. I have spent an awful lot of my working life as a shift worker. My family and I sorted out very early on that a good way to spend Christmas Day is to have a very special ham sandwich so that we all had time to be together on Christmas Day. I really understand how important it is to recognise actual public holidays—they days on which these very special

occasions occur—for families. Public holidays are recognised throughout the world as days of commemoration and celebration. They provide an opportunity for workers to rest, communities to gather and most importantly to recognise days of significance that are often unique to a particular country.

A survey of countries and the national holidays they celebrate demonstrates the ubiquity of public holidays. Some countries observe a large number of holidays. For example, Japan has 17 , Venezuela has 13 and Lebanon has 20 public holidays. Not one State in the United States of America has fewer than 10 public holidays, and some States have 12 or 13. It is quite stunning when we think how cross country people sometimes get when they go into town to go to the shops, but the shops are closed because it is a race day—it is much different in other countries. The only places with fewer public holidays than New South Wales are England and Ireland, which have eight and nine respectively.

In the past, whether workers have enjoyed any benefit from a public holiday, particularly those that coincide with a weekend, has largely depended on when they work and the terms of their industrial instruments. The current legislation dates back to a time when Sunday was a sacred day of religious observance, shops and businesses were closed and only workers in essential services were required to work. In those times, transferring the holiday observance to the Monday resulted in the vast majority of workers receiving a holiday in addition to their usual Sunday day of rest. Today, workers in many industries regularly work on weekends, which means that an inequity has crept into the arrangements for substituting holidays. A Sunday worker who does not work on Monday will have no public holiday, no rights to refuse work and likely no holiday penalty rates for working on that day.

This bill is underpinned by three main principles: clarity, consistency with community values and, where possible, national harmony in the governing of public holidays in New South Wales. The New South Wales public sector has declared specific public holidays, not necessarily to get extra pay but so that persons of other religions or beliefs who have a different day of celebration have the right to take that day off for celebratory purposes, something that is very important considering some of the discussion we have heard on this bill in this House tonight. The bill will provide clarity and certainty so that all residents, workers and businesses in New South Wales know when public holidays will fall. This will enable people to plan celebrations or commemorations, and it will ensure that employers and employees can prepare for their responsibilities, and understand their obligations and entitlements about work on those days.

This bill achieves this principle through the specification of all the occasions for a statewide public holiday, the dates on which they are to be observed, and clear arrangements for substitutions and additions. The occasions that are recognised are: New Year's Day, 1 January; Australia Day, 26 January; Good Friday on the Friday publicly observed as Good Friday; Easter Saturday, the day after Good Friday; Easter Sunday, the Sunday following Good Friday; Easter Monday, the Monday following Good Friday; Anzac Day, 25 April; Queens Birthday, second Monday in June; Labour Day, a very special day, first Monday in October; Christmas Day, 25 December; and Boxing Day, 26 December. They are almost the same days we grew up with.

Specifying those days as public holidays will remove the annual administrative actions that have been necessary to give effect to a public holiday for Labour Day, Easter Saturday and Queen's Birthday. These actions, while always undertaken in an orderly and timely fashion, left some doubt in the minds of those citizens, including employers and employees, who were looking at the public holiday calendar for the years ahead. The bill also puts in place conclusive arrangements for substitution holidays for Australia Day—whenever it occurs on a weekend—and additional holidays for New Year's Day, Christmas Day and Boxing Day whenever they coincide with a weekend. Those arrangements will provide for greater clarity from year to year in the standard public holiday calendar for New South Wales. Last year there was confusion when a specific holiday was announced—I think we were given an extra day.

The Government is amending the Public Holidays Bill 2010 to preserve the well-publicised and relied upon proclamation of Monday 3 January 2011 as a public holiday, in addition to the New Years Day holiday on Saturday 1 January. It is also important to maintain consistency with community values. This bill supports the values of the community and reflects the customs and practices already observed in the State. Australians have traditionally celebrated days of particular national significance and times for religious reflection. In 1898, bank holidays, which are now commonly understood as public holidays, provided workers in the then New South Wales colony with the opportunity to visit family in the country. Times have changed since 1898 in more ways than one. Yet public holidays continue to be a welcome respite from work and an opportunity to join in family and community activities. I may sound selfish, but I am pleased that all my city relatives do not dump on me on every bank holiday opportunity and visit me in the country.

While annual leave entitlements provide necessary rest, recuperation and recreation for individuals, public holidays provide the opportunity for sharing commemoration and celebration of significant events and occasions in our common heritage. This is also about national harmony. The last governing principle of this bill is national harmony. This bill, as far as possible, is to be in harmony with other States so that there is some national uniformity and consistency. When the people of New South Wales work for so many organisations, both national and international, there are other important issues in relation to employing people for national harmony to occur. Of course, New South Wales alone cannot achieve complete national harmony without the assistance and agreement of the other States and Territories.

To that end further discussions will be held with our State and Territory colleagues to further the commitments made to harmonise arrangements concerning public holidays at the Council of Australian Governments. In particular, New South Wales will be encouraging the other States and Territories to give public holiday status to Easter Sunday. By focusing on the key drivers of clarity, community expectation and national harmony, the Public Holidays Bill takes a modern and responsible approach to ensuring that we have a balanced approach to the public holiday observation in this State. I commend the bill and its cognate bill to the House.

Dr JOHN KAYE [8.28 p.m.]: On behalf of the Greens I support both the Public Holidays Bill 2010 and the Shop Trading Amendment Bill 2010. These are sensible legislative protections that will lock in the rights of working people in New South Wales, in particular to enjoy an additional day off for each public holiday even when that public holiday falls on a weekend. This legislation will make it much harder for a subsequent government to take away the additional day off. The Public Holidays Bill 2010 sets in legislation the number of public holidays and the days on which they will occur.

The bill also declares a subsequent weekday to be a public holiday if Christmas Day, Boxing Day or New Year's Day should fall on a Saturday or Sunday. There will also be a substituted day when Anzac Day falls on a Saturday or Sunday, not just for the Sunday as happens currently. From 2012 the occasions that will be observed as public holidays are New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Sunday, Easter Monday, Anzac Day, the Queen's Birthday, Labor Day, Christmas Day and Boxing Day. From recollection, Reverend the Hon. Fred Nile suggested that if the Greens were in charge of this Parliament we would lose Good Friday, Easter Saturday, Easter Sunday, Easter Monday and Christmas Day. Is that correct?

Reverend the Hon. Fred Nile: I did not say Easter Monday.

Dr JOHN KAYE: Not Easter Monday, so we would take away Good Friday, Easter Saturday and Easter Sunday.

Reverend the Hon. Fred Nile: Christian days.

Dr JOHN KAYE: And Christmas Day. I know the Reverend has been losing sleep over this issue, but that would not be the case. In the event that we did get control of this Parliament—

The DEPUTY-PRESIDENT (The Hon. Kayee Griffin): Order! The member with the call will address his remarks through the Chair.

Dr JOHN KAYE: Madam Deputy-President, just to set the reverend gentleman's mind at ease, we would not do that, so he might now desist in saying it.

Reverend the Hon. Fred Nile: Have you had a referendum of your members?

Dr JOHN KAYE: I would also—

The DEPUTY-PRESIDENT (The Hon. Kayee Griffin): Order! I remind all members that interjections are disorderly at all times.

Dr JOHN KAYE: I appreciate the ruling. To set the reverend gentleman's mind at ease, it is not party policy, nor would it be party policy, to ever take away a public holiday. Of course there is always, and has been, a debate about Australia Day and the Queen's Birthday, and there have been debates about creating other holidays that are more relevant to Australia, particularly to recognise the prior occupation of Aboriginal people. That is a debate that the Greens look forward to entering into, as to whether indeed the Queen's Birthday and Australia Day are appropriate days for celebration or, for example, Mabo Day would be a better substitution.

In addressing another issue, Reverend Nile suggested that the Greens were, somehow or other, anti-Christian. As Reverend Nile was talking about us being anti-Christian, I started counting my friends and colleagues in the Greens who are practising Christians and I got to a fairly large number before I decided that it was really a waste of time. I recognise that the reverend gentleman's problem is that he confuses criticism of church leaders with being anti-Christian—and that is appalling. Let us argue this by analogy. If, for example, the Hon. Catherine Cusack were to criticise the Prime Minister of Australia, that would not make her anti-democratic or anti-Federation or anti the Commonwealth Government. It would say that she was critical of a particular leader, just as being critical of some of the things that the Pope or Archbishop Pell or Archbishop Jensen or other church leaders might do does not make one anti-Christian. If the reverend gentleman wishes to interpret it that way, it is his right to do so, but he would be profoundly incorrect because that is not the position of the Greens. In fact it is not the position of anybody I know within the Greens. I know no-one in the Greens who you could validly describe, in any way whatsoever, as anti-Christian. You could describe some of them—me included—as having major issues with some of the leaders of the Christian church, but that certainly does not make them anti-Christian.

Reverend the Hon. Fred Nile: Scripture in schools?

Dr JOHN KAYE: Reverend the Hon. Fred Nile, by way of interjection, raises the issue of scripture in schools, by which I presume he is referring to the issue of special religious education.

The Hon. Catherine Cusack: Anyway, back to public holidays.

Dr JOHN KAYE: Madam Deputy-President, I will return to public holidays, but I look forward to the opportunity of debating—

The DEPUTY-PRESIDENT (The Hon. Kayee Griffin): Order! If members continue to interrupt the member with the call, I will place them on a call to order.

Dr JOHN KAYE: I will return to the bill, but just to respond to the interjection I look forward to a debate in this House—we have had a few already—on the issue of ethics and providing an alternative for those children who do not attend a religion on offer in those schools. The reverend gentleman is again, along with many of his colleagues, converting a concern for children whose families—many of whom are Christian; many of whom subscribe to other religions—do not either subscribe to religion on offer or choose to deal with religious and spiritual matters more appropriately in the home and not at school, as well as those children whose families are atheist or agnostic or do not subscribe to any particular religion. Providing an option for those children during the hours set aside for special religious education is not anti-Christian, it is not anti-Muslim, it is not anti-Jewish—it is not anti any religion whatsoever. It is simply addressing the welfare of those children who do not subscribe to a particular religion on offer. We have said that many times and we have been unable to break through the prejudices of those who are attacking the rights of those children, but that is clearly another matter. I now return with great joy to the fact that Easter Sunday is currently not recognised as a public holiday. Madam Deputy-President, I would really like Reverend Nile to hear this because this is significant to him.

Reverend the Hon. Fred Nile: I'm all ears.

Dr JOHN KAYE: That is wonderful. I understand that the reverend gentleman is all ears, and that is a wonderful thing, because presently Easter Sunday is not recognised as a public holiday. This legislation recognises Easter Sunday as a public holiday and we support that. We support the legislation. We support the recognition of Easter Sunday as a public holiday. Under the new government legislation these significant days—New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Sunday, Easter Monday, Anzac Day, the Queen's Birthday, Labor Day, Christmas Day and Boxing Day—will be celebrated on whichever day they occur, including on a Sunday. However, there will be a compensatory day off on the Monday if they fall on a Sunday.

This is a significant right of working people. The right to have days off is not only a benefit to working people, but also to their households, their families, their friends, their society and their community. It is an important mechanism by which people can replenish themselves, refresh themselves, and give themselves the opportunity to recover from the stresses of work. We have heard about people working behind counters and the stresses and strains of working behind counters, and there are many other jobs that create stress and for which public holidays are a catch-up opportunity, an opportunity for people to refresh themselves and to spend time with their families, with their friends, with their households and with their loved ones. That is an important right, which this legislation enshrines and the Greens support the Public Holidays Act.

The Shop Trading Amendment Bill 2010, the cognate bill, provides for a new Sydney trading precinct within which all shops that wish to open on Boxing Day will be free to do so. Shops outside that precinct may still apply for exemptions under the Act, as they currently can. Voluntary work conditions will be extended under this bill to apply for all employees of those shops, which are exempt from restrictions such as newsagents, chemists, restaurants and cafes, as well as employees of those shops who apply for exemptions under the Act. There are therefore mechanisms within the new Shop Trading Amendment Bill to protect the rights of people who do not wish to work on Boxing Day. Those people who wish to spend that time with their family quite correctly have the right to do so, and that right should be perpetuated and is now locked into legislation. That is a good thing and is something that the Greens support.

The Keneally Government is quite sensibly preparing to batten down the hatches against the onslaught on workers' entitlements that could occur under a future Coalition Government. This legislation will make it through both Houses of Parliament with the combined votes of the Greens and Labor, and possibly the Coalition will not object to it.

Reverend the Hon. Fred Nile: And the Christian Democratic Party.

Dr JOHN KAYE: And the Christian Democratic Party. I note the interjection of Reverend the Hon. Fred Nile, and I note it specifically because there will come a time—probably sooner rather than later—when the Coalition will be in power and when it is in power it will be under enormous pressure from the big end of town to wind back the number of days off that working people receive. It is very clear that there are a number of employers who are very keen to take away public holidays.

Reverend the Hon. Fred Nile: Shame!

Dr JOHN KAYE: I agree 100 per cent with Reverend the Hon. Fred Nile. Taking away days off for working people is an appalling act that undermines the capacity of individuals to work. I am not saying the Coalition supports that; I am saying it is the friends of the Coalition, the big end of town. There is no doubt that a future O'Farrell Government will be under a lot of pressure to wind back the number of days off that working people receive. I am particularly pleased to hear that Reverend Nile, who will be here for at least another four years, will vote, I presume, with the Greens and presumably with Labor members to make sure these conditions are never wound back.

The Hon. Rick Colless: Where did you dream up this nonsense?

Dr JOHN KAYE: I am pleased to note the interjection of the Hon. Rick Colless, who is saying a Coalition Government will not attempt to wind back public holidays.

The Hon. Rick Colless: That is not what I said. I asked you where you dreamt up this nonsense.

Dr JOHN KAYE: I note the Hon. Rick Colless refuses to say that a future Coalition Government will not attempt to wind back—

The Hon. Rick Colless: I didn't say that. I didn't say anything like that. I asked you where you dreamt up this nonsense.

Dr JOHN KAYE: Through you, Madam Deputy-President, I issue a challenge to Mr Colless to stand up and say a future Coalition Government will not attempt to wind back the number of days off. Members opposite are laughing and interjecting—

The DEPUTY-PRESIDENT (The Hon. Kayee Griffin): Order! The member with the call should ignore interjections. By responding he is inviting further interjections. I again remind members that interjections are disorderly at all times. Members should listen in silence to the remainder of the speech of Dr John Kaye.

Dr JOHN KAYE: I understand your ruling, Madam Deputy-President, and I will endeavour to ignore the interjections, no matter how silly they are. This legislation is an important example of what progressive Parliaments can achieve when progressive members use their numbers. The Greens support this legislation and look forward to the application of more such legislation.

The Hon. PENNY SHARPE (Parliamentary Secretary) [8.42 p.m.], in reply: I thank honourable members for their considered contributions to the debate. I believe an issue that is good for workers in this State has received broad support, as it should, across the Parliament. I commend the bill to the House.

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

Motion agreed to.

Bills read a second time.

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

Third Reading

Motion by the Hon. Penny Sharpe agreed to:

That these bills be now read a third time.

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

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO. 2) 2010

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

Motion by the Hon. Penny Sharpe agreed to:

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

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

TABLING OF PAPERS

The Hon. Penny Sharpe tabled the following papers:

1. Annual Reports (Statutory Bodies) Act 1984—Report of Building and Construction Industry Long Service Payments Corporation for the year ended 30 June 2010.

2. Independent Pricing and Regulatory Tribunal Act 1992—Report of the Independent Pricing and Regulatory Tribunal entitled "Energy distribution and retail licences: Compliance Report for 2009/10—Report to the Minister for Energy", dated October 2010.

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

BUSINESS OF THE HOUSE

Suspension of Standing and Sessional Orders: Order of Business

The Hon. IAN COHEN [8.46 p.m.]: I move:

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 6 in the Order of Precedence, relating to the Threatened Species Conservation Amendment (Ecological Consultants Accreditation Scheme) Bill 2010, be called on forthwith.

I seek precedence for this matter and believe I have the support of the House. We have just passed the Local Government Amendment (Environmental Upgrade Agreements) Bill, a vital piece of legislation. The importance of the role of ecological consultants will be central to the bill and it is imperative that such regulation is set in place. It is certainly long overdue that some degree of regulation of environmental consultants be put in place in this State. I seek to progress this matter through the House at the earliest possible opportunity because I believe the building in which we are working is suffering from sick building syndrome. I have just been talking to Reverend the Hon. Dr Gordon Moyes, who is feeling somewhat under the weather, and other people have suffered terribly in this building. I believe it is a sick building and it is time there was a proper investigation by accredited consultants. We have seen the United Nations report on the global biodiversity outlook and I believe we have reached a tipping point. There are certainly adequate reasons for bringing forward this legislation and I seek the agreement of the House.

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

Motion agreed to.

Order of Business

Motion by the Hon. Ian Cohen agreed to:

That Private Member's Business item No. 6 in the Order of Precedence be called on forthwith.

THREATENED SPECIES CONSERVATION AMENDMENT (ECOLOGICAL CONSULTANTS ACCREDITATION SCHEME) BILL 2010

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

Second Reading

The Hon. IAN COHEN [8.50 p.m.]: I move:

That this bill be now read a second time.

The aim of the Threatened Species Conservation Amendment (Ecological Consultants Accreditation Scheme) Bill 2010 is to establish a robust and comprehensive accreditation scheme for consultants who are involved in preparing ecological assessments and reviews. Ecological consultants play a fundamental role in the New South Wales environmental planning and natural resource management system. Their work provides us with technical information about our biodiversity and ecosystem functions. Their work enables and empowers planners, governments, proponents and communities to make informed and forward-thinking decisions about our natural environment. It allows us to implement the principles of ecologically sustainable development in a real and meaningful way.

We should not underestimate the role and contribution of ecological consultants to our irreplaceable, unique and natural landscape. I acknowledge the excellent work done in New South Wales by ecologists. Other key professions in our society—doctors, veterinary practitioners, lawyers, accountants and engineers, to name but a few—have adopted accreditation to ensure important services are delivered to our communities in a manner that promotes professionalism and quality assurance. Professional regulatory accreditation also drives professional engagement, knowledge sharing, capacity building and continuing professional education. A number of ecological consultants from New South Wales are members of associations such as the Ecological Consultants Association of New South Wales, the Ecological Society of Australia, the Royal Zoological Society of Australia, the Environment Institute of Australia and New Zealand and Greening Australia, to name but a few. It speaks volumes about industry that it has organised to form associations and to ensure continuing professionalism in that sector.

The New South Wales Government has always envisaged an accreditation scheme for ecological consultants. Section 113 of the Threatened Species Conservation Act will enable the Director General of the Department of Environment, Climate Change and Water [DECCW] to institute an accreditation scheme for consultants undertaking species impact statements. Unfortunately, the director general has never used this power, even though the discretion has been part of the Act for the past eight years. In January this year I wrote to Minister Sartor about the need for an ecological consultant accreditation scheme. I wrote that letter after representatives from the North Coast Environment Council, the Nature Conservation Council and a number of ecological consultants expressed concern about the lack of an accreditation scheme, and about the fact that some proponents were consultant shopping. There were further concerns that some proponents were putting improper pressure on consultants to write reports that were advantageous to their development applications.

While these concerns relate only to a small minority of consultants, the implications of poor species impact statements and biodiversity assessments are significant. In the context of the Contaminated Lands Management Act we acknowledge the importance to human health and safety of having certainty and trust in site auditors and their work. The same is true of the work of ecological consultants. One argument that I have heard put forward by those opposed to such a scheme is that it costs too much money. From questions placed on

notice I obtained information about the cost of administering current accreditation schemes managed under DECCW legislation. In 2008 the site auditors' accreditation scheme for the Contaminated Lands Management Act cost $272,740 to administer. The net operating cost for the Biobanking Accredited Assessors Panel was $2,684. That is a nominal price to pay for an accreditation process that further builds on the professionalism of the ecological consultant industry.

While this bill obviously has not gone through a regulatory impact statement, it would be fair to say that the cost of the model proposed in this bill would be minimal. Turning to the substantive provisions of the bill, it seeks to introduce a new part 8A into the Threatened Species Conservation Act 1995 which would implement an ecological consultant accreditation scheme. Proposed section 138 requires ecological consultants preparing ecological assessments to have accreditation under part 8A. Proposed division 1 defines ecological assessments as:

> (a) an environmental assessment, or part of an environmental assessment, carried out for the purposes of compliance with the environmental assessment requirements under Part 3A of the Planning Act that relates to biodiversity values or the impact of a project on biodiversity values,
>
> (b) an environmental impact statement, or part of an environmental impact statement, prepared for the purposes of compliance with Part 4 or 5 of the Planning Act that relates to biodiversity values or the impact of a development or activity on biodiversity values,
>
> (c) any other assessment, or part of an assessment, prepared to assist a consent authority in deciding under the Planning Act whether something is likely to have a significant effect on threatened species, populations or ecological communities, or their habitats.

That is consistent with section 5A of the Planning Act. The definition of "ecological assessments" continues as follows:

> (d) a species impact statement referred to in Division 2 of Part 6,
>
> (e) any survey or assessment of biodiversity values or of the impact of a proposal on biodiversity values prepared or carried out for the purposes of this Act (such as for use in connection with biodiversity certification under Part 7AA of the biobanking scheme under Part 7A) ...

Ecological assessments will be required to be undertaken with accredited ecological consultants. It is important to note that an employee who prepares an ecological assessment under the supervision of an accredited ecological consultant does not have to be accredited under that part. Proposed division 2 sets out the process of accreditation. The criteria for accreditation will be specified by regulations and in consultation with the industry. During consultation on the draft bill ecological consultant associations indicated that there was significant contestation and debate about prerequisites and requirements for working as an ecological consultant. If someone wants to become accredited he or she would need to apply to the director general and his or her application would either be granted, with or without conditions, or be denied altogether.

The director general must provide a written response to an applicant letting that applicant know whether he or she has been granted or denied accreditation. In cases where accreditation has been denied, reasons for that must be given. If accreditation is granted accreditation will run for three years, after which time applicants would need to apply for renewal, although renewal might be refused if it is deemed that they are no longer eligible, or there are grounds for suspension or revocation of accreditation. Again, this decision must be provided in writing with reasons given for any refusal to renew. A person whose application for renewal is denied must be provided also with an opportunity to make submissions about it.

Accreditation may be revoked or suspended by the director general in certain circumstances. These include situations where the person is no longer eligible for accreditation; he or she has not satisfied the continuing education requirements; he or she has contravened any of the provisions of the changes to the Act or regulations, or a condition of the accreditation, if it is recommended following peer review; if false or misleading information is provided by that person; if an accreditation fee is not paid; or any other matter that may be prescribed by the regulations. As the proposed changes have the potential to impact significantly on a person's livelihood, the bill provides important protection for ecological consultants through a right of appeal to the Administrative Decisions Tribunal. A review by the tribunal may be applied for if a person does not agree with the decision not to grant accreditation, to refuse to renew accreditation, to impose, vary or revoke conditions of an accreditation, or to revoke or suspend accreditation completely.

Proposed division 3 seeks to establish an accreditation panel to manage the accreditation of ecological consultants, make recommendations on eligibility criteria, and undertake peer review of ecological assessments

of referred assessments. There will be five members on the panel, with one of those being the director general or an officer of the department who will be responsible for chairing the panel. The other four members will be experts in biodiversity values who are not officers of the department. Each member will sit on the panel for a period of five years but may be reappointed after that time. There are provisions within proposed division 3 relating to the management and disclosure of pecuniary interests of those serving on the accreditation panel. Under proposed division 4 the accreditation panel will have a peer review function which will allow it to review ecological assessments that have been carried out and to make recommendations to the director general on its findings.

This is important because it will allow any ecological consultant, consent authority or other person who is supported by an accredited ecological consultant to request a peer review of an assessment if they are not satisfied that the assessment was undertaken in accordance with industry best practice or any other matter that may be stipulated in regulations. This review will involve consideration of the methodology used, species identification, writing skills employed and the ability of the ecological consultant to develop and advise on appropriate management and mitigation measures. To protect consultants from mischievous requests for a peer review of their work the accreditation panel may refuse to conduct a peer review if it believes the request is frivolous or vexatious. It is hoped that the peer review function, when combined with the overall accreditation process, will help prevent "consultant shopping" whereby a proponent will deliberately choose an ecological consultant that is known to produce outcomes that will be in their favour.

The Hon. Rick Colless: The Greens would never do that, would they?

The Hon. IAN COHEN: I acknowledge the interjection of the Hon. Rick Colless about the Greens doing similar ecological consultant shopping. That is not the case, but I know a small number of highly qualified consultants—it is inappropriate to mention names—who do not receive a great deal of work in the industry because they will not be bent from their scientific integrity. They assess situations as they see appropriate and many of them do not get a great deal of work because they are not malleable. So, conversely, they are not bending the rules for the ecological perspective; they are actually adhering exactly to the ecological perspective rules, something they set out to do. They have a high level of professionalism. Often they do not get the work others do. It tends to work the other way in respect of consultant shopping. During the consultation with industry members concerns were raised about the impartiality of the panel and the danger of an individual member's professional interests being advanced under cover of the accreditation scheme. I have addressed this concern by including requirements for disclosure of pecuniary interests which will cover direct and indirect interests in matters that are being considered or about to be considered by the panel. This will include whether they are employed, or their partner is employed, in a particular company or either has some other specified interest. These interests are to be recorded and the member who has disclosed them must not be involved in the matter unless the director general or the whole panel agrees that they can.

A number of offences will be introduced through the bill. It will become an offence for a person to prepare or carry out an ecological assessment, or indicate they are able to carry out an assessment, unless they are accredited. This will not apply to a person who is preparing or carrying out an assessment under the directions or supervision of an accredited ecological consultant. This clarification has been made to allow for junior ecologists participating in the preparation and carrying out of assessments as part of their professional development. It also acknowledges that a range of professionals may be involved in an assessment, for example geographical information systems [GIS] and urban design experts feeding information into an overarching ecological assessment document. It will also become an offence to make false representations about being accredited.

I acknowledge the time and effort given by groups and individuals who provided such helpful and considered feedback on the various versions of this bill. I thank those people and acknowledge that while we have not agreed on every single point I have tried to draft a bill with which the industry is comfortable while still achieving some of the policy objectives I have outlined in this speech. I commit to an ongoing dialogue on this bill with the sector to flesh out any final issues or problems they may have or that remain unresolved. I commend the bill to the House.

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

BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT AMENDMENT BILL 2010

STATE REVENUE LEGISLATION FURTHER AMENDMENT BILL 2010

Bills received from the Legislative Assembly.

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

Motion by the Hon. Penny Sharpe agreed to:

That the bills be read a first time and printed, standing orders be suspended on contingent notice for remaining stages and the second readings of the bills be set down as orders of the day for a later hour of the sitting.

Bills read a first time and ordered to be printed.

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

COURTS AND CRIMES LEGISLATION FURTHER AMENDMENT BILL 2010

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

Second Reading

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Citizenship, Minister for Regulatory Reform, and Vice-President of the Executive Council) [9.06 p.m.]: I move:

That this bill be now read a second time.

The purpose of the Courts and Crimes Legislation Further Amendment Bill 2010 is to make miscellaneous amendments to a range of courts and tribunals, and crime-related legislation of New South Wales. The bill is part of the Government's regular legislative review and monitoring program and will amend a number of Acts to improve the efficiency and operation of our justice system. I shall now outline each amendment in turn. Schedule 1 to the bill makes two amendments to the Administrative Decisions Tribunal Act 1997. Firstly, it amends section 55 to allow the Administrative Decisions Tribunal to deal with an application to review the reviewable decision where the applicant has applied for an internal review of that decision and the review is not finalised. The tribunal can deal only with the application in such circumstances where it is satisfied that it is necessary in order to protect the applicant's interests.

Secondly, schedule 1 to the bill amends section 71 to provide legislative immunity to Guardians ad Litem panel members who act in good faith in proceedings in the tribunal. Guardians ad Litem panel members are appointed by the Director General of the Department of Justice and Attorney General for a period of three years. Although some protection is provided at common law for Guardians ad Litem, currently Guardians ad Litem panel members acting in good faith are required to cover the costs of their own defence, should legal proceedings be commenced against them. The amendment is also replicated in this bill under schedule 2 to the Adoption Act 2000, schedule 5 to the Children and Young Persons (Care and Protection) Act 1998, schedule 7 to the Community Services (Complaints, Reviews and Monitoring) Act 1993 and schedule 8 to the Consumer, Trader and Tenancy Tribunal Act 2001. Following commencement of these amendments it is intended that the Crown Solicitor will act on behalf of a Guardians ad Litem panel member in the event that legal proceedings are commenced against them.

Schedule 3 to the bill amends the Children's Court Act 1987 to increase the maximum appointment period for a Children's Magistrate from three to five years in accordance with a proposal from the Wood report into Child Protection Services in New South Wales.

Schedule 4 to the bill amends the Youth Conduct Order scheme, which is established by part 4A of the Children (Criminal Proceedings) Act 1987. This schedule also amends the Children (Criminal Proceedings) Regulation 2005. Members of the House would know that the Government has been piloting the youth conduct order scheme since 1 July 2009. The pilot currently is being independently evaluated by the Nous group, which has prepared an interim evaluation report that is now available publicly. This report noted several areas of improvement to the youth conduct order scheme as well as making recommendations about the scheme's

expansion. The bill implements many of the suggestions. I shall deal first with the main amendments to the Children (Criminal Proceedings) Act 1987 made by schedule 4.1. Item [3] replaces the current definition of "relevant offence" with a new definition. This new definition significantly expands the category of offence that can be dealt with under the scheme. A relevant offence is any offence that the Children's Court has jurisdiction to hear and determine, other than the following offences: a prescribed sexual offence within the meaning of the Criminal Procedure Act 1986, any other serious children's indictable offence, and a traffic offence.

Allowing people who are charged with or who have pleaded guilty or who have been convicted of more serious offences to participate in the scheme recognises that a youth conduct order is not a soft option. Rather, through the intensive inter-agency case management offered through the scheme, a youth conduct order has the potential to directly address the underlying causes of a young person's offending behaviour.

Item [7] introduces new factors that the court must consider before it makes a suitability assessment order in relation to a young person. When the legislation is enacted, it must be satisfied that it is appropriate for a child to be dealt with under the scheme having regard to the seriousness of the relevant offence, the degree of violence if any that is involved in the offence, any harm caused to any victim, and the number and nature of any previous offences committed by the child.

Item [8] precludes the Children's Court from making a suitability assessment in relation to a child before a relevant offence if, having regard to the above matters, the court considers that the appropriate penalty for the relevant offence would be a control order under section 33 (1) (g) of the Act. To put that another way, if the court is of the view that, despite a young person substantially complying with a youth conduct order, a control order still would be the appropriate penalty, the Children's Court should not refer the young person for a suitability assessment order.

Item [11] clarifies that section 48Q, which deals with the consequence of the revocation of a youth conduct order, does not authorise the Children's Court to impose on a child for a relevant offence a penalty that is more severe than the penalty that would have been imposed on the child if he or she had not been the subject of a youth conduct order. Item [12] amends section 48R to allow the Children's Court to make an order dismissing the charge for the relevant offence whether the child did or did not plead guilty to the offence. The current section 48R empowers the Children's Court to dismiss the charge only if the young person has pleaded not guilty. Of course, the Children's Court could also deal with the child by way of a dismissal, if the child had pleaded guilty to the offence under section 33 of the Act.

Schedule 4.2 amends the Children (Criminal Proceedings) Regulation 2005. Of particular note are items [1] to [3]. Item [1] expands the number of participating local area commands to include Blacktown, St Marys, Liverpool and Macquarie Fields commands. Items [2] and [3] amend the prescribed eligibility criteria in relation to a young person's participation in the scheme. Item [2] replaces the residential requirement. Now, among other matters, a young person is eligible to participate in the scheme if the young person has an appropriate connection with a participating local area command. An appropriate connection can be either or both of the following conditions: firstly, the person concerned permanently or temporarily resides in, or is an habitual visitor to, the area of the command; or, secondly, the relevant offence—or, in a case in which more than one relevant offence is sought to be dealt with, at least one of the offences—was committed, or was alleged to have been committed, in the area of the command.

The Government has consulted closely with its youth conduct orders advisory committee and has been greatly assisted by those discussions. Membership of this committee includes representatives from the Aboriginal Legal Service, the Law Society of New South Wales, Legal Aid, the Council of Social Service of New South Wales [NCOSS], the Youth Action and Policy Association, the Victims Advisory Board, the National Children's and Youth Law Centre, the Regional Communities Consultative Council, the Intellectual Disability Rights Service and the Youth Justice Coalition.

In relation to the Civil Procedure Act 2005, schedule 6.1 to the bill amends the Civil Procedure Act 2005 to insert a new part 10 to provide for a comprehensive representative proceedings regime in the New South Wales Supreme Court. The new regime is substantially modelled on part IVA of the Commonwealth's Federal Court of Australia Act 1976, plus the inclusion of two new procedural rules to clarify the existing Federal regime.

Representative proceedings, which are also known as class actions, are proceedings brought by one person on behalf of a group of people with the aim of resolving common issues and factual disputes among that

group. In New South Wales, rules 7.4 and 7.5 of the Uniform Civil Procedure Rules 2005 make some provision for representative proceedings. However, these rules lack procedural clarity. The regime that is proposed by these amendments will provide a greater level of certainty for both litigants and the court, and will enhance the community's access to justice.

Extensive consultation has been undertaken on the introduction of a comprehensive representative proceedings regime in New South Wales. A consultation draft of the proposed amendments and a discussion paper recently were publicly released for comment. Nineteen submissions were received and all submissions were generally supportive of the proposed regime. The bill's comprehensive set of rules for representative proceedings in New South Wales is modelled substantially on the Federal and Victorian regimes and includes provisions dealing with standing requirements, the nature of the group, substituting the representative party, settlement of proceedings, costs, and appeals.

Two additional procedural rules also have been included. The first additional rule clarifies that representative proceedings may be taken against several defendants, even if not all group members have a claim against all defendants. The provision overcomes the contrary view of the Commonwealth expressed in relation to the operation of part IVA of the Federal Court of Australia Act 1976 in *Philip Morris (Australia) Ltd v Nixon* [2000] 170 ALR 487. The second rule clarifies that it is not inappropriate for representative proceedings to be brought on behalf of a limited group of identified individuals. This is consistent with the view taken by the Full Court of the Federal Court in relation to the operation of the Federal part IVA in *Multiplex Funds Management Limited v Dawson Nominees Pty Limited* [2007] 244 ALR 600.

The Government has taken the opportunity to prescribe this view in legislation to avoid unnecessary interlocutory battles and appeals on this point. Both of these new procedural rules arose out of the 2009 Commonwealth Attorney-General's Department's report on access to justice and the Victorian Law Reform Commission's report, "Civil Justice Review", in 2008. The new regime established by these amendments will give the New South Wales Supreme Court an efficient and effective procedure to deal with representative proceedings. The broad consistency between this bill and the existing Federal and Victorian regimes also will provide New South Wales litigants with a greater degree of certainty and clarity.

Schedule 6.2 to the bill amends the Civil Procedure Act 2005 to encourage people to resolve their disputes outside the court system whenever possible without limiting access to, or the independent discretion of, our courts. In doing so, these reforms extend the overriding purpose in section 56 of the Civil Procedure Act, which is the "just, quick and cheap resolution of the real issues" to civil disputes before they are commenced in court. We know that most civil disputes never get to court in the first place. They are resolved either informally or through the growing number of alternative dispute resolution [ADR] avenues that are available. In fact, of those disputes filed in court, up to 97 per cent are resolved before the final hearing. The reforms will require parties to identify the issues, exchange relevant information and, most importantly, to start talking to one another before they set foot in the courthouse. That not only will increase the chances of early settlement but also should assist the parties to keep the costs of resolution proportionate to the subject matter of the dispute.

Specifically, parties will be required to take reasonable steps, when appropriate, to resolve or at least to narrow the issues in their civil dispute before commencing court proceedings, including consideration of the use of alternative dispute resolution. Reasonable steps may include notifying the other person of the issues and offering to discuss them with a view to resolving the dispute; responding to any such notification; exchanging information and documents relevant to the dispute; considering and when appropriate proposing options for resolving the dispute, including engaging in genuine and reasonable negotiations and/or alternative dispute resolution processes; and taking part in alternative dispute resolution processes.

The amendments also expressly recognise that the meaning of "reasonable steps" must be understood by having regard to a person's situation as well as the nature of the dispute, including the value and/or complexity of the claim. This makes it clear that parties are not required to take pre-litigation steps that are unreasonable or disproportionate in terms of costs or time. It also stipulates that a person's situation, which may include, for example, social or economic disadvantage, language or literacy problems, a relevant disability, health issue or other factors, can be considered when determining what is reasonable.

As well as introducing a general requirement to take reasonable pre-litigation steps, an important feature of the bill is to set up a framework for the courts to develop appropriate tailored pre-action protocols in specific matter types. When a bespoke pre-action protocol has been developed, compliance with it will meet the pre-litigation requirements in this bill to take reasonable steps. The bill also appropriately sets out exemptions to

the pre-litigation requirements, including appeals, ex parte proceedings, proceedings in which parties already have been subject to separate pre-litigation processes, disputes involving vexatious litigants and civil penalty provisions.

The bill also gives the courts power to make rules excluding different classes of matter from the requirements when appropriate. For example, proposed section 18B (3), in schedule 6 to the bill excludes from the proposed requirements "any civil proceeding in relation to the payment of workers compensation". This includes claims for statutory damages and for work injury damages as defined by the New South Wales Workplace Injury Management and Workers Compensation Act 1998. Those proceedings are excluded because they are covered by their own pre-action processes.

Parties who are subject to the pre-litigation requirements will be required to attach a dispute resolution statement to the first substantive document they file in court that certifies, if they are the plaintiff, the steps that have been taken to try to resolve or narrow the issues in dispute or, if no such steps were taken, the reasons why and, if they are the defendant, whether they agree with the plaintiff's statement; if not, what other reasonable steps they believe could usefully be undertaken to resolve the dispute.

It is important to note that a person will not be prevented from starting or responding to a case because he or she has not complied by taking reasonable steps or filing the statement. Generally, each party is to bear his or her own costs of complying with pre-litigation requirements. However, the court will have the discretion to take pre-litigation conduct into account when making costs orders either with respect to pre-filing costs or costs of the proceedings as a whole. In doing so the court may have regard to any relevant matters, including any reasons given for failure to comply with the reasonable steps requirements and whether or not a person was legally represented.

There may be many reasons for not taking pre-filing steps that a court may take into account, for example, where one of the parties is terminally ill, if the safety of a person is threatened, where a limitation period is about to expire or if the litigation concerns matters of public interest. The amendments also explicitly protect the integrity and confidentiality of mediation conducted in accordance with pre-litigation requirements. Evidence of discussions, admissions and documents produced for the purposes of the mediation will not be admissible before a court except in certain circumstances. Furthermore, it is not intended that the parties be disadvantaged by disclosing relevant information and documents in accordance with the pre-litigation requirements. To this end, these reforms extend the existing protection for documents exchanged in the course of litigation to those disclosed in the pre-litigation process. These measures will ensure that parties to a dispute can engage in frank and constructive negotiations that maximise the likelihood of settlement.

These reforms follow extensive consultation on the Government's ADR Blueprint released in 2009. Extensive stakeholder submissions were received; a consultative committee, consisting of senior representatives of the Supreme Court, the District Court, the Local Court, the New South Wales Bar Association, the Law Society of New South Wales and Legal Aid New South Wales, and various industry and community groups, provided advice; and we considered the experience of other jurisdictions. The Government thanks all those who took time to contribute to these reforms. Schedule 6.3 to the bill amends section 25 of the Civil Procedure Act 2005 and schedule 17 amends the Supreme Court Act 1970 to provide that the Supreme Court may refer a question of foreign law to a foreign court and respond to a question from a foreign court concerning Australian law. These amendments support recent changes to the Uniform Civil Procedure Rules and provide a more cost-effective and efficient process for dealing with foreign law matters in Supreme Court proceedings.

Schedule 9 to the bill amends section 44 of the Crimes Act 1900, which as presently drafted is limited in its application and would benefit from the introduction of modernised language that is gender neutral. The amendment updates the language used in the section and covers a range of modern relationships between adults where one party has a legal duty to provide basic necessities for the other. The recent joint report of the Australian Law Reform Commission and the New South Wales Law Reform Commission on family violence also recommended that section 44 be amended to ensure that its underlying philosophy and language are appropriate in a modern context. The reference to legal duty in section 44 (1) (a) encompasses both statutory and common law duties. The common law duty is set out in the negligent manslaughter matter, *R v Taktak* (1988) 14 NSWLR 226, where one of the key issues involved consideration of the circumstances in which a person is under a duty which obliges them to care for another, gross breach of which, resulting in death, may render him or her guilty of manslaughter.

Where the Crown relies on criminal negligence by omission, it must establish the existence of a legal duty and not merely a moral obligation. There must be a personal legal duty of such a nature that the natural and

ordinary consequences of a breach of that duty is a danger to life. Examples of a relationship that may give rise to such a duty include where an accused has assumed a contractual duty of care, for instance, in a paid care arrangement where the accused has agreed to provide necessities of life; or where an accused has voluntarily assumed the care of the victim who is unable to help themselves and the accused has so secluded the victim as to prevent others from rendering aid. This latter situation was considered in the Taktak decision to which I referred. This provision will ensure the protection for some of the most vulnerable in our community, being those who are dependent on others for the basic necessities of life.

Schedule 10 to the bill amends section 39 of the Crimes (Criminal Organisations Control) Act 2009. The first application under the Act is still before the courts. Therefore it is proposed that section 39 be amended to extend the review period from two years to four years to ensure that the Ombudsman is reviewing substantive action under the Act. Schedules 11 and 12.1 to the bill make important reforms to the provision of evidence in sexual assault matters, most significantly to the Sexual Assault Communications Privilege contained in part 5 division 2 of the Criminal Procedure Act 1986. I shall deal with the amendments made to the Criminal Appeal Act 1912 which, as members of the House will see, are closely related to the amendments to the Criminal Procedure Act 1986 made by schedule 12.1.

Schedule 11 amends the Criminal Appeal Act 1912. Item [1] gives standing to the subpoenaed person and the protected confider to appeal a ruling made under chapter 6 of part 5, division 2 of the Criminal Procedure Act 1986. This includes a decision by the court to grant leave, as well as a determination by the court that a document or evidence does not contain a protected confidence within the meaning of the division. Item [2] is a transitional provision that specifies that the amendments to the Criminal Appeal Act 1912 extend to proceedings commenced but completed before the commencement of those subsections. The importance of these reforms will become clearer once I have dealt with the amendments made to the Criminal Procedure Act 1986 by schedule 12.1. The New South Wales Government first introduced legislation to protect the confidentiality of a sexual assault victim's counselling records in the Evidence Amendment (Confidential Communications) Act 1997.

The Act protected confidential communications such as counselling notes, and emphasised the public interest in ensuring the confidentiality of counselling relationships. The then Attorney General, the Hon. Jeff W. Shaw, in the second reading speech on the Evidence Amendment (Confidential Communications) Bill in May 1997, gave several reasons why the Government considered that it was necessary to provide a specialised privilege for sexual assault counselling communications. These reasons are still significant 13 years later. In 1997 New South Wales was the first Australian State to introduce a specialised sexual assault counselling communications privilege. Today all but one of the Australian States and Territories have introduced similar protections. The national importance of this issue is highlighted by the fact that at the May 2010 meeting of the Standing Committee of Attorneys-General [SCAG] in Melbourne Ministers agreed on seven principles to be applied as the minimum standard for protection of sexual assault counselling communications in Australia where jurisdictions decide to provide such a protection.

It is pleasing that the current New South Wales provisions comply with each of the Standing Committee of Attorneys-General principles. However, that is not to say that the Government should rest on its laurels. In recent years concerns have been expressed by numerous stakeholders that the current privilege is not operating as effectively as it was intended. As such, the Government has taken the opportunity to review the division. To this end, it has been assisted by submissions made by the Women’s Legal Service New South Wales and the law firms Blake Dawson, Clayton Utz and Freehills, which, together with the Office of the Director of Public Prosecutions and the New South Wales Bar Association, operated a Sexual Assault Communications Privilege Pro Bono Referral Pilot at the Sydney Downing Centre Local Court and District Court from February 2009 to February 2010.

The reforms that this bill introduces are informed by the findings of the pro bono referral pilot, as well as the Standing Committee of Attorneys-General principles, and, together with the recently announced establishment of a specialist government unit, which will provide free legal representation to victims who have had their counselling records subpoenaed, will ensure that the sexual assault communications privilege is strengthened. I turn now to the detail of schedule 12.1, which amends the Criminal Procedure Act 1986. Item [1] amends the definition of "sexual offence witness" contained in section 294D of the Act. Currently, a sexual offence witness is defined as a witness, other than the complainant, against whom it is alleged that the accused has committed a sexual offence not being the sexual offence that is the subject of the proceedings. A sexual offence witness is entitled to the same protections when giving their evidence as the complainant in the

proceedings, including giving evidence by closed-circuit television, being entitled to a support person and allowing the court to make an order directing that the identity of a sexual offence witness will not be publicly disclosed.

However, currently the definition of "sexual offence witness" does not extend to witnesses who were the subject of sexual misconduct that did not fall within the provisions of the Crimes Act 1900 as enacted at the time that the conduct occurred, but which conduct would now be an offence. An example of such conduct is grooming by adult offenders of children in order to commit unlawful sexual activity, which was first introduced into the Crimes Act 1900 in 2007. The current definition of "sexual offence witness" also does not apply to witnesses who were the subject of sexual misconduct that is alleged to have occurred in interstate or overseas jurisdictions. Item [1] rectifies these anomalies by extending the definition of "sexual offence witness" to include those two classes of witnesses.

A sexual offence witness will now be defined as any witness in the proceedings, other than the complainant, who is alleged to have been the victim of a prescribed sexual offence committed by the accused person, or acts of the accused person that would constitute a prescribed sexual offence were those acts to occur in this State at the time of the proceedings.

Item [3] clarifies that criminal proceedings as defined under the division include pre-trial and interlocutory proceedings. Item [4] amends the definition of sexual assault offence. This amendment extends the privilege to witnesses who were the subject of sexual misconduct that did not fall within provisions of the Crimes Act 1900 as enacted at the time that the conduct occurred, but would now be an offence; witnesses who were the subject of sexual misconduct that is alleged to have occurred in interstate or overseas jurisdictions; and witnesses who fall into both of the above categories.

Item [4] repeals sections 297 to 299D and replaces them with new provisions that are clearer, more prescriptive and offer better protection to sexual assault victims who have their counselling records subpoenaed by the defence. It is important to note that the common law is not ousted by the privilege in this area; that is to say, the requirement for a subpoena to have a legitimate forensic purpose still exists. In addition to this requirement, however, any party seeking to compel a person to produce a document recording a protected confidence must also comply with this section and obtain leave from the court.

The sexual assault communications privilege is designed to limit the disclosure of protected confidences at the earliest point possible: for a complainant who has gone to a counsellor to discuss the sexual assault, it is little comfort to him or her if the documents are not to be adduced in evidence at the trial if they have already unnecessarily been disclosed to the defence by an order of the court. The privilege is not just designed to prevent the unnecessary adduction of evidence of protected confidences before a jury, but is designed to prevent the inappropriate subpoena of such confidences in the first place, and then the inappropriate granting of access to them.

New section 297 retains the current absolute privilege in relation to preliminary criminal proceedings. That is, protected confidences continue to be inadmissible in relation to preliminary criminal proceedings which are defined as committal proceedings or proceedings relating to bail. The court does not have the power to grant leave in those proceedings. New section 298 clarifies that a protected confidence can be produced or adduced in evidence in criminal proceedings only if the court gives leave. Under subsection (1) a new requirement is introduced to obtain leave from the court before seeking to compel a person to produce a document recording a protected confidence in, or in connection with, any criminal proceedings.

Under subsection (2) leave of the court must also be obtained before a document recording a protected confidence can be produced in, or in connection with, any criminal proceedings. Under subsection (3) leave must also be obtained before evidence can be adduced in any criminal proceedings if it would disclose a protected confidence or the contents of a document recording a protected confidence. The defence must have some legitimate forensic purpose for seeking the issue of a subpoena for records in the first place, or the subpoena is merely fishing and can be set aside as abusive without resort to these provisions.

New section 299 replaces the old section 303 and states that the court must satisfy itself that a witness, party or protected confider, which includes the victim or other person who made the protected confidence, who may have grounds for an application for leave, objection to the production of a document, or the adducing of evidence, is aware of the effect of the division, and has been given a reasonable opportunity to seek legal advice. The importance of this section is highlighted by its new location at the beginning of the division. That is, the

question of whether the protected confider is aware of the protections offered by the division should not be an afterthought, given its importance in ensuring that the division offers effective protection. The new requirement for the victim to be given a reasonable opportunity to seek legal advice strengthens the earlier protection and, together with government-funded representation for victims in applications under this division, will ensure that the confidentiality of counselling records of sexual assault victims are better protected.

New section 299A gives a protected confider who is not a party standing to appear in criminal proceedings or preliminary criminal proceedings, if a document is sought to be produced or evidence is sought to be adduced that may disclose a protected confidence made by, to or about the protected confider. Previously, the protected confider had to seek leave to appear in criminal proceedings under section 298 (7), and had no statutory right of appearance in preliminary criminal proceedings. This section gives the protected confider automatic standing by right, and not by leave, and is an important new protection to assist sexual assault victims to successfully object to applications made under the division.

It is necessary for standing to apply to preliminary criminal proceedings, even though the privilege is absolute in these proceedings, due to the fact that, on occasion, protected confidences may inadvertently be returned in relation to a defence subpoena without the defence requesting them. For instance, the defence may subpoena a victim's school records as part of their preparation of the accused's case in preliminary proceedings, not intending that protected confidences will be produced amongst the records, and therefore not being restricted by section 297. If, when the documents are produced to the court by the record holder, they also include protected confidences such as school counselling records, the protected confider needs standing at this stage to ensure that he or she can object to the production of, or the granting of access to, the documents to the defence. New section 299B describes the process the court may undertake if a question arises under this division relating to whether a document or evidence contains a protected confidence.

The court may make any orders it thinks fit to facilitate its consideration of a document or evidence under this section, however, it must be considered in the absence of the jury. Subsection (3) specifies that the court must not make available or disclose to a party, other than a protected confider, any document or evidence to which the section applies, or the content of any such document, unless under subsection (a) the court determines that the document does not record a protected confidence or that the evidence would not disclose a protected confidence, in which case clearly the privilege does not apply; or, under subsection (b), a party has been given leave under this division in relation to the document or evidence and the making available or disclosing the document or evidence is consistent with that leave; that is, in accordance with the court's determination under section 299D.

This allows the court independently to inspect or consider the documents in order to determine whether they contain a protected confidence. It also allows the court to grant first access to a protected confider. However, this section does not allow the court to adduce evidence from the protected confider about the substance of the protected confidence; any disclosure or adduction of evidence relating to the content of the protected confidence must be done in accordance with section 299D. To do otherwise would subvert the privilege and render it useless. Thus, this section assists the court in considering whether or not there may be a protected confidence, but does not regulate the production or adduction of a protected confidence, which is provided for in section 299D.

New section 299C deals with the notice requirements for an application for leave. It provides that the applicant for notice must, as soon as is reasonably practicable, give notice in writing of the application to each party and each relevant protected confider. If the protected confider is not a party to the proceedings the notice can instead be given to the prosecutor or, if another person or body is specified by the regulations, that person or body. The prosecutor must then ensure that a copy of the notice is given to the protected confider within a reasonable time after its receipt. Subsection (4) introduces a new requirement that prohibits the court from granting an application for leave under the division until at least 14 days, or such shorter period as may be fixed by the court, after the relevant notices have been given under subsections (1) and (2).

Subsection (4) specifies three circumstances in which the court may waive the requirements to give notice. They are if notice has already been given in respect of an application under this division, being an application that relates to the same protected confidence and the same criminal proceedings, the principal protected confider has consented in writing to the notice being waived, or the court is satisfied that there are exceptional circumstances that require notice to be waived. The first two categories are self-explanatory. However, some elucidation of what are "exceptional circumstances" is required. The fact that the trial is due to

commence either the day of the application for leave, or perhaps in a number of days, will not of itself amount to exceptional circumstances. The statutory notice period is now specified as 14 days under subsection (4), and this is the time frame that should be complied with by the applicant in all but a small number of cases.

New section 299D prescribes six factors that the court must take into account when determining whether to grant leave under the division. These six factors provide clear guidance to the court of what it must consider when it embarks on its weighing exercise under subsection (1) (c). However, this list is not exhaustive, and the court is not limited when it determines the public interest in preserving the confidentiality of protected confidences and protecting the principal protected confider from harm. The court is required to take judicial notice of all these factors and there is no obligation on the protected confider to adduce evidence, although there is no prohibition on the protected confider from doing so if he or she wants.

To that end, subsection (3) introduces a provision that allows the court to receive a confidential statement, by way of affidavit made by or on behalf of the principal protected confider, specifying the harm the confider is likely to suffer if the application for leave is granted. Under subsection (4), the court must not disclose or make available to a party, other than the principal protected confider, any confidential statement made to the court under this section by or on behalf of the principal protected confider.

This addresses the difficulty that some protected confiders face in describing to the court the harm they might suffer if the protected confidence is disclosed, without describing the substance of the protected confidence. Subsection (5) provides that the court must state its reasons for granting or refusing to grant an application for leave under this division. Subsection (6) ensures that, if there is a jury, any application for leave is to be heard and determined in its absence.

Item [8] is a new regulation-making power that allows regulations to make provision for, or with respect to, the issue and service of subpoenas in or in connection with any criminal proceedings or preliminary criminal proceedings involving a prescribed sexual offence. Item [9] is a transitional provision. Items [1] to [3] of schedule 12.1 relate to procedural matters and, under subclause (1), extend to proceedings commenced but not completed before the commencement of those amendments. Subclause (2) clarifies that the admissibility of any evidence given in proceedings before the commencement of the amendments in subclause (1) does not affect the validity of anything done, or omitted to be done, before that commencement. Items [4] to [6] relate to evidentiary matters. Because they may affect the availability of certain pieces of evidence, they do not extend to proceedings in a court if the proceedings have commenced in that court before the commencement of those amendments. Thus, if preliminary criminal proceedings in a matter are still taking place in the Local Court, these amendments do not apply. However, once the proceedings are no longer preliminary and become criminal proceedings in the District Court, the new provisions will apply.

Schedule 12.2 to the bill makes a further three amendments to the Criminal Procedure Act 1986. First, schedule 12.2 amends section 56 (1) of the Criminal Procedure Act 1986 to allow certain aspects of committal proceedings to be conducted by online court proceedings. It is proposed that there initially be a 12-month trial of the online court at the Downing Centre Local Court. The aim of the online trial is to make better use of the court's resources by minimising the number of in-person court appearances required during the early stages of criminal proceedings, many of which are administrative and non-contentious. The amendment specifically provides that aspects of committal proceedings may be conducted in the absence of the public only for the purpose of the online court, and only with the parties consent; and after the first appearance of the accused person in committal proceedings; and if the matter is of a procedural nature that does not require the resolution of a disputed issue or a person giving oral evidence.

It is proposed that the trial will commence in early 2011 and that, in the first three months, only the Director of Public Prosecutions and Legal Aid NSW or the Aboriginal Legal Service will be referred to the online court. Upon evaluation at that stage, and if the Chief Magistrate considers it appropriate, private practitioners may then be offered the opportunity to register and participate in the online court. It is proposed that if a member of the public is interested in a matter in the online court list they will be able to request a printout of the online court proceedings from the registry once the proceedings are completed. Currently, a fee is charged for copies of court documents; however, it is proposed that this fee be waived in these circumstances. No objections were raised by stakeholders on the proposed trial. I understand that the Local Court will consult further with relevant stakeholders prior to its commencement. A full evaluation of the trial is planned.

Schedule 12.2 to the bill amends schedule 1 of the Criminal Procedure Act 1986 to increase the maximum property value for break and enter offences under section 109 (1) of the Crimes Act 1900 dealt with

summarily by the Local Court under chapter 5 from $15,000 to $60,000. The bill further amends the Criminal Procedure Act 1986 to implement a new system for determining when a trial should proceed before a judge sitting alone without a jury. Section 132 of the Criminal Procedure Act 1986 allows the accused person in criminal proceedings to be tried by a judge alone if the judge is satisfied that the accused has sought legal advice in relation to the election and the Director of Public Prosecutions consents to the making of the election. The Chief Judge of the District Court proposed in late 2009 that the Director of Public Prosecution's veto power be removed from section 132 by allowing a court to settle the dispute if the prosecution and defence cannot agree on the issue of trial by a judge alone. Judge-alone trials are appropriate in a limited number of circumstances. For example, they may be appropriate where there are concerns that cannot be overcome regarding pre-trial publicity, or where the evidence of the trial is likely to be highly technical.

The Standing Committee on Law and Justice endorsed the model referred to it by the Government with minor amendments and the provisions of the bill reflect the result of the committee's consideration. The purpose of the new model is to allow both the prosecution and defence to apply for a judge-alone trial and uses the court to determine the appropriate trial method where there is a dispute. This will bring New South Wales into line with other jurisdictions and represents a fair and transparent way to determine whether a trial should proceed without a jury.

It is not intended that these amendments will significantly increase the number of judge-alone trials. The jury remains the most appropriate fact finder for serious criminal trials and these provisions do not seek to change that; they merely seek to provide a clear set of rules for the determination by an independent arbiter—the court—as to when a matter should proceed before a judge alone. The accused's right to trial by jury continues to be a central tenet of the New South Wales criminal justice system. Item [2] of schedule 12.2 replaces the existing provision for judge-alone trials and inserts a new provision adopting the model considered and approved by the Standing Committee on Law and Justice. Either party may apply for a judge-alone trial. Where the parties agree, the trial is to proceed before a judge sitting alone. Where the accused does not agree, the matter must proceed before a jury, thus preserving this important right.

The only circumstances where an accused's right to a trial by jury will be overborne is detailed in section 132 (7). Notwithstanding the view of the accused, a judge may make a trial by judge order where there is a substantial risk that jury tampering is likely to occur and that risk cannot be mitigated by other means. This provision differs from that originally proposed as a result of the standing committee's concerns that the original model had too low a threshold in this regard. If an accused applies for a judge-alone trial and the prosecution does not agree, the issue is to be determined by a court applying the interests of justice test. This allows a broad discretion for the court to determine the issue, although the provisions provide that the court may refuse to make a trial by judge order where the trial will involve factual issues that are appropriately determined by juries—for example, community standards or reasonableness, negligence, indecency, obscenity or dangerousness. As recommended by the standing committee, this is not an exhaustive list of criteria to be taken into account by the court in determining whether to make a trial by judge order, merely an indicative list of factors that a court may find relevant in considering an application.

Consistent with recommendation No. 2 of the standing committee, the provisions also require that an accused must receive legal advice before giving consent to a trial by judge order. The new section 132A sets out procedural matters regarding trial by judge orders, including that applications are to be made no less than 28 days before the trial date, except by leave of the court. This is designed to minimise the risk of a party applying for a judge-alone trial on the basis of knowing the identity of the trial judge. The provisions also note that joint trials should not proceed without a jury except where all accused have consented, and the consent relates to all relevant charges, and that a party may apply to the court for a trial by jury after a trial by judge order has been made and before the trial has commenced.

The standing committee recommended that consideration be given to preventing interlocutory appeals from a court's decision in relation to an application for a judge-only trial. The Government has given serious consideration to this issue but has decided not to implement a bar on appeals from such decisions. Given the serious issues at stake, it is appropriate that they be determined according to the ordinary appeal provisions that otherwise apply to interlocutory orders in criminal matters. It is noted that, while no direct appeal provisions are provided in Queensland and Western Australia, parties that dispute an order in relation to a judge-alone trial can object via other means; for example, via a stay of proceedings or as a ground of appeal against conviction or sentence.

The committee was concerned as to the delays that a right to appeal might create. However, the Government is confident that, should the Court of Criminal Appeal determine that a trial by judge order is

appellable under the Criminal Appeal Act 1912, the court has the capacity to deliver a swift hearing and verdict prior to a trial taking place. Given the relatively limited circumstances where a judge would make an order that might be the subject of appeal, there is unlikely to be a significant impact on the criminal justice system by implementing the provisions in their current form. Moreover, in the long term, the decisions of the Court of Criminal Appeal would provide useful guidance to both practitioners and judges about which matters are suitable to be heard before a judge sitting alone, ensuring that the system operates efficiently and fairly.

Schedule 13 amends the Graffiti Control Act 2008 and Graffiti Control Regulation 2009 to provide a definition of "fine" that accords with the Fines Act 1996. Amendments to the Graffiti Control Act, which commenced in May 2010, introduced community clean-up orders, which allow a court that imposes a fine on an offender to make an order that the person satisfy the amount of the fine by performing community clean-up work. For clarity, this amendment inserts a definition into section 9A of that Act, clarifying that the term "fine" has the same meaning as under the Fines Act 1996. This amendment renders clause 12 of the Graffiti Control Regulation superfluous, and that clause will be omitted.

Schedule 14 to the bill amends the Industrial Relations Act 1996 to provide that legally qualified commissioners are exercising the jurisdiction of the Industrial Court of New South Wales when dealing with small claims matters under section 548 of the Commonwealth's Fair Work Act 2009. Currently under section 548 of the Fair Work Act, the small claims jurisdiction is only conferred on State Magistrates Courts, which is defined as a court constituted by a police, stipendiary or special magistrate, or by an industrial magistrate. The Commonwealth has indicated that once New South Wales has made the current amendment to our Industrial Relations Act proposed in this bill, it will take steps to amend the Fair Work Act to enable the Industrial Court of New South Wales to hear small claims matters. Once the Commonwealth has made the necessary corresponding amendments, it is then proposed that the Industrial Amendment (Jurisdiction of the Industrial Relations Commission) Act 2009 and the Industrial Relations Further Amendment (Jurisdiction of the Industrial Relations Commission) Act 2009 will be proclaimed. The effect of this will be that the New South Wales industrial relations jurisdiction will be consolidated in the Industrial Court of New South Wales.

Schedule 15 to the bill makes two amendments to the Local Court Act 2007. Schedule 15 to the bill amends the Local Court Act 2007 to increase the civil jurisdiction of the General Division of the Local Court from $60,000 to $100,000. The Small Claims Division of the Local Court will maintain its current $10,000 limit, and claims for damages arising from personal injury or death in the General Division will also remain at $60,000. This amendment is intended to provide litigants with a quicker and more accessible forum for resolving disputes, particularly in rural and remote New South Wales, where there is greater access to the Local Court than to the District Court. However, parties will still retain their right to commence actions in the District Court for claims of less than $100,000.

Schedule 15 also amends the Local Court Act 2007 to confer power on the Minister to make determinations with respect to the extended leave entitlements of magistrates appointed before 20 September 2002, and includes a transitional provision to ensure the validity of a 2005 determination made by the then Minister. The purpose of the 2005 determination was to introduce a scheme to allow magistrates who were appointed from the public service before 20 September 2002 to make an election to waive rights to extended leave conferred by section 25 (1) of the Local Court Act 2007, and to be paid an equivalent gratuity to the rights waived. The transitional provision allows the Minister to make arrangements under which magistrates or former magistrates who have already elected to be paid a gratuity under the 2005 determination can opt to repay the gratuity, and have their pre-2002 extended leave entitlements reinstated.

Schedule 16 to the bill amends the Mining Act 1992 to allow applicants for mining leases and landowners to apply to the Land and Environment Court where there is a dispute about a claim that there is a valuable structure on the land, such as a substantial building or a dam. The Act provides that a mining lease may not be granted over land on which a significant improvement has been made. Currently, the Director General of the Department of Industry and Investment must refer disputes to an independent person for report to the Minister. These provisions have not proved practical and have not been utilised to date. The proposed new provisions will give both parties the ability to apply directly to the Land and Environment Court for a determination of the applicant's objection.

I move now to schedules 18 and 19, which contain amendments to the Victims Support and Rehabilitation Act 1996 and the Victims Rights Act 1996 respectively. The main purpose of these schedules is to make amendments to legislation concerning victims of violent crime to facilitate the streamlining of the

compensation and counselling application process, expand the offences for which victims compensation levies are payable, and implement recommendations of a review of the Charter of Victims Rights and of the Chairperson of the Victims Compensation Tribunal.

The Victims Support and Rehabilitation Act 1996 sets out the compensation and counselling entitlements of victims of crime. Compensation, legal and other victims' service-related costs are paid from the Victims Compensation Fund set up under the Act. A number of the changes proposed in schedule 18, together with changes that will be made to the Victims Support and Rehabilitation Rule 1997 and the Victims Support and Rehabilitation Regulation 2006, are required to support the streamlined administrative procedures. These changes are expected to provide savings, meaning more money is available to be paid directly to victims.

Schedule 18 implements a number of recommendations from the Chairperson of the Victims Compensation Tribunal. These include allowing a person who receives a compensable injury as a direct result of an act of violence to recover all actual expenses incurred under the Victims Assistance Scheme—currently only a limited number of prescribed expenses can be claimed, preventing family victims from lodging applications out of time other than in limited circumstances, and clarifying that the definition of "related acts" includes multiple acts that have been committed against a victim by a person over a period of time, as is the case in other jurisdictions in Australia. Schedule 19 to the bill contains amendments to the Victims Rights Act 1996, to improve the implementation of victims' rights under the Charter of Victims Rights. The proposed changes are the result of extensive consultation with the Victims Advisory Board and victims support groups.

I turn now to the most important provisions of schedule 18. Section 5 (3) defines the circumstances in which an act is to be considered related to another act for the purpose of determining whether a number of acts are to constitute a single act of violence. The Victims Compensation Tribunal Chairperson's Report 2007-08 recommended that section 5 (3) be strengthened to provide that an act is related to another act if the acts were committed against the same person by the same perpetrator or perpetrators. Since then, the District Court has examined how section 5 (3) is to be interpreted. This has resulted in applicants increasingly separating their claims into multiple claims. This has increased the pending caseload and could have serious adverse consequences for the financial state of the Victims Compensation Fund if it enables awards to be made in respect of every single act of violence occurring during a series of acts of violence.

As currently interpreted, there is concern that individual victims could receive payouts of more than $1 million. The architects of the scheme never intended that a victim should receive such a large amount, especially when $50,000 is the maximum payable in relation to the death of a victim. No other jurisdiction allows this, and it would be financially irresponsible for New South Wales to continue to allow it. As of 10 September 2010, 30 per cent of claims lodged were multiple claims. If this trend continues, the potential impact on the Victims Compensation Fund could run to tens of millions of dollars.

With the vast majority of victims compensation payments coming from consolidated revenue, the Government has a responsibility to ensure that payments do not become an unaffordable drain on public funds. Given the financial climate, and the outstanding liability of the Victims Compensation Fund, failing to manage such multiple claims properly will eventually result in reduced compensation for other victims of crime. Therefore, item [2] provides that where there is more than one act of violence and those acts were committed against the same person over a period of time by the same perpetrator or group of perpetrators, the acts will generally be considered as related. Such related acts are treated as a single act of violence for the purposes of victims compensation under the Act. However, compensation assessors will still retain the discretion to treat multiple claims as unrelated acts, which is made clear in new section 5 (3A). The recommended amendment will make New South Wales legislation consistent with other jurisdictions, such as Queensland and Victoria.

The purpose of the Victims Assistance Scheme is to reimburse specified expenses to victims of crime who are not otherwise eligible for statutory compensation. The scheme currently covers only specified expenses. The Victims Compensation Tribunal Chairperson's Report 2007-08 recommended that the scheme be modified to make it less administratively difficult for applicants, and that the category of prescribed expenses be expanded. The amendment in item [5] will allow a person who receives a compensable injury as a direct result of an act of violence to recover all actual expenses incurred. Compensating all actual expenses will remove the confusion about what expenses are covered and make it easier for applicants to lodge a claim under the scheme.

Items [16] to [21] make changes that streamline the approval of counselling applications. The amendments to section 21 of the Act allow the Director of Victims Services, instead of a compensation assessor, to approve applications for approved counselling services. It is considered an inefficient use of resources for

compensation assessors to determine counselling applications under the approved counselling scheme given the high approval rate and the low evidential standard applied to them. Instead, trained staff will approve these applications, on delegation from the director. Currently counselling is approved by an assessor for an initial two hours, and then for further hours as requested. On average, victims of crime need six to eight hours of counselling in addition to the initial two-hour assessment, and requests for this extra time are rarely refused. The amendments will therefore replace the initial period of two hours counselling with up to 19 hours of counselling.

I refer, next, to claims that pre-date a current claim. A claim from a person who has suffered multiple acts of violence may not be properly evaluated unless considered in the context of all acts of violence and all relevant claims arising from those acts of violence. Under item [25] the intention of the amendment is to prevent applicants from drip-feeding claims over a number of years, and to ensure that applicants bring all claims at the same time. New section 23A will prevent subsequent claims being made in relation to acts of violence pre-dating a successful claim, other than in exceptional circumstances. This will encourage claimants to bring all outstanding claims. Examples of the sorts of claims that might be affected by this amendment are claims that involve a psychological injury. Multiple acts of violence over a long period may have contributed to a psychological injury. If all claims for compensation are lodged at the same time the decision-maker will be able to identify whether multiple acts of violence should be treated as a single act of violence.

Where the decision-maker determines that the act concerned consists of a single act of violence involving multiple injuries, he or she would award compensation according to clause 3 of schedule 1, which sets out how compensation should be awarded where there are multiple injuries. It is difficult for the decision-maker to apply this clause when a person does not bring all claims at the same time. The amendment would also enable a decision-maker to apply clause 4 of schedule 1, which allows for a reduction of the standard amount of compensation because of an existing condition in cases where there has been more than one act of violence and earlier acts of violence have given rise to an existing condition.

I refer, next, to the time limits for family victim claims. Currently, an application for statutory compensation must be lodged within two years of the act of violence or, in the case of family victims, within two years of the death of the primary victim. However, an application lodged out of time may be accepted with leave of the director. The Chairperson of the Victims Compensation Tribunal recommended precluding leave being granted to family victims to lodge claims outside the two-year time limit. Claims are being lodged in relation to deaths that occurred more than 40 years ago. It was not intended that the Act provide compensation in relation to such deaths. Item [26] implements this recommendation with two exceptions. First, applications by family victims who were less than 18 years old at the time of the offence may be accepted, with the leave of the director, within two years of those victims turning 18. Secondly, applications by family victims may be lodged out of time, with the leave of the director, within two years of it becoming apparent that the primary victim has died as the result of an act of violence.

I refer, next, to the maximum amount of compensation for family victim claims lodged out of time. New section 26 (2C) prevents the director from giving leave under one of the exceptions in new section 26 (2B) when the total award of $50,000 has already been made. This limitation is consistent with the principle that $50,000 is the maximum amount that the primary victim of an act of violence, and any other victims claiming through that victim, may receive, as set out in sections 16 and 19. It is difficult to recover amounts of compensation already awarded to valid family claimants if a subsequent family claimant emerges. Once the maximum award has been made and the two-year limitation period has expired no further claims should be able to be made.

Items [30] to [32] will amend section 35 of the Act to make it clear that the awarding of legal costs is discretionary, and that compensation assessors are to form a view as to the appropriate level of costs to be awarded for each claim, depending on the amount of work involved or its complexity. The current wording of the section has created an expectation that legal costs will be paid irrespective of the outcome of an application and irrespective of the amount of work involved. The Victims Compensation Tribunal or compensation assessors will continue to be able to award costs in excess of the scale of costs if of the opinion that the special circumstances of the case justify such an award.

I refer, next, to extending the victims compensation levy to all offences. One of the objects of the Act is to impose a levy on people found guilty of crimes to provide a source of revenue for the Victims Compensation Fund. Currently, the levy is payable by people convicted of offences, punishable by imprisonment, and who are dealt with by particular courts. The levy is $148 if the first offence is an indictable offence and $64 otherwise. The victims compensation levy represented just 4 per cent of the total revenue of the fund in 2008-09. The funds

main source of revenue is the Consolidated Fund. The Government is committed to reducing the contingent liability of the Victims Compensation Fund and reducing the dependence of the fund on the Consolidated Fund. Item [40] will extend the victims compensation levy to all offences dealt with by the courts listed in that clause, not only those punishable by imprisonment. Penalty notices will not be subject to the victims compensation levy. It is projected that this change will yield an additional $2.91 million per annum for the fund. I note that in all other jurisdictions where levies are imposed they are payable in respect of all summary and indictable offences. This amendment will bring New South Wales into line with those jurisdictions.

I move now to the amendments to the Victims Rights Act 1996 contained in schedule 19. The amendments arise from a review of the Charter of Victims Rights, conducted by Victims Services within the Department of Justice and Attorney General. The object of the Victims Rights Act 1996 is to recognise and promote the rights of victims of crime. The Victims Rights Act 1996 incorporates the Charter of Victims Rights, which sets out 17 rights for victims of crime and outlines how government agencies should treat and assist victims.

The following amendments are part of a package of proposals to enhance the implementation of the Charter of Victims Rights: specifying that Victims Services may publish codes and guidelines to provide practical guidance on how agencies are to implement the Charter of Victims Rights and ensure that agencies are accountable for their interactions with victims; strengthening the way in which victims' rights under the charter are expressed; providing a specific right to complain and to be informed about complaint processes; extending the application of the charter to non-government agencies, professionals and subcontractors that are funded by the State under direct contractual arrangements—the charter generally will not apply to non-government legal practitioners who provide advice on victims legal issues or private medical practitioners who may deal with a victim's injuries, even if the cost of those services are ultimately paid by the Government, unless they provide those services under contract with the Government; updating the references to the Victims of Crime Bureau to refer to Victims Services, making it clear that Victims Services is the branch of the Department of Justice and Attorney General that is responsible for victims' issues; and increasing the number of members of the Victims Advisory Board that represent the general community from four to six members.

This bill addresses a number of issues relating to the smooth and effective running of the New South Wales justice system. The amendments contained in the bill have been the subject of consultation with key stakeholders, including the judiciary, the courts and tribunals, the legal profession, relevant government agencies and community stakeholders. I commend the bill to the House.

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

CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) AMENDMENT BILL 2010

NATIONAL BROADBAND NETWORK CO-ORDINATOR BILL 2010

Bills received from the Legislative Assembly.

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

Motion by the Hon. Michael Veitch agreed to:

That the bills be read a first time and printed, standing orders be suspended on contingent notice for remaining stages and the second readings of the bills be set down as orders of the day for a later hour of the sitting.

Bills read a first time and ordered to be printed.

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

BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT AMENDMENT BILL 2010

Second Reading

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [10.06 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 Government moves to introduce amendments to the New South Wales Building and Construction Industry Security of Payment Act 1999.

The aim of these amendments is to improve security of payment for subcontractor claimants, that is, those businesses at the bottom of the contractual chain that have the least cash flow and struggle to survive when they do not receive money owed to them for work undertaken.

The *Building and Construction Industry Security of Payment Act* has been recognised as reforming the payment practices of the building industry by providing access to speedy, low-cost resolution of disputed payment claims and stimulating the much-needed cash flow along the supply chain.

It also brings parties in dispute together sooner, thus avoiding the need to resort to formal dispute resolution processes, such as expensive court litigation.

Notwithstanding these strengths, stakeholders have advised the Government that some subcontractors are finding it difficult enforce the outcomes of adjudications of payment disputes under the Act.

Payment disputes at the subcontractor level involve three key players.

The first is the subcontractor themselves, known as the claimant.

The second is the contractor who owes the claimant money. This person is known as the respondent.

And the third is the legal entity next up the contractual chain, which has a contractual agreement with the respondent. They are known as the principal contractor.

The current *Building and Construction Industry Security of Payment Act* has been widely utilised by subcontractors to gain adjudication determinations for disputed payment claims.

But one of the problems facing subcontractors is ensuring that the respondent (the contractor owing money) makes the payments outlined in the adjudication determination.

The Government is of the view that increasing awareness of payment problems in the contractual chain can help protect subcontractors and further improve payment performance in the building industry.

That is what this bill intends to do.

I shall now describe in more detail the features of these amendments outlined in the *Building and Construction Industry Security of Payment Bill 2010.*

Currently, if a claimant knows that the respondent is owed money by a principal contractor, they must go through the court system to have those funds frozen, utilising the Contractors Debts Act.

This bill establishes that a principal contractor can be required to retain sufficient money to cover the claim being made by the claimant against the respondent without requiring the subcontractor claimant to go through the courts.

The moneys withheld are to be taken from any money that is, or becomes, payable by the principal contractor to the respondent.

The requirement for the principal contractor to retain moneys is not an automatic requirement and can only be instigated through service of a payment withholding request.

If the principal contractor does not owe any moneys to the respondent, they are required to notify the subcontractor claimant they are no longer a principal contractor for the claim. This will need to be done within 10 business days of receiving the payment withholding request.

The obligation for the principal contractor to retain money is only in force for 20 business days after the claimant's adjudication application is determined and served.

If the claim is withdrawn, or if the respondent makes a payment to the claimant before 20 business days have passed, the requirement to retain moneys will lapse.

The requirement also lapses if the claimant commences proceedings for the recovery of the debt under the Contractors Debts Act 1997.

If the principal contractor fails to retain moneys owed as per these requirements, the principal becomes jointly liable for the amount paid to the respondent in contravention of the payment withholding request. Importantly, any money that the subcontractor claimant recovers from the principal under this part can be recovered as a debt by the principal contractor from the respondent. This is designed to protect the principal contractor from the risk of double-payment.

The bill also provides protections for principal contractors in relation to their contractual payment arrangements with the respondent. If a principal is required to retain moneys as a result of being issued a payment withholding request, the time these moneys are withheld cannot be taken into account for the purposes of invoicing and payment dates. This is designed to prevent payment claims being made against the principal contractor as a result of withholding moneys under this legislation.

In some cases, subcontractor claimants are unaware of who the principal contractor is. To address this, the bill will establish a requirement for a respondent to provide information regarding the identity and contact details the principal contractor in relation to that particular claim.

While these amendments will require the principal to freeze moneys owing to the contractor, equal to the amount being claimed by the subcontractor, the proposed amendments do not provide a mechanism to assign the debt to the claimant.

Debt assignment would need to be pursued through the court system under the *Contractors Debts Act*.

I emphasise that while the amendments here will alert the principal to payment issues and the lodging of an adjudication application by a subcontractor, there will not be any additional protection for subcontractors when the principal has already paid the contractor all moneys owed.

The measures outlined in this bill will go some way towards addressing the difficulties faced by unpaid subcontractors, whilst ensuring that principals will not be unduly affected.

I commend the bill to the House.

The Hon. GREG PEARCE [10.07 p.m.]: The Building and Construction Industry Security of Payment Amendment Bill 2010 is an unfortunate example of the way in which this Labor Government is behaving in the dying days of this Parliament. This morning or this afternoon—I am not sure which—the bill was introduced in the lower House without any consultation, without any warning, without giving stakeholders any opportunity to understand what it would do, and certainly without any opportunity for the New South Wales Liberal-Nationals Coalition to analyse the bill or to seek advice and input from important stakeholders around the State who potentially will be impacted by this legislation. The Government has not made any attempt to disguise the fact that this legislation is again a shocker. It has been introduced at the behest of the left-wing unions that appear to be the rump of support for the Labor Party in New South Wales. Potentially this legislation will have a significant impact on the construction industry and on the economy of New South Wales.

The New South Wales Liberals and The Nationals have not had any opportunity to examine this legislation properly. It is appalling that this Government is pressing through with this type of legislation. On the face of it the bill may have some merit as, obviously, we as a Parliament must do everything possible to protect the interests of independent contractors, small contractors, who may not be getting paid because someone further up the construction project chain is defaulting on their payment responsibilities. On the other hand, this legislation appears to reverse all the principles of contract law that professions involved in construction have abided by for centuries. This legislation is being pushed through in less than one day by this Government, which everyone knows is absolutely and completely on the nose.

The Liberals and The Nationals are not prepared to support this legislation because we simply do not know its implications. This legislation possibly could be used to cause economic chaos, particularly in the construction industry. If that is the case, then part of this Government's legacy will be the further destruction of the New South Wales economy, work places, jobs and wealth. We will not support this proposal by this Government. This important issue should have been the subject of proper and transparent consultation with the community and all stakeholders.

In those circumstances we cannot support the legislation. We very much support protecting small-sized and medium-sized businesses, the tradies, who potentially suffer the impacts of issues in the building and construction industry, but this bill is not the solution. This Government has had 16 years to address these issues and it is disgraceful that it now is playing the politics of its union puppet masters. Labor Party members who support this legislation should be appalled and disgraced by these actions. I hope the crossbench members give proper consideration to this legislation and also do not support it.

Mr DAVID SHOEBRIDGE [10.12 p.m.]: The Greens in large measure support the intent of the Building and Construction Industry Security of Payment Amendment Bill 2010. Unless a system is in place, such as the construction industry security of payment legislation, it is likely that building industry contractors further down the food chain—bricklayers, concreters, plasterers, and those they employ—are likely to find themselves at the mercy of those further up the food chain who can cut off the money supply and potentially prejudice the ongoing business of those smaller subcontractors. Indeed, building and construction is a pretty

ruthless industry. Larger contractors often put pressure on subcontractors further down the food chain to accept much lesser sums than that to which they are genuinely entitled because they know they depend on the flow of money for their business survival.

The rationale behind this legislation seems good in theory: A subcontractor—called the claimant in the bill—having made the adjudication application under the security of payment legislation serves that adjudication application on the principal, who then must retain those moneys and not pay the respondent named in the adjudication application. Indeed, one hopes that theory ends up being good in practice if this bill can deal with the following concern. The bill contains no obligation on the claimant to ensure that their adjudication application is bona fide. The following simple illustration might identify the potential problem with this legislation. I ask the Parliamentary Secretary either now or at a later point after the debate is adjourned to address the Greens' concern with the bill.

If a claimant has a genuine although contestable claim for perhaps $200,000, he or she may make an adjudication application on the respondent, the person who owes them the money—the one further up the food chain—for a greatly inflated sum, say, for $1 million. The claimant serves that adjudication application on the principal contractor, who is required to retain and not pass on to the respondent the whole of the $1 million. That procedure may greatly prejudice the respondent's business and in some circumstances could be a substantial and entirely inappropriate bargaining tool for the subcontractor or claimant under the Act.

If it were simply a case of power relations between the claimant and respondent, it might be acceptable to give the smaller players in the construction industry that kind of economic sway and equality against the respondent or the contractor higher up the food chain. However, an unscrupulous claimant—let us be clear, the building industry is not full of angels—in making an inflated claim may so cruel the respondent's business, which may employ three, four or five other subcontractors who also are dependent on the business's continuing existence and viability, that the ramifications may be far greater on other subcontractors with valid claims under the legislation.

The first claimant subbie may claim an inflated amount. Those moneys are withheld from the respondent and other genuine subcontractors may not have the benefit of retained amounts under the claim because the whole of the contract money is retained by the first claim, and the respondent's business is potentially prejudiced because the cash flow is cut off from the principal. If there were a way to address that by requiring the adjudication claim to be in a bona fide amount, subject to some modest checks and balances to ensure the bona fide nature of the claim—not that it ultimately be proven in that sum—the Greens would welcome and support the legislation. I ask the Parliamentary Secretary to address these concerns during the course of the debate, if possible. A modest adjournment of this debate may enable further discussion of some amendments I have sought from Parliamentary Counsel to address the Greens' concerns, which would allow this bill to be passed later tonight.

Reverend the Hon. Dr GORDON MOYES [10.18 p.m.]: On behalf of Family First I support the Building and Construction Industry Security of Payment Amendment Bill 2010. The object of the bill is to amend the Building and Construction Industry Security of Payment Act 1999, the principal Act, to provide a procedure for a subcontractor on a construction project, who is claiming progress payments from a defaulting contractor, to secure payment for those progress payments by giving notice of the claim to a principal contractor further up the chain of contractors engaged in the project. The principal contractor then is required to withhold payment of moneys owed by the principal contractor to the defaulting contractor to give the subcontractor a reasonable opportunity to make use of the recovery procedures provided for under the principal Act and the Contractors Debts Act 1997.

It is not necessary to illustrate what happens when a downturn occurs in the building market, because all of us are thoroughly accustomed to some of the disgraceful situations that resulted from rogue or defaulting contractors. As pointed out by previous speakers, frequently it is the little contractor at the end of the food chain who misses out on payment. The non-payment to subcontractors is a substantial problem in Australia's building and construction industry. The cost of the problem is significant enough to warrant Government action.

The main features of the scheme will allow a subcontractor to go directly to the principal contractor if the defaulting contractor withholds payment of money owed to him. The principal contractor will then be required to withhold money from the defaulting contractor for the amount owed to the subcontractor. The principal contractor will be obligated to withhold payments from the defaulting contractor until the

subcontractor either withdraws his claim or, if he was successful in his claim for a certain period after the claim is finalised, to provide him with ample opportunity to recover from the defaulting contractor using procedures under the Contractors Debts Act 1997.

In some senses this is an issue of stopping Peter from robbing Paul, but enabling someone else to come along with some money so that Peter can eventually claim against Paul. I am sure members realise that some builders go into liquidation whereas others simply default and disappear. The subcontractor will be able to obtain the defaulting contractor's name and contact details of any person who is a principal contractor to the defaulting contractor through the claim adjudication process. I hope it can be worked out in a gentlemanly and legal process instead of someone sending around his brother-in-law and a few heavies from the local bikie gang to sort it out. The principal contractor will be protected from any claim for payment by the defaulting contractor for the duration that he withholds any payments for the subcontractor.

Letters patent were issued for a royal commission of inquiry by the Governor-General in August 2001 appointing Commissioner Cole to inquire into certain matters relating to the building and construction industry. The commission inquired into many aspects that are relevant to the legislation before the House. I will not outline the terms of reference for the Cole inquiry; suffice it to say that they related directly to some of the practices widespread in the building industry, including fraud, corruption, collusion, anticompetitive behaviour, coercion, violence and inappropriate payments, receipts or benefits. The matters sound very much like the activities of some of the political parties of which I am not a member. Commissioner Cole was required to take into account his findings on the matters referred to and to make recommendations and suggestions.

It is not my role to speculate on the effect on this bill of all Commissioner Cole's recommendations having been implemented. Members who preceded me in this debate already have suggested that the bill could be improved; however, I do not believe that is a reason for us not voting on the bill or passing it. I hope that the Parliamentary Secretary will be able to comment during his reply on some issues that I regard as particularly relevant. Security of payments problems have a number of causes, such as the operation of rogue builders who deliberately delay or avoid the payment of subcontractors. They are the type of people depicted on Channel 7's *This Day Tonight* constantly being chased by a cameramen and journalists asking them why they have not paid someone. Some builders use non-payment of existing claims as a bargaining tool in an attempt to reduce subsequent claims. Some builders who are in financial difficulty do not have the cash flow to pay subcontractors, but they would certainly do so when their financial difficulties are resolved. Some builders who become insolvent and who cannot pay the full amounts owing to their creditors, including subcontractors, sometimes disappear and go underground only to reappear shortly afterwards as principals of other companies, or their relatives or friends register a company.

A consistent theme across the reviews has been that traditional remedies under the Commonwealth Corporations Law, common law and contract actions are not sufficient. Our Greens colleague Mr David Shoebridge has raised a couple of issues that are particularly relevant. The New South Wales green paper, for example, noted that there is evidence, based on comments made by subcontractors and their industry association representatives, that some subcontractors fail to take the necessary actions and remedies that already are available to them under the law. Reasons for their not taking action may include the high cost and time delays of taking legal action, with the result that they simply allow the situation to continue, and perceived concerns about victimisation by contractors in relation to future work opportunities. Subcontractors sometimes choose to waive their legal rights when faced with promises of future payment. If insolvency then occurs losses are therefore unnecessarily magnified.

The Contractors Debts Act 1997 already enables a subcontractor who has not been paid by a defaulting contractor to obtain payment directly from the principal contractor, either by freezing moneys that the principal contractor has—thereby rendering the principal contractor unable to pay the defaulting contractor until the subcontractor has obtained judgement in the magistrates court for the amount owed—or the court may issue a debt certificate for the amount, which the subcontractor can serve on the principal contractor thereby creating an obligation to pay the subcontractor the amount owed to him by the defaulting contractor. Unfortunately, the whole system of moving money from one person to another and to another company frequently involves hold-ups along the way, with the result that the ordinary subcontractor loses out. The Building and Construction Industry Security of Payment Act 1999 was reviewed after October 2002. The discussion paper stated:

> Whilst it can be said there is general satisfaction with the Act, a number of proposals have nevertheless been made for improvement. As to whether the terms of the Act remain appropriate, the general satisfaction being expressed with the Act would indicate that they are. Improvements, however, can be made.

Broadly speaking, that sums up my approach to the bill. There is general satisfaction and the legislation ought to be passed, but improvements can be made. In 2002 the commission received a number of submissions and letters supporting national consistency from organisations such as the Air Conditioning and Mechanical Contractors' Association of Victoria [AMCA] and the Association of Consulting Engineers Australia. I have consulted with some of those industry representatives. All industries and organisations stated that State and Commonwealth legislation is required to attain the best and most uniform approach to the security of payments problems in the building and construction industry. During the Parliamentary Secretary's reply I hope he will address the issue of the way in which our State should be working in harmony with Commonwealth legislation to secure the best outcomes.

It has also been requested that codes of practice be implemented that include criteria to promote the timely payment of subcontractors. Subcontractors also need to be better educated about their rights and trained to improve their management expertise, if not debt collection. The Building and Construction Industry Payments Regulation Act 2004 can be regarded as a valuable resource. It was established by the building and construction industry payments agency of the Queensland Building Services Authority. The agency was established to provide an infrastructure to assist the adjudication registry.

Family First takes into consideration the concerns of subcontractors and the knock-on effects of payments default upon families, family incomes, and the welfare of each member of families. In the building and construction industry that is a substantial problem. In spite of the issues to which I have referred that warrant close attention, Family First supports the bill.

Reverend the Hon. FRED NILE [10.29 p.m.]: I support the Building and Construction Industry Security of Payment Amendment Bill 2010, which amends the Building and Construction Industry Security of Payment Act 1999 to improve the security of payment for subcontractor claimants. The bill will enable a claimant, when making an adjudication application, to notify the principal—that is, the person or entity next up the contracting chain from the respondent—that an adjudication application has been made and the amount of that claim. As a result of that notification the principal is required to retain the amount of the claim from any money owed by the principal to the respondent. The principal is only required to retain unpaid money to the value of the adjudication application. This bill is necessary because a number of small subcontractor claimants in New South Wales indicated the problems they faced during meetings of stakeholders. They raised the issue for consideration, and it has now been dealt with in legislation.

When a contractor obtained an adjudication determination in their favour they found that the respondent, the contractor owing money, refused to make payment or was unable to do so because of insolvency. Many building construction companies come and go; one minute they are there and then they disappear. Then like the phoenix they rise from the ashes under another company name and pursue their activities. Not only are they ripping off subcontractors but often they are also ripping off families that have contracted them to build a home or whatever the property may be. Many of these contractors build up large debts and then plan to go bankrupt or insolvent to avoid paying those outstanding debts, particularly to the subcontractors who worked under their direction on a particular development.

This bill is practical. I do not believe it will put unnecessary pressure on principals because they are required to retain unpaid money only to the value of the adjudication application, and it will apply only when funds are outstanding from the principal to the contractor. Nothing in the process will prevent a principal from making a direct payment to the claimant, preventing the claimant from commencing proceedings for an attachment order under the Contractors Debt Act 1997, or enforcing the adjudication determination in any way. The bill seems to be a practical measure to solve a specific problem and I believe it should be supported by the House. Then we can observe its operation and if there are further problems it can be amended.

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [10.33 p.m.], in reply: I thank all members for their contributions to the debate. This Government introduced the Building and Construction Industry Security of Payment Act in 1999 to address unethical payment practices in the construction industry. The Act has reformed payment practices in the industry. It provides access to speedy, low-cost resolution of disputed payment claims and has stimulated cash flow along the supply chain. In particular, it has provided benefits for the small players in the construction industry, those subcontractors who can least afford to have their payments delayed. The Government is committed to ensuring that the security of payment scheme provides the best possible protection for subcontractor claimants.

After consulting with the industry, it became apparent to the Government that additional measures were warranted to ensure that payments awarded through adjudication determinations make their way to the

subcontractor claimants. This bill contains amendments that will go some way towards addressing the difficulties faced by unpaid subcontractors while at the same time ensuring that an unreasonable burden is not placed on principal contractors. This will be done by establishing the right for subcontractor claimants to issue a payment withholding request on a principal contractor at the same time that a request for adjudication of a payment dispute between the subcontractor and a head contractor is made.

The payment withholding request will require the principal contractor to retain sufficient money to cover the payment claim without requiring the subcontractor to go through the courts. The moneys withheld are to be taken from any funds that are already owed by the principal contractor to the respondent. If there are no outstanding payments due by the principal contractor, the principal contractor will need to advise the subcontractor claimant of this fact within 10 business days of receiving the payment withholding request. The bill includes protections for principals in the form of limited time frames on the obligation to withhold funds and also in relation to contractual payment arrangements with the respondent. These amendments deliver a balance by providing additional protection for subcontractor claimants without imposing onerous requirements upon business. 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.

Consideration in Committee set down as an order of the day for a later hour.

STATE REVENUE LEGISLATION FURTHER AMENDMENT BILL 2010

Second Reading

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [10.36 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 New South Wales Government is committed to having best practice revenue laws.

The *State Revenue Legislation Further Amendment Bill* makes important amendments to State tax Acts both to protect the revenue and to ease the compliance burden on New South Wales taxpayers.

The bill amends the *Payroll Tax Act 2007*, the *Duties Act 1997* and the *Land Tax Management Act 1956*.

The bill also amends the *First Home Owner Grant Act 2000* to comply with requirements of the Intergovernmental Agreement on Federal Financial Relations.

I will deal firstly with the amendments to payroll tax.

The bill amends the employee share scheme provisions of the Payroll Tax Act in relation to the valuation of shares and options and the definition of an "employee share scheme".

These amendments are necessary because of changes made by the Commonwealth Government in the 2009-2010 budget to the method of taxing employee share schemes.

The Payroll Tax Act relies on provisions of the Commonwealth *Income Tax Assessment Act 1936* to determine when a grant of shares and options becomes liable for payroll tax and in determining their taxable value, and these amendments align the Payroll Tax Act with the recent Commonwealth changes.

This allows the ordinary meaning of market value to be used to determine the value of shares and options. This increases flexibility for taxpayers, who can now choose a valuation method that fits their circumstances and has the lowest compliance costs.

The method for calculating the value of an employee share scheme interest can also be specified by Commonwealth regulation, which will allow taxpayers to use this method instead of the market value. At this stage the Commonwealth regulations only specify a method for valuing unlisted options.

These amendments will ease the compliance burden on New South Wales taxpayers because they will use one set of rules for employers to meet their Commonwealth and State tax liabilities.

The new provisions commence on 1 July 2011.

These changes have been developed in consultation with other States and Territories in order to maintain payroll tax harmonisation across Australia.

The bill also includes amendments to the Duties Act. The bill provides for three amendments relating to stamp duty on superannuation property transfers.

First, the duties concession for persons changing complying superannuation funds has been extended to apply to transfers of marketable securities to a pooled superannuation trust. While the current concession allows transfers of property from a pooled superannuation trust to a complying superannuation fund, it does not allow a reverse transaction, that is, a transfer of property to a pooled superannuation trust from a complying superannuation fund in connection with a person changing funds

This removes significant constraints on persons changing superannuation funds.

Secondly, the bill ensures concessional duty applies to transfers of property to new trustees of self-managed superannuation funds where there is no scheme to avoid duty.

Finally, the duties concession for transfers of property to self-managed superannuation funds has also been extended to allow a transfer of property from a member of the fund to a custodian appointed by the trustee of that fund.

This ensures the concession is available where superannuation funds borrow to purchase property.

The bill also includes amendments to the Land Tax Management Act to extend a concession applying on the death of a land owner.

The existing concessions are extended from one year to two years.

Finally, the bill amends the First Home Owner Grant Act to comply with requirements of the Intergovernmental Agreement [IGA] on Federal Financial Relations.

The grant is currently capped at $750,000, and homes valued above that amount are not eligible for the grant.

The IGA requires the cap to be not less than 1.4 times the capital city median house price, and that figure must be reviewed annually.

The bill implements this obligation by increasing the cap to $835,000 for transactions on and after 1 January 2011.

Amendments contained in this bill have been the subject of consultation with professional and industry bodies, including the Financial Services Council, the Institute of Chartered Accountants, CPA Australia, the Law Society of New South Wales, the Property Council of Australia and the Taxation Institute of Australia. I wish to thank those organisations for their assistance in preparing this legislation.

The amendments introduced by this bill will improve State tax Acts by increasing consistency with other States, Territories and the Commonwealth, while protecting the revenue bases for both payroll tax and transfer duty.

I commend the bill to the House.

The Hon. MATTHEW MASON-COX [10.36 p.m.]: It is my pleasure to lead for the Opposition in debate on the State Revenue Legislation Further Amendment Bill 2010. Let me say at the outset that the bill was introduced in the other place only this morning, and it has been introduced into this place this evening without any notice. The amount of consultation given in respect of this bill and the many other bills we are considering at this late hour is extraordinary, to say the least. The way the Government runs this House is an absolute shambles. It replicates the way the Government runs the State. It is an absolute disgrace; it shows the Government's contempt for this Parliament and indeed for the people of New South Wales. Tonight the Government is saying that we must take it all on trust. One need only recall all the other things we have had to take on trust from this Government. One shivers in one's boots at the prospect of taking this bill and many others bills we will consider tonight on trust. I cast my mind back to none other than the transport 2010 plan, the twelfth anniversary of which was celebrated this week. The transport plan was released in 1998.

The Hon. Michael Gallacher: Inaction for transport.

The Hon. MATTHEW MASON-COX: Inaction for transport 2010. The Leader of the Opposition remembers it well. Indeed, he was probably involved in the commentary on the plan at the time. Reading the plan, which we took on trust in 1998, we can see the inaction. All the things have been announced time and time again, but the Government has failed to deliver on matters that we took on trust. I refer to the North West Metro, which we took on trust.

The Hon. Michael Veitch: Point of order: I know we have wide-ranging debates in the House, but I suggest that this contribution is a fair way from that. I ask you to bring the Hon. Matthew Mason-Cox back to the objects of the bill.

The Hon. MATTHEW MASON-COX: To the point of order: Trust is at the heart of this bill. Trust in this Government, or lack of trust, is a commodity that it has spent over the past 16 years.

The PRESIDENT: Order! If the member continues to make debating points under the guise of contributing to a point of order, I will have no option but to place him on a call to order. I uphold the point of order. The Hon. Matthew Mason-Cox should confine his remarks to the leave of the State Revenue Legislation Further Amendment Bill 2010.

The Hon. MATTHEW MASON-COX: I accept your ruling, Madam President, of course. Whilst I digressed for a moment, I will now turn to the tenor of the bill. The purpose of the State Revenue Legislation Further Amendment Bill 2010, which we take on trust from this Government, is to make various amendments, including increasing the First Home Owner Grant cap to comply with Federal Intergovernmental Agreement, updating payroll tax share scheme provisions to align with Commonwealth legislation and extending duties concessions for superannuation property transfers. I note that various amendments have been made recently to legislation administered by the Office of State Revenue and that this bill clarifies the implementation of those amendments and brings New South Wales legislation in line with Commonwealth requirements.

The bill amends the Duties Act 1997 to clarify the duties concession for transfers of property to new trustees of self-managed super funds. It also amends that Act to extend the duties concession for people changing superannuation funds. I note that currently a concession exists for transfers of property from a pool superannuation trust to a fund. However, this amendment allows the reverse to occur. It amends the Duties Act 1997 to extend to other defence force officers a provision that exempts from duty an application to register a motor vehicle from a war veteran.

The Hon. Charlie Lynn: Hear! Hear!

The Hon. MATTHEW MASON-COX: I note the interjection of the Hon. Charlie Lynn. It is certainly a provision of this bill that the Opposition strongly supports. The bill also amends the First Home Owner Grant Act 2000 to increase the First Home Owner Grant cap from $750,000 to $835,000 from 1 January 2011 as the Commonwealth requires it to be no less than1.4 times the capital city median house price. The bill amends the Land Tax Management Act 1956 to extend land tax concessions to two years—currently it is one year and is discretionary from one to two years. The Opposition understands the reason for this amendment. The bill also amends the Payroll Tax Act 2007 to make further provision with respect to liability for payroll tax in respect of shares or options granted to employees by employers.

In considering the bill it is worth noting that the harmonisation with Commonwealth legislation through amendments to the First Home Owner Grant and payroll tax is a particularly worthy pursuit. The bill clarifies concessions for trustees of self-managed superannuation funds under section 54 and addresses a problem that has already been identified by industry. The payroll tax amendment in particular provides more flexibility to taxpayers, with a choice of valuation method. We also note that the constraint is removed for transfers of property when people change superannuation funds. We understand that wide consultation has been conducted with the superannuation funds industry in respect of that particular amendment, and that it is welcomed by that industry.

The Office of State Revenue argues that all these changes have come about through consultation with various peak industry groups and professional bodies, such as the Financial Services Council, and again we must take it on trust in that respect. Our major concern with this bill is the nature in which it has been presented to this place: it has been rushed through both Houses; there has been a lack of consultation with the Opposition and, in particular, with the shadow Treasurer; and we have had only one day to consider the bill and, consequently, we have not been able to independently consult with stakeholders to ensure that they are happy with its detailed provisions. In that regard it certainly undermines the democracy and independence of this House and its ability to do its work properly. The Opposition trusts that this will not result in unintended consequences, but it cannot be sure.

I note that the Office of State Revenue has disclosed that the impact on revenue is negligible. The Opposition would like further clarification of that from the Parliamentary Secretary. What does "negligible"

mean in the context of this bill? A specific cost impact would be appreciated. I ask the Parliamentary Secretary to address that particular aspect in his reply also. Despite all of our misgivings about the bill being rushed through this House, the Opposition will not oppose it. We will have to take it on trust, like we have had to take on trust so many things from this Government.

The Hon. Michael Gallacher: Tell me about that public transport issue?

The Hon. MATTHEW MASON-COX: I will not go into that again in detail although it was a resounding embarrassment for the Government during the latest estimates hearings when we canvassed exactly what was happening with the North-West Metro project, a project that the Opposition took on trust from this Government. We are paying in excess of $420 million and counting for that project, which was announced by this Government and then trashed. It is very sad that the Government continues to abuse the trust that has been given to it in goodwill. It is certainly the one commodity that this Labor Government has well and truly exhausted over the past 16 years. Despite all that, the Opposition acknowledges that the bill does do some positive things; it corrects some mistakes. Whilst we have not had the opportunity to consult with particular stakeholders, we will not oppose it at this time.

Dr JOHN KAYE [10.46 p.m.]: On behalf of the Greens I speak to the State Revenue Legislation Further Amendment Bill 2010. As the Hon. Matthew Mason-Cox said, the bill deals with four specific issues: increasing the eligibility cap of the First Home Owner Grant in line with the rise in median house prices; clarifying and fixing a number of provisions within payroll tax; dealing with trusts that have been established by a will that is not a special trust for land tax purposes by extending the period for which that trust remains not a special trust following the death of the testator; and the transfer of property when a person changes superannuation funds, particularly when the trustee of a self-managed superannuation fund changes.

None of the provisions in this legislation are particularly earth shattering, and all of them seem to be sensible and, we are told, revenue neutral. The change to the First Home Owner Grant, however, contains a self-irony, that is, the First Home Owner Grant. The grant was supposed to make home ownership more affordable but it has clearly failed to do so, given that it has increased from $750,000 to $835,000, which indicates that the median cost of a house has increased substantially since the legislation was introduced. Clearly, providing money to assist first home owners does not make houses more affordable. It gives the apparent feeling of making houses more affordable but because most developers are not driven by their own costs—prices are driven by what the market will bear—putting more money in the pockets of first home buyers will inevitably put money into the pockets of developers. It will not make houses more affordable.

The developers will estimate what is available and will just add that amount on to the price. It is certainly not an efficient and probably not an effective mechanism for providing housing stress relief. That very important issue must be addressed. It is time we had another look at the First Home Owner Grant to bring about more efficient and effective ways to create a housing market that provides houses at affordable rates, particularly for first home buyers. That said, the Greens will not oppose the legislation.

Reverend the Hon. FRED NILE [10.49 p.m.]: The Christian Democratic Party supports the State Revenue Legislation Further Amendment Bill 2010, which has a number of practical positive advantages for the people of this State. The bill contains a number of amendments to legislation administered by the Office of State Revenue, including an increase in the First Home Owner Grant cap from $750,000 to $835,000 from 1 January 2011 to comply with requirements of the Intergovernmental Agreement on Federal Financial Relations. It also updates payroll tax share scheme provisions and stamp duty on transfer of superannuation property. The updated provisions taxing employee share scheme benefits will align with recent amendments to Commonwealth income tax legislation.

The bill also includes transfers of property where persons change superannuation funds. The bill extends the duties concession for persons changing complying superannuation funds to apply to transfers of marketable securities to a pooled superannuation trust. While the current concession allows transfers of property from a pooled superannuation trust to a complying superannuation fund, it does not allow a reverse transaction, that is, a transfer of property to a pooled superannuation trust from a complying superannuation fund. This removes significant constraints to persons changing superannuation funds. The people of New South Wales should be given that assistance when they have had a change of mind as to which fund they wish to be involved with. The bill clarifies the duties concession for transfers of property to new trustees and deals with transfers from a member of a self-managed fund to a custodian. It extends the duties concession for transfer of property to self-managed superannuation funds. The bill also includes a number of other minor amendments. For those reasons, we support the bill.

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [10.51 p.m.], in reply: I thank all members for their contribution to this debate, including the Hon. Matthew Mason-Cox. The Government is committed to having best-practice revenue laws, and these amendments reflect that commitment. The State Revenue Legislation Further Amendment Bill 2010 makes important amendments to State tax Acts both to protect the revenue and to ease the compliance burden on New South Wales taxpayers. These amendments include changes in response to issues raised by industry and Commonwealth legislative changes. Whilst it was difficult to determine exactly where the Hon. Matthew Mason-Cox was going in his contribution, I recall he did ask a question about the implications of revenue. I have been advised that the duties amendments component of the bill is expected to have negligible revenue implications. The increase to the First Home Owners Grant cap is expected to have minor negative impact revenue of around $1.5 million in the 2010-11 financial year. 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.

FAIR TRADING AMENDMENT (AUSTRALIAN CONSUMER LAW) BILL 2010

Bill received from the Legislative Assembly, and read a first time and ordered to be printed on motion by the Hon. Michael Veitch, on behalf of the Hon. Peter Primrose.

Motion by the Hon. Michael Veitch agreed to:

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

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

NATIONAL BROADBAND NETWORK CO-ORDINATOR BILL 2010

Second Reading

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [10.54 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.

I am pleased to introduce the *National Broadband Network Co-ordinator Bill 2010* which will facilitate and accelerate the rollout of the National Broadband Network in New South Wales.

The NBN Co—an Australian Government owned company—has already commenced construction of the national telecommunications network for the high-speed delivery of communications throughout Australia.

NBN Co is currently working in a number of priority sites—known as first and second release sites—across the country, including some within NSW.

The National Broadband Network is to be rolled out across Australia over the next eight years.

The purpose of the bill is to ensure that New South Wales can get the most out of the short and long term economic and social benefits the National Broadband Network will deliver.

Widespread high-speed broadband is essential for the delivery of Government services to the community of NSW, and especially for regional and remote communities.

High-speed broadband can connect regional and remote offices, schools and medical centres, support high quality video conferencing and provide regional doctors with immediate access to medical files.

Widespread high-speed broadband is also vital for the transformation of our economy.

The National Broadband Network will create new markets and business opportunities as well as new business models in the key sectors of health, education and transport.

The New South Wales Government strongly supports the rollout of the National Broadband Network.

It showed its support by establishing the New South Wales National Broadband Network Taskforce to ensure the State is in the best possible position to achieve as smooth a rollout as possible.

Right from the beginning, NBN Co foreshadowed its need to access assets with the potential to facilitate the rollout.

This has been demonstrated in NBN Co's keenness to access New South Wales Government owned assets for the rollout of the National Broadband Network in the first release sites in Armidale and Minnamurra/Kiama Downs.

This translated into the successful execution of facilities access agreements between Country Energy and Integral Energy with NBN Co.

The Department of Services, Technology and Administration worked closely with all involved to assist the successful outcome.

To ensure the rollout continues quickly and smoothly in New South Wales, it is vital to establish a dedicated position that has the power to act on behalf of the State.

It is imperative to ensure similar agreements between New South Wales Government asset owners and NBN CO are expedited as smoothly and successfully as those agreements just concluded over the first release sites.

The coordinator's primary role will be to negotiate access to all New South Wales Government-owned infrastructures which will be used in the NBN rollout.

This infrastructure includes not only power poles, but microwave towers and road, rail and river bridges.

Part 2 of the bill establishes the New South Wales NBN Coordinator who will be responsible for facilitating and accelerating the rollout of the National Broadband Network in New South Wales.

The coordinator will have the specific functions of liaising with and coordinating the activities of Government agencies in relation to their involvement with the rollout of the National Broadband Network in New South Wales.

The coordinator will be the State Government coordinator for negotiations with NBN Co.

The coordinator will manage complex negotiations between NBN Co and New South Wales Government agencies.

The coordinator will also be able to enter into contracts on his or her own behalf with NBN Co.

Part 3 of the bill also provides for the establishment of a Government Chief Executives Committee to provide advice on the exercise of functions by the coordinator.

The Director-General of the Department of Services, Technology and Administration or the Director-General's nominee will be the presiding member of the Committee.

Directors General, or their nominees, of the Department of Premier and Cabinet, Industry and Investment and Transport New South Wales will also be on the Committee as well as the Secretary of the Treasury or the Secretary's nominee.

The Committee will issue guidelines if necessary, in relation to consultations the coordinator should undertake when carrying out official functions.

The Committee may also prepare protocols for Government agencies in relation to developing and implementing agreements with NBN Co regarding the rollout of the National Broadband Network in New South Wales,

Part 4 of the bill requires Government agencies to facilitate and assist the rollout of the National Broadband Network in New South Wales.

The bill requires agencies to cooperate with the coordinator in relation to providing access to Government assets and to notify the coordinator of any proposed exercise of the agency's functions that may adversely impact on the coordinator's functions.

Importantly the bill authorises and empowers Government agencies to exercise any of their functions for the purpose of facilitating and assisting the rollout of the National Broadband Network, particularly to comply with a request of the coordinator.

The bill will allow the coordinator to request Government agencies to agree to the appointment of the coordinator as agent for a Government agency in its dealings with NBN Co including authorising the coordinator to enter into contracts and arrangements with NBN Co on behalf of the Government agency.

The bill provides for Ministerial powers to support the coordinator in resolving on behalf of the New South Wales Government, any contractual or other disputes.

Specifically, the bill allows the Minister to direct agencies to comply with a request made by the Coordinator for the purposes of facilitating the roll out of the National Broadband Network.

Such directions will only be made after consultation with the Chief Executives Committee, and in the case of State Owned Corporations, with the shareholding ministers.

The initiatives in this bill apply only to the rollout of the National Broadband Network in New South Wales.

Once the network has been constructed, the legislation will be repealed.

The bill therefore provides a mechanism under which the functions of the coordinator are kept under review.

Once the coordinator is satisfied that the Act is no longer required, he or she will provide a certificate to that effect and the Governor can repeal the Act.

This bill will ensure that New South Wales realises the benefits that the National Broadband Network will deliver.

It establishes a framework in which the activities of Government agencies will be co-ordinated, and jointly focussed on delivering economic and social benefits for the people of New South Wales.

I commend the bill to the House.

The Hon. GREG PEARCE [10.55 p.m.]: This is the latest in the conga line of legislation that the Government is pushing through both Houses of Parliament in the dying stages of this Government and this Parliament. The National Broadband Network Co-ordinator Bill 2010, like others before it, has been introduced without any consultation or any proper argument to support its introduction. It really is quite extraordinary because, fundamentally, the Government could establish a co-ordinator for the national broadband network and a chief executives committee by a simple administrative order; there is no need for legislation. The third extraordinary objective of the bill is to require government agencies to cooperate with the National Broadband Network Co-ordinator in facilitating and assisting the rollout of the National Broadband Network. I say extraordinary because the National Broadband Network does not exist yet. We are still waiting on legislation to tell us what it is about, yet here we are being asked to agree to legislation that requires every New South Wales government agency to facilitate and assist the Gillard Government in the rollout of its network. There is no description of what is required; there is no outline of what New South Wales government agencies will have to do to comply with this awful piece of legislation.

As I said, a co-ordinator and a chief executives committee could be established by way of administrative order. In the past couple of years the Government has undertaken a massive review of government agencies in this State. It has created the so-called 13 super departments. And how did it do that? It did it by administrative order. It did not legislate for that purpose. That is the appropriate way to deal with the management of the public service. Indeed, what has been Government's involvement in the broadband proposal? On 26 May 2009 the New South Wales Government's National Broadband Network Task Force held its first meeting, and there have been other meetings of the task force since then. Who are supposed to be members of this chief executives committee? There is the Director General of the Department of Premier and Cabinet. The first person named for 26 May 2009 was the representative of the Department of Premier and Cabinet. Then we have a representative of the Department of Services, Technology and Administration and then, if we go back to May 2009, there is a representative of the Department of Commerce. All the meetings of the broadband task force are listed; it has been in existence since May 2009. A couple of my colleagues have asked me who the Premier was at that time.

It is an apposite question. The Premier at the time was none other than Nathan Rees, currently the member for Toongabbie. It is a comment on the putrid nature of this Government that its members are trying to drive Nathan Rees out of his seat of Toongabbie. They are trying to deprive the Liberal candidate of a victory over Nathan Rees. Having said that, I point out that in November 2009 Nathan Rees was talking about the National Broadband Network Task Force—one of his most important strategies. The Government was vigorously pursuing opportunities to play a leading role in the rollout of the National Broadband Network. At that stage Nathan Rees and his Labor Government—a different Labor Government from the one we have now—were desperately trying to get the headquarters of the National Broadband Network located in Sydney. What happened? Did they get the headquarters in Sydney? No, they missed out again. They were incompetent and totally hopeless, as always.

To finish on this point, some time in 2009 the then Premier, Nathan Rees, wrote to the then Prime Minister, Kevin Rudd—there are lots of "thens" when we talk about Labor people; a "then Premier", a "then Prime Minister" and "then Ministers" for this and that. We think it was about August. The then Premier forgot to date his letter to the then Prime Minister, but by piecing it all together we believe it was about that time. The then Premier talked about the processes the New South Wales Government had in place for dealing with the National Broadband Network. He had a planning team that would undertake joint planning and common implementation approaches. He also had a greenfield estates team, which would ensure that the Commonwealth's vision of all greenfield estates being fibre optic connected by 1 July 2010 was a reality in New South Wales. That is a reality check.

Nathan Rees was doing a good job. I ask Labor members whether they think Nathan Rees was doing a good job. The Hon. Luke Foley agrees that Nathan Rees did a good job. Nathan Rees did a good job because he also had an "Access Team" to provide access to State-owned land, transport and utilities carriers to support the rollout of the National Broadband Network. Just in case the Rees Government was not doing enough to support the National Broadband Network, he also had a skills team, which was formed to facilitate the education of skilled technicians and engineers required to support the rollout.

I went through that information because the bottom line is that this legislation is a nonsense. If the Government wants to support the National Broadband Network program, it can do so by simple administrative orders. They should stick with one Premier and stick with the program. They had it all in place under Nathan Rees. The bill is a nonsense, and the New South Wales Liberals and Nationals will not support a piece of nonsense.

Reverend the Hon. FRED NILE [11.03 p.m.]: On behalf of the Christian Democratic Party I speak on the National Broadband Network Co-ordinator Bill 2010, the main purpose of which is to facilitate and accelerate the rollout of the National Broadband Network in New South Wales by establishing a National Broadband Network Co-ordinator. Whether members agree with the bill or not, the National Broadband Network certainly needs a co-ordinator or someone to organise it efficiently. There have been reports in the media today of housewives at Minnamurra being distressed about the sudden arrival of broadband, like a monster from outer space. Great machines are digging up their concrete driveways and gardens and putting in cement strips where lawns have been dug up. The results are quite ugly. Replaced concrete is not matched or coloured, so most of the driveways of reasonably modern homes are scarred.

When broadband engineers and staff—I assume they are qualified—gathered on the veranda of a house, the lady who lives alone in that house asked them, "What are you doing here?" They did not knock on the door and ask permission to come onto the premises, they just prowled around the house. They said, "We're here to give you your NBN box." They asked her where she thought it should go. She said she thought it should probably go in the electricity box. They said, "No, it won't work in there." They just stuck it on the veranda. I assume that this lady, who did not want broadband and does not know what it is for, will probably get a bill for it because a National Broadband Network box is now attached to her house. She complained about an invasion of her privacy. Something is going radically wrong with the implementation of the National Broadband Network.

The bill refers to giving the co-ordinator the ability to identify New South Wales Government-owned assets to facilitate the rollout. Power poles, transmission pylons, existing optical fibre networks and microwave towers are mentioned. This is supposed to be a modern, underground National Broadband Network. It seems that because they are finding it difficult and expensive to dig trenches everywhere, as they did in Tasmania—now they are attacking houses in the Minnamurra area, at Kiama—they are going to string up the National Broadband Network on telegraph poles. That is why a co-ordinator is being set up. Another ugly cable will be added to those already on the poles: the telephone lines and the wiring for cable television. The residents of New South Wales thought that they were getting rid of ugly overhead wiring; that the National Broadband Network cables would be placed underground. It seems that that will not happen. If the National Broadband Network is to be placed underground, why are power poles and transmission pylons listed specifically in the bill?

As we all know, members of the Federal Parliament, particularly in the Senate, are trying to find out exactly what the broadband network will cost before they agree to support the Government's legislation—they may be doing that as I speak. They want to know what the exact cost is, not some wishy-washy figure of $43 billion. How much will it cost the taxpayers of Australia and where is the business plan? The Federal Labor Government has said the business plan is secret and that members cannot see it. When a Greens Senator insisted, the Labor Government eventually said, "Yes, you can have a look at it but you have to sign a document

to say that you will not reveal the contents of the business plan for seven years." The Greens member said, "That is amazing. I am already on a defence committee of the Senate where I see confidential security documents and I have not signed any request to keep that information secret." In other words, the National Broadband Network is more secret than our national defence and security plans. The question is: Why the secrecy? Why is the Federal Labor Government concealing the business plan?

Today a Federal Government Minister said the cost might be $34 billion rather than $43 billion. It is an airy-fairy figure that someone has plucked out of the air. Perhaps we should vote in favour of this bill because the Government needs all the help it can get to sort out this tangled web. Perhaps the Government does need a co-ordinator. If we do not have a co-ordinator, the National Broadband Network will be a greater mess than it already appears to be.

Reverend the Hon. Dr GORDON MOYES [11.09 p.m.]: On behalf of Family First I speak in debate on the National Broadband Network Co-ordinator Bill 2010. I believe this is the most optimistic bill that has ever been brought before this House and I will not support it.

Dr JOHN KAYE [11.09 p.m.]: I compliment Reverend the Hon. Dr Gordon Moyes on the remarkable brevity of his speech and I will attempt to match it as well as I can.

Reverend the Hon. Fred Nile: Quote the Greens senators in Canberra.

Dr JOHN KAYE: It has been suggested that I should quote the Greens senators in Canberra. However, I will not do so. The National Broadband Network Co-ordinator Bill 2010 will facilitate the rollout of the National Broadband Network [NBN] in New South Wales by creating an NBN co-ordinator, by establishing an NBN Chief Executives Committee to advise and seek guidelines for that co-ordinator, by establishing certain powers for the co-ordinator, and by imposing certain obligations on government agencies. In the end, I suspect that the way one feels about this legislation comes down to the way one feels about the NBN. If one supports the NBN—

The Hon. Greg Pearce: No.

Dr JOHN KAYE: The Federal Coalition has worked hard to frustrate the NBN. It is always fascinating to watch Malcolm Turnbull—

The Hon. Greg Pearce: Speak for yourself.

The PRESIDENT: Order! Dr John Kaye will ignore interjections, which are disorderly at all times.

Dr JOHN KAYE: I note with some interest the attitude of Malcolm Turnbull, the Opposition Federal spokesperson on the NBN, who made a lot of money—and good for him—out of the internet. He is in the extraordinary position of knowing full well that the NBN is an essential ingredient for the future of Australia. At the same time, because the internet equivalent of climate deniers have infiltrated the Coalition, Malcolm Turnbull is in the difficult position of knowing, on the one hand, that he needs to support the NBN and, on the other hand, that he wants to frustrate the NBN. It was interesting to listen to the Chaser's piece on the Liberal Party's policy on the NBN. To illustrate Liberal Policy it placed someone in front of one of those Commodore computers and transmitted the sound effects of a dial-up modem.

Opposition to the NBN seems to be coming largely from people who have not fully understood the significance to a modern economy of having as its backbone high-quality and high-speed internet. That is important not just economically but also socially and culturally. It fascinates me that the Coalition parties always argue for globalisation. However, if we are to have globalisation it would be more than just economic globalisation. If we had cultural globalisation, high-speed internet would become an important ingredient in connecting people to people and regions to regions. Trying to frustrate the NBN is one of the worst things one could do for the future of Australia. Tonight I raise two issues, the first of which relates to the use of State assets. If this legislation had been introduced prior to the agreement obtained by Federal Greens Senator Scott Ludlam, and prior to the amendments to the Federal legislation that will not allow the NBN to be privatised without the approval of both Houses of Parliament, the Greens in New South Wales would be less effective.

The Hon. Greg Pearce: What about the co-ordinator's job?

Dr JOHN KAYE: I will refer in a moment to the co-ordinator's job. I am making an important point about the public ownership of the NBN. The NBN is being allowed to use public assets in New South Wales.

Reverend the Hon. Fred Nile: And they are going to sell it.

Dr JOHN KAYE: Reverend the Hon. Fred Nile referred to the intention of the Government to sell the NBN. Scott Ludlam and other Greens senators in Canberra successfully negotiated to keep the NBN in public hands, unless there is approval by both Houses of Parliament to privatise it. The NBN, a monopoly asset, must remain a public asset. As the Coalition learned when it privatised Telstra against all advice—it privatised Telstra's wires, copper silicon and hardware—when one privatises a monopoly, a natural monopoly, or a near-natural monopoly, the problems that are encountered are legend and devastating. It is important to keep the NBN—which probably will be a natural monopoly or a near-natural monopoly—in public hands. How New South Wales interacts with the NBN is also important.

Reverend the Hon. Fred Nile: If the Coalition votes to sell it in the Federal Parliament it will have the numbers. You cannot stop it.

Dr JOHN KAYE: Reverend the Hon. Fred Nile suggested that the Coalition would have the numbers in the Federal Parliament. My understanding is that the numbers in the Federal Parliament, with or without the Christian Democratic Party's attempt to change them through the courts—will be such that the Coalition will not have control of the Senate.

Reverend the Hon. Fred Nile: What if the Labor Party and the Coalition vote together?

Dr JOHN KAYE: Reverend the Hon. Fred Nile referred to a scenario in which together the Labor Party and the Coalition had the power in the Senate. Of course, that is always a problem. Liberal, Labor and Nationals alliances form round privatisation—the coalition of the Right which happens so often—which is always a problem. However, at the moment, the NBN is publicly owned so we are not raising issues relating to the NBN.

[*Interruption*]

Not in Victoria; in Victoria we have a coalition—

The PRESIDENT: Order! Members will cease interjecting. Interjections are disorderly and the member with the call should refrain from responding to them.

Dr JOHN KAYE: In Victoria, Labor and the Coalition parties are in coalition and we know that they are doing preference swapping. To get back to the point at hand, the public ownership issue has been addressed and, therefore, there is less concern about State assets being used to facilitate the NBN. I raise two final issues. The first issue relates to the clause 9 obligations imposed on government agencies in respect of the rollout of the NBN in New South Wales, including the need to comply with any request from the NBN co-ordinator for information; to enable the NBN co-ordinator to exercise his or her functions; and to facilitate the rollout of the NBN network. I would like the Parliamentary Secretary in reply to respond to this question: How do the part 4 powers and obligations in clauses 9, 10, 11 and 12 stand with respect to planning legislation, native vegetation legislation, heritage legislation and Aboriginal heritage legislation? Does that legislation in any way override those laws?

The Hon. Greg Pearce: It will do.

Dr JOHN KAYE: Opposition members have suggested—and it has been suggested to me privately—that it could well do. As we have seen with other co-ordinator legislation, will this override those laws?

Reverend the Hon. Fred Nile: They are bulldozing Kiama.

Dr JOHN KAYE: Reverend the Hon. Fred Nile suggested that the Government is bulldozing Kiama, but that happened before the introduction of this legislation. The example quoted by Reverend the Hon. Fred

Nile in his contribution to debate on this bill is not relevant to this legislation because those alleged instances occurred before this legislation was introduced. The second issue I raise relates to the appointment of the NBN co-ordinator. On any cynical reading of this legislation, this is a landing pad for former Labor politicians or retiring Labor politicians.

The Hon. Greg Pearce: Or a relative.

Dr JOHN KAYE: Or a relative, or somebody else who does not have a public sector background. I foreshadow moving an amendment during the Committee stage to make sure that whoever is appointed to that position is not such a person, but will be somebody who has at least two years experience in government service. Of course, this would rule out any sitting member of Parliament.

The Hon. Greg Pearce: It won't rule out all their brothers, sisters, aunties, uncles, friends, colleagues.

Dr JOHN KAYE: It rules out any sitting member of Parliament. The Opposition spokesperson would suggest that we rule out people because they are married to a politician or because of their relationship to a politician. I have grave concerns about the meaning of that comment in respect of people's partners who may already have an independent career. The Greens certainly would not support legislation that would violate a modern understanding of gender and relationship equality.

Reverend the Hon. Dr Gordon Moyes: What about Jeanette Howard?

Dr JOHN KAYE: Sorry? What about Jeanette Howard? I am mystified. Therefore, the Greens will move an amendment that will be an opportunity for the Government to clarify that it is not its intention—and the Opposition too—to use the co-ordinator's position—

The Hon. Greg Pearce: We oppose it. How can we do that?

Dr JOHN KAYE: The Coalition may well be in government after the next election. The Greens amendment will enable the Government and the Opposition to not use this legislation as a landing pad for a politician who is about to lose their seat or about to retire. The Greens do not oppose the legislation.

The Hon. PENNY SHARPE (Parliamentary Secretary) [11.21 p.m.], in reply: That was one of the more interesting debates we have heard this evening. The primary aim of the National Broadband Network Co-ordinator Bill 2010 is to ensure that New South Wales takes full advantage of the economic and social benefits that will flow from the rollout of the National Broadband Network. The bill will achieve this by establishing the NBN Co-ordinator. The co-ordinator will simplify the process of working with the New South Wales Government so that the network builder, NBN Co, can roll out the National Broadband Network faster. The co-ordinator will act as a single point of contact within the New South Wales Government for negotiations with NBN Co for access to State-owned infrastructure, which will be used in the National Broadband Network rollout. It will develop standard agreements for accessing this infrastructure so duplication is avoided and there is a uniform New South Wales approach.

The co-ordinator will reduce the burden on asset owners by taking on complex negotiations on their behalf. The Government has taken the first steps in building the platform for a successful National Broadband Network rollout in New South Wales by finalising agreements with NBN Co to use energy infrastructure within the first release sites at Armidale and Kiama Downs-Minnamurra. Dr John Kaye raised issues around clauses 9 and 10. I can advise that clause 9 deals with the obligations of government agencies to facilitate the rollout. Clause 10 does not affect the operation of existing planning legislation. The National Broadband Network is an unprecedented initiative. Some of the ridiculous arguments put forward by Opposition members did nothing more than support their Federal leader, who has admitted that he is not a tech head and does not understand the National Broadband Network. At every point he has tried to frustrate the National Broadband Network process and the building of one of the most important pieces of infrastructure for Australia's future. All we have seen tonight from the Opposition is simply a continuation of that approach. I commend the bill to the House.

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

The House divided.

Ayes, 21

Mr Catanzariti	Mr Moselmane	Mr Veitch
Mr Cohen	Mr Obeid	Mr West
Ms Cotsis	Mr Primrose	Ms Westwood
Ms Faehrmann	Mr Robertson	
Mr Foley	Ms Robertson	
Ms Griffin	Mr Roozendaal	*Tellers,*
Mr Hatzistergos	Ms Sharpe	Mr Donnelly
Dr Kaye	Mr Shoebridge	Ms Voltz

Noes, 16

Mr Clarke	Mr Khan	Mrs Pavey
Ms Cusack	Mr Lynn	Mr Pearce
Ms Ficarra	Mr Mason-Cox	
Mr Gallacher	Reverend Dr Moyes	*Tellers,*
Miss Gardiner	Reverend Nile	Mr Ajaka
Mr Gay	Ms Parker	Mr Colless

Pair

Mr Kelly	Mr Harwin

Question resolved in the affirmative.

Motion agreed to.

Bill read a second time.

In Committee

The CHAIR (The Hon. Kayee Griffin): With the consent of the Committee I propose to deal with the bill in parts.

Part 1 [Clauses 1 to 4] agreed to.

Dr JOHN KAYE [11.31 p.m.]: I move Greens amendment No. 1:

No. 1 Page 4, clause 5 (2) (a), line 7. Insert ", being a person who has been employed in the Government Service of New South Wales for at least 12 months immediately before being appointed to that office" after "***2002***".

The amendment requires a person who is appointed as the National Broadband Network Co-ordinator to be a person who has been employed in the New South Wales government service for at least 12 months immediately prior to being appointed to that position. The amendment is intended to prevent the Government from appointing someone who currently is a politician, or indeed anyone who is not currently a member of the government service, to the position.

It is important to ensure that the National Broadband Network Co-ordinator comes from the public sector. Abundant skills that are suitable for the type of work of the co-ordinator exist within the public sector. The amendment is intended to prevent the appointment of someone from outside the public sector and to prevent the position being used as a drop zone for someone who is parachuted in. If the Government supports the amendment it will be clear that it does not intend to use the position as a soft landing for someone who may or may not be about to lose their seat in Parliament.

The Hon. PENNY SHARPE (Parliamentary Secretary) [11.33 p.m.]: The Government does not oppose Greens amendment No. 1. The New South Wales National Broadband Network Co-ordinator will be appointed under the Public Sector Employment and Management Act 2002. The Director General of the Department of Services, Technology and Administration will undertake that function until the office is created or during any vacancy. If the position were to be occupied by an alternative person on a full-time basis, the

usual public sector employment processes associated with establishing new positions and appropriate pay scales would be followed. The Government has no problem with the amendment because it sets out what is already the Government's intention.

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

Greens amendment No. 1 agreed to.

Part 2 as amended [Clauses 5 and 6] agreed to.

Parts 3 to 5 [Clauses 7 to 18] agreed to.

Title agreed to.

Bill reported from Committee with an 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 with a message requesting its concurrence in the amendment.

WATER MANAGEMENT AMENDMENT BILL 2010

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

Motion by the Hon. Penny Sharpe agreed to:

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

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

BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT AMENDMENT BILL 2010

In Committee

Clauses 1 and 2 agreed to.

Mr DAVID SHOEBRIDGE [11.40 p.m.]: I move Greens amendment No. 1:

No. 1 Page 3, schedule 1 [1] (proposed clause 26A). Insert after line 17:

(3) A payment withholding request must include a statement in writing by the claimant in the form of a statutory declaration declaring that the claimant genuinely believes that the amount of money claimed is owed by the respondent to the claimant.

As I said during the substantive debate on this bill, there is concern that the bill as currently drafted will allow an unscrupulous claimant to put an inflated claim on the principal so as to provide an inappropriate form of commercial pressure on the respondent or potentially to choke off the source of income to the respondent and therefore potentially prejudice other subcontractors who may also have valid claims against the respondent.

Following some discussion with the Government about that concern, I understand there is agreement to amend the bill to require the payment withholding request made by the claimant to include a statement in writing in the form of a statutory declaration that the claimant genuinely believed that the amount of money claimed is owed by the respondent to the claimant.

The importance of the amendment is that the statement is required to be in the form of a statutory declaration. If the statutory declaration is knowingly false the law provides significant criminal penalties against the person who made the false statutory declaration. That seems to be a prudent and wholly sensible additional check and balance in what is otherwise a good bill. If the amendment gets the support of the Committee, which I hope it will because it improves the legislation, the Greens will, with a great degree of comfort, support the balance of the bill.

The Hon. PENNY SHARPE (Parliamentary Secretary) [11.42 p.m.]: The Government does not oppose the Greens amendment, which ensures that the principals are not unduly required to withhold money arising from inflated claims and that cash flow is maintained in the industry. By providing these additional protections to subcontractors, it is important that an undue or unreasonable burden is not placed on principals and respondents. The rights of claimants who have a genuine belief that the amount of money claimed is owed by the respondent will not be affected. The Government is happy to support the amendment.

The Hon. GREG PEARCE [11.42 p.m.]: The amendment was provided only about 10 minutes ago. Just as the legislation was introduced by the Government in a manner that did not allow for proper scrutiny or consultation, and that did not provide an opportunity for us to ensure that there are no shortcomings or unintended consequences, the same applies to the amendment. Although the amendment does not appear to be offensive in itself, there are many ways the Greens could have approached the issue other than by acting in accordance with their newfound coalition with the Labor Party. The Greens and the Labor Party have formed a formal coalition federally. Now we hear that Mr David Shoebridge has been in discussion with the Government on this amendment but without presenting the amendments to members. Clearly, the Greens-Labor coalition is manifesting itself in a formal way in New South Wales.

As I said earlier, we simply do not know whether this legislation will do any good. We were a little surprised to hear that crossbench members were so well prepared in relation to the bill, as the public, the stakeholders and the Liberal-Nationals heard about this legislation only when it was introduced earlier today. We cannot support the legislation on that basis. As I said, while the amendment seems to be inoffensive, we cannot properly assess the amendment or get any commentary from stakeholders because of the way it has been done. If the Greens endorse this approach to legislation then let them live with the consequences.

Mr DAVID SHOEBRIDGE [11.44 p.m.]: I hate to poke a hole in the member's conspiracy theories in relation to the grand coalition he has conceived in his own mind. I also hate to inform him that the Greens have had this bill for exactly the same amount of time as the Coalition. However, rather than make fruitless contributions, as we have heard from the Coalition on a number of bills tonight, the Greens read the legislation. We took the time to read the bill. Having read the bill, we had some understanding of it and realised there was a potential problem so we put the amendment to improve what we thought was a problem with the bill. Rather than spend time coming up with conspiracy theories and coalitions that do not exist, I commend Coalition members to devote their time to reading the bill and considering ways that it could be improved, rather than simply whinging and complaining.

The Hon. Catherine Cusack: Did you discuss it with the Government?

Mr DAVID SHOEBRIDGE: Yes, we discussed the amendment with the Government. Earlier tonight we discussed the amendment with the Government, as is only sensible and rational when one wants to improve legislation. In much the same way, we attempted to discuss with Coalition members an amendment to improve the National Broadband Network Co-ordinator Bill, but their response was, "Well, even though it may improve or fix the bill we will not support it. You can all go down in a terrible fit of fury." They do not want to be seen to improve things; they simply want to grandstand.

The Hon. GREG PEARCE [11.46 p.m.]: I need to ask the member whether he is relying on his own legal advice. A long time ago I learned that one who takes his own legal advice has a fool for a client.

Mr DAVID SHOEBRIDGE [11.47 p.m.]: I am sure that when the honourable member relied on his own legal advice he learned at close quarters that he had a fool for a client.

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

Greens amendment No. 1 agreed to.

Schedule 1 as amended agreed to.

Title agreed to.

Bill reported from Committee with an 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 with a message requesting its concurrence in the amendment.

FAIR TRADING AMENDMENT (AUSTRALIAN CONSUMER LAW) BILL 2010

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [11.50 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 the second reading speech incorporated in *Hansard.*

Leave granted.

It is my great pleasure to introduce the Fair Trading Amendment (Australian Consumer Law) Bill 2010, the final step in giving effect to far reaching reforms of consumer protection legislation in this State and throughout Australia.

Last session this Parliament passed legislation to regulate unfair contract terms in standard form consumer contracts. When those provisions commenced on 1 July 2010, in concert with Commonwealth and Victorian laws, phase one of the national reform process was complete.

Successful passage of this bill will conclude phase two. On 1 January 2011, the new consumer policy framework envisaged by the Council of Australian Governments will be in place.

This has been described as the most significant overhaul of consumer law in a generation.

The last serious attempt to introduce uniform laws and reduce the level of complexity, duplication and fragmentation was in the mid-1980s, when State and Territory Governments agreed to mirror the consumer protection provisions in Part V of the *Trade Practices Act* 1974 by introducing *Fair Trading Acts*.

Unfortunately, there was no mechanism in place to ensure that uniformity was maintained. During the intervening years, Governments of all political persuasions faced new consumer protection and fair trading issues and communities that demanded action to minimise detriment, particularly for disadvantaged and vulnerable consumers.

A federal system of Government can benefit from innovation in different jurisdictions to find solutions to problems, leading to better public policy and service delivery. The problem is that regulatory innovation can lead to divergence in legislation.

It was against this background that the Productivity Commission held an inquiry into Australia's consumer policy framework during 2007.

By the time the Commission was finalising its report, the Council of Australian Governments had agreed to an ambitious regulatory reform agenda, including an enhanced national consumer policy framework.

The Ministerial Council on Consumer Affairs had the task of developing a new national approach to consumer policy, based on the recommendations in the Productivity Commission's May 2008 Report.

In their communiqué of 23 May 2008, Ministers noted that the reforms would serve to overcome inefficiencies resulting from the division of responsibilities between Australian Governments so as to deliver better outcomes for consumers, lower costs for businesses and more speedily tackle practices that harm consumers.

In August 2008 the Ministers agreed to a series of proposals for far-reaching consumer policy reform.

In summary, the reforms involved:

- a single national consumer law, based on the consumer protection provisions of the Trade Practices Act with amendments reflecting best practice in State and Territory fair trading legislation;
- the Commonwealth as lead legislator, with States and Territories applying the national law as part of their own laws;
- enforcement of the national generic consumer law shared between the ACCC and the State and Territory offices of fair trading.

In October 2008 the Council of Australian Governments agreed to this new consumer policy framework.

The Australian Consumer Law replaces approximately 20 Commonwealth, State and Territory statutes, including parts of the New South Wales Fair Trading Act.

For the first time, all Australian businesses and consumers will have the same rights and obligations concerning the supply of goods and services.

The national consumer policy objective—agreed by the Ministerial Council on Consumer Affairs in May 2008 – is as follows:

To improve consumer wellbeing through consumer empowerment and protection, fostering effective competition and enabling the confident participation of consumers in markets in which both consumers and suppliers trade fairly.

On 2 July 2009 the Council of Australian Governments signed the *Intergovernmental Agreement for the Australian Consumer Law*.

The IGA governs the development, administration and enforcement of the Australian Consumer Law. Importantly, it also governs future amendment of the law, so that uniformity can be maintained.

The Australian Consumer Law scheme is an applied law scheme. Legislation is enacted by the Commonwealth and applied, as in force from time to time, by other participating jurisdictions as a law of those jurisdictions.

The relevant Commonwealth legislation is the *Trade Practices Amendment (Australian Consumer Law) Act (No 2)* 2010. Under the amendments, the Trade Practices Act becomes the *Consumer and Competition Act* 2010 and the Australian Consumer Law is schedule 2 to the Competition and Consumer Act.

All States and Territories are passing application laws. The only exception to this is Western Australia.

It has been WA Government practice to adopt a different mechanism so that the WA Parliament has the opportunity to consider any changes to national legislative schemes before they are made. This is the case with the Australian Consumer Law.

Unlike some other applied law schemes, the States and Territories have, and will maintain, an active role in the development of consumer policy and the enforcement of consumer laws.

This is of particular significance to New South Wales. It is vital that New South Wales, Australia's most populous State with the largest economy, is able to influence the decision-making process when national action is contemplated.

As far as changes to the law are concerned, the IGA provides that any jurisdiction may submit a proposal to the Commonwealth, supported by best practice regulation documentation similar to that required in New South Wales. Any Commonwealth proposal must be similarly justified.

There is a three month consultation period, after which a vote is held. Although consensus is the preferred outcome, in the end no amendments can be introduced to the Commonwealth Parliament unless they are supported by the Commonwealth plus four other jurisdictions, including at least three States.

Before I speak in more detail about the provisions of the bill, I wish to acknowledge the legacy that has made New South Wales the pre-eminent law-maker for consumer protection and fair trading in Australia.

Some would say that Victoria has the honour of passing the first specific consumer protection legislation in this country, but in 1969 it was New South Wales that introduced the comprehensive Consumer Protection Act, a statute which served as the model for corresponding legislation in other States and territories, including Victoria.

The Consumer Protection Act operated successfully for nearly twenty years, supplemented by industry-specific regulation and innovative laws such as the Contracts Review Act and the former Consumer Claims Tribunals Act.

The Fair Trading Act was enacted in 1987 in response to the agreement to mirror the consumer protection provisions of the Trade Practices Act. At the time it was described, in words that have a familiar ring, as a groundbreaking piece of legislation and the most comprehensive overhaul of consumer law in New South Wales since 1969.

This bill amends the *Fair Trading Act* 1987 to apply the Australian Consumer Law as a law of New South Wales.

I can assure honourable members that the Fair Trading Act will not disappear. Although the core provisions of the Act are now replicated in the Australian Consumer Law, we will retain those provisions that are required for the exercise of Fair Trading's other administrative and regulatory functions.

The Fair Trading Act gives our State agency power to advise and educate consumers; take action for remedying infringements of, or for securing compliance with, all legislation administered by the Minister for Fair Trading; receive, investigate and refer complaints; and examine and research laws and matters affecting consumers.

Staff will continue to carry out these functions with respect to both the Australian Consumer Law and industry specific laws, such as those which regulate motor dealers and real estate agents.

Investigators require powers to enter premises, undertake search and seizure under warrant and obtain information, documents and evidence. The Fair Trading Act powers will be retained.

Consumers in New South Wales have long benefited from the legal assistance provisions in the Fair Trading Act. Subject to the approval of the Minister, such assistance may be granted to a consumer involved in legal proceedings arising out of the supply of goods or services or an interest in land.

Applications must meet the threshold consideration that it is in the general interests of consumers or a class of consumers for assistance to be granted.

The Fair Trading Act will continue to provide for the establishment of the Products Safety Committee and other advisory councils.

The Australian Consumer Law is generic regulation, whereas industry-specific regulation targets particular sectors. It is likely to be the preferred option when effective enforcement of generic regulation has not achieved the policy objectives, such as modification of trader behaviour or protection of consumers from financial loss.

The Fair Trading Act will continue the specific regulation of employment placement services, funeral goods and services and the relationship between motor vehicle insurers and repairers.

A most important part of the Fair Trading Act deals with enforcement and remedies. Although many of these provisions are replicated in the Australian Consumer Law, there are others which are particular to New South Wales and have been retained.

These include the Director General's power to suspend licences and the prohibition on publishing a Statement that is intended to promote the supply of goods and services and makes reference to the Minister or Fair Trading officials without their consent.

Also retained is the broad power to make public warning Statements about unsatisfactory goods or services or unfair business practices and those who supply or engage in them.

I turn now to the provisions of the bill.

Schedule 1 amends the *Fair Trading Act 1987* to apply the Australian Consumer Law as a law of New South Wales and provide for the administration and enforcement of the Australian Consumer Law in NSW.

Schedule 1 also makes consequential amendments to the Fair Trading Act. It repeals the provisions that are superseded by the enactment of the Australian Consumer Law and clarifies the interaction of existing enforcement and remedies provisions with those in the Australian Consumer Law.

Existing provisions are amended to promote harmonisation and national consistency in the administration of consumer protection and fair trading laws.

The bill amends section 4 to make it clear which of the definitions in the ACL are also to apply to the Fair Trading Act. Section 5, which defines 'consumer', is repealed in favour of the definition in the ACL.

The definition in the ACL is the same as that in the Trade Practices Act. Essentially, a consumer is someone who buys goods or services which would normally be for personal, domestic or household use, any type of goods or services costing up to $40,000 or a vehicle or trailer used mainly to transport goods on public roads. Under the ACL, the provisions dealing with consumer guarantees, unsolicited consumer agreements, lay-by sales, proof of transactions and itemised bills all rely on the definition of 'consumer'.

The Fair Trading Act uses 'consumer' in a generic sense. For example, one of the functions of the Director General is to make general information available to consumers about matters affecting the interests of consumers. Adoption of the ACL definition will have little practical impact in New South Wales.

The bill amends section 9 to extend the functions of the Director General to accommodate the role played by agencies in cooperative legislative schemes, such as the joint administration and enforcement of the ACL. To facilitate cooperative enforcement activity, section 9A is amended to make it clear that information exchanged with other regulators can include reports, recommendations, opinions, assessments and operational plans.

The bill repeals Part 2 Division 3A dealing with substantiation of claims and representations. Substitute provisions in the ACL provide New South Wales Fair Trading with a similar investigative tool.

The bill amends the existing powers of investigators to match the enhanced suite of product safety market surveillance and enforcement powers at the Commonwealth level.

The national product safety reforms that are an integral part of the ACL require the Australian Competition and Consumer Commission to take a stronger role in the day to day administration and enforcement of the law.

The existing powers in New South Wales are strengthened with respect to unsafe consumer goods and product related services. The bill defines unsafe consumer goods as consumer goods that will or may cause injury to any person or a foreseeable use (or misuse) of which will or may cause injury to any person. Unsafe product related services as product related services of a particular kind supplied in trade or commerce, a result of the supply of which is that any consumer goods will or may cause injury to any person, or a reasonably foreseeable use (including misuse) of any consumer goods will or may cause injury to any person.

The bill amends section 19A to permit an investigator to apply for the issue of a search warrant on the grounds that unsafe consumer goods or product related services are being supplied from premises. The investigator will be able to seize the goods or the equipment used to supply the services. Proposed section 23D provides that if seizure is not practical, the investigator may issue an embargo notice to prevent their supply.

Proposed section 23B enables the Director General to make an application to a court to authorise an investigator to enter and search premises for consumer goods that are in a person's possession for the purposes of trade or commerce and that do not comply with safety standards or have been permanently banned or recalled or are unsafe. The court may make an order for the destruction or other disposal of any such goods.

The bill inserts a new Part 3—The Australian Consumer Law—into the Fair Trading Act.

Part 3 applies the Australian Consumer Law text, as in force from time to time, as a law of New South Wales—to be referred to as the Australian Consumer Law (New South Wales).

The existing administration and enforcement powers in the Fair Trading Act will apply and may be utilised for the Australian Consumer Law (New South Wales) unless otherwise provided.

Part 3 confirms that the Director General (of the Department of Services, Administration & Technology) will be the regulator for the purposes of the enforcement and administration of the Australian Consumer Law in New South Wales.

Part 3 also sets out the jurisdiction of the New South Wales Courts and the Consumer, Trader and Tenancy Tribunal with respect to the Australian Consumer Law.

The ACL text consists of schedule 2 to the Competition and Consumer Act and the regulations under section 139A of that Act.

Part 3 provides that modifications to the Australian Consumer text by the Commonwealth may be excluded by a New South Wales proclamation from having operation in New South Wales.

The provisions of the Principal Act that apply the ACL as a law of New South Wales, and the ACL, bind the Crown in right of New South Wales and of each other Australian jurisdiction, but only to the extent that the Crown carries on a business. The Australian Consumer law applied by other jurisdictions binds the Crown in right of New South Wales to the extent that it carries on a business.

Part 3 provides that the Crown in any capacity is not liable to a pecuniary penalty or to be prosecuted for an offence under the provisions of the Principal Act that apply the ACL as a law of New South Wales or the ACL.

A person is not liable to be punished for an offence against the Australian Consumer Law of another jurisdiction and the Australian Consumer Law of New South Wales, or to pay pecuniary penalties, in respect of the same conduct.

The Australian Consumer Law comprises five chapters. Chapter 1 includes definitions and interpretive provisions about consumer law concepts.

Chapter 2 contains general protections which create standards of business conduct in the market. In particular, misleading, deceptive or unconscionable conduct is prohibited and unfair terms in consumer contracts are regulated.

Chapter 3 deals with specific protections in five categories: unfair practices, consumer transactions, safety of consumer goods and product related services, information standards and liability of manufacturers for goods with safety defects.

Unfair practices include false or misleading representations, unsolicited supplies, pyramid schemes, referral selling and harassment or coercion. NSW provisions on false billing and dual pricing (now called multiple pricing) have been adopted.

The section on consumer transactions deals with the new consumer guarantees and the harmonised national provisions regulating unsolicited consumer agreements and lay-by sales. New to this State are best practice provisions from Victoria that require consumers to be given proof of transactions and an itemised bill, if requested, following the supply of services.

Chapter 4 contains criminal offences relating to certain matters in Chapter 3 and provides for a number of defences.

Chapter 5 sets out enforcement powers and remedies relating to consumer law. These include enforceable undertakings, substantiation notices, public warning notices, pecuniary penalties, injunctions, actions for damages, compensation orders for injured persons and non-party consumers, non-punitive orders, adverse publicity orders and disqualification orders.

Most are already available in New South Wales, but pecuniary penalties, orders for non-party consumers, non-punitive orders and disqualification orders are welcome additions to the compliance and redress options for Australian Consumer Law contraventions.

Chapter 5 also provides a defence to allegations that claims about the country of origin of goods are false, misleading or deceptive, details the remedies available under the new consumer guarantees and provides for the liability of suppliers and credit providers.

The bill inserts a new Part 4 dealing with New South Wales consumer safety and information requirements.

Under the ACL, State Ministers retain the power to introduce interim bans or recall unsafe consumer goods and product-related services, while the Commonwealth Minister has sole power to introduce mandatory safety standards and permanent bans, following consultation with all jurisdictions.

The bill amends the role and functions of the Products Safety Committee to align them with the Minister's powers under the ACL.

The bill repeals those provisions relating to safety standards, banning and recall orders that are made redundant by the ACL.

The bill repeals Part 4, which deals with product information, dual pricing, direct commerce, conditions and warranties in consumer transactions and actions against manufacturers and importers of goods. The ACL contains substitute provisions that maintain and in some cases enhance the New South Wales provisions.

For example, mandatory information standards can now be prescribed for services as well as goods, although only by the Commonwealth Minister after consultation with the States and Territories.

Implied conditions and warranties in contracts are replaced by statutory consumer guarantees, a comprehensive set of rights and remedies for defective goods and services. They draw on the New Zealand Consumer Guarantees Act 1993, which adopts a clearer approach to the law and to the remedies consumers have.

The statutory guarantees are much the same as the implied conditions and warranties—although the law simplifies the language and replaces the poorly understood concept of 'merchantable quality' with a new guarantee of 'acceptable quality'.

Acceptable quality means fit for all the purposes for which goods of that kind are commonly supplied, acceptable in appearance and finish, free from defects, safe and durable.

The bill omits Part 5 (Fair trading), Part 5B (Lay-by sales) and Part 5D (Pyramid selling), which are largely replicated in Chapter 3 of the ACL.

Although they are not included in the ACL, the bill repeals section 51A, which prohibits mock auctions and Part 5A, which regulates trading stamp schemes. Specific regulation of these practices dates from the 1970s and is now regarded as inoperative. The general prohibition on misleading and deceptive conduct is considered sufficient protection.

The bill omits Part 5G, which deals with unfair contract terms. Part 5G is replicated in Part 2-3 of the ACL.

The bill inserts a new Part 6 that addresses enforcement and remedies. Part 6 makes a distinction between ACL contraventions and local contraventions—that is, breaches of the remaining provisions of the Fair Trading Act.

The old Part 6 contained provisions dealing with enforceable undertakings, injunctions, actions for damages, compensation orders and adverse publicity orders. These are repealed because substitute provisions are in the ACL.

Also repealed, because they are included in the ACL, are certain provisions dealing with defences and the disposal of proceedings for offences.

Part 6 makes it clear that these ACL provisions apply to both ACL contraventions and local contraventions.

The old Part 6 also contained enforcement and remedy provisions that apply only in New South Wales and are not adopted in the ACL. The bill re-writes these provisions and makes it clear that, where appropriate, they apply to ACL contraventions and/or local contraventions.

For example, proposed section 64 replaces existing section 62 (2A), which provides for the imposition of a penalty of imprisonment for a term not exceeding three years for a second or subsequent offence against certain provisions of the ACL.

Another example is proposed section 71 which replaces existing section 64B and enables the Director General or, with leave, a party to a standard form consumer contract to apply to the Supreme Court for a declaration that a term in a contract of that kind is unfair.

Proposed section 67 replaces existing section 64 and enables a penalty notice to be served on a person in relation to an ACL or local offence.

The bill inserts a new Part 7 to establish a New South Wales Consumer Law Fund. The equivalent law in Victoria also provides for such a fund, into which will be paid civil pecuniary penalties awarded under the Australian Consumer Law.

When ordered by a court, the fund will also be able to receive and distribute payments to redress loss or damage suffered by a class of persons who have not taken proceedings and are known as 'non-party consumers'. They would be entitled to redress if the loss or damage resulted from a contravention of the ACL.

Currently, the Director General must identify and obtain the consent of consumers when making an application for compensation orders. When contravening conduct affects a large number of consumers, this requirement is both impractical and has the potential to exclude consumers who have not yet come forward with legitimate claims.

Although the Director General will be able to apply for orders for non-party consumers under Australian Consumer Law, the ACL does not address the question of where any monetary compensation so ordered is to be held while non-party consumers make a claim. The experience of New South Wales Fair Trading suggests that the establishment of a permanent fund will ensure good process and governance and reduce administrative complexity.

Part 7 provides that money is to be paid out of the Fund in accordance with the relevant court orders and may be paid out of the Fund for other specified purposes, including special purpose grants for improving consumer well-being, consumer protection or fair trading.

Proposed section 88A deals with the relationship of the ACL and provisions of other Acts. Section 88A (1) maintains the status quo with respect to contracts for recreation services under section 5N of the *Civil Liability Act 2002*. Section 88A (2) provides that section 101 of the ACL does not apply to a bill within the meaning of Part 3.2 of the *Legal Profession Act 2004*.

The remaining provisions of schedule 1 contain consequential, savings and transitional amendments.

Schedule 2 amends the *Fair Trading Regulation 2007* as a consequence of the enactment of the proposed Act and, in particular, repeals certain prescribed product safety standards and product information standards that will be covered by the national scheme.

By virtue of the savings provisions in schedule 1, the product information standards on fibre content labelling for textile products and petrol price boards will continue to operate in NSW.

This bill fulfils our commitment to participate in the introduction of a new Australian Consumer Law.

The successful development of the Australian Consumer Law reflects the hard work and co-operation of many people—Commonwealth, State and Territory colleagues on the Ministerial Council on Consumer Affairs, the officials of all the jurisdictions involved and consumer and business stakeholders. Thanks are due to them all.

I commend the bill.

The Hon. CATHERINE CUSACK [11.50 p.m.]: The purpose of the Fair Trading Amendment (Australian Consumer Law) Bill 2010 is to give effect in New South Wales to the 3 July 2008 agreement of the Council of Australian Governments to develop a seamless national economy. It means that from 1 January 2011 Australia will have a single, national consumer law known as the Australian Consumer Law. This will replace the State-based consumer protection legislation contained in various State Fair Trading Acts as well as the Commonwealth Trade Practices Act. Australian Consumer Law will be contained in a schedule to the Competition and Consumer Act 2010. The objective of the new national consumer policy framework is to improve consumer wellbeing through consumer empowerment and protection, to foster effective competition and to enable the confident participation of consumers in markets in which both consumers and suppliers trade fairly.

When I was the shadow Minister for Fair Trading I was called on numerous occasions about Australia's product safety laws to be united under a Commonwealth banner. The system we were proceeding with, known as harmonisation, which was defended by the Minister at the time, Linda Burney, had resulted in what can only be described as Swiss cheese consumer protection laws whereby every State had a different law. Some States banned products and other States mandated products. The 2006 Productivity Commission Review of the Australian Product Safety System, conducted by Robert Fitzgerald—a very impressive Australian who did a truly remarkable job—documented for the first time the inconsistencies in our legislative framework having eight different jurisdictions trying to dream up their own laws and regulations for product safety.

The survey conducted by Mr Fitzgerald revealed that product bans are massively inconsistent with 63 per cent of product bans applying in only one State, and 23 per cent applying in only two States. In other words, very few products judged to be unsafe by one State are actually banned across Australia. There are numerous examples. For instance, New South Wales is the only State in Australia that has a regulation mandating certain requirements for Santa bags. It is ludicrous that if a person purchases a Santa bag in Coolangatta it is illegal in New South Wales. In relation to more sophisticated items such as mini-bikes and mobile toys the inconsistency can become quite dangerous.

Some time ago the New South Wales Government decided to adopt a United Kingdom standard, which was the international standard, in relation to hot water bottles. All the other States had different standards, usually relating to some incident that had occurred in that State. New South Wales was so slow in adopting the United Kingdom standard that by the time we actually proclaimed the regulation for the hot water bottle standard based on the United Kingdom standard it was obsolete. As a result the hot water bottles that were being

imported into this country, which we thought had world's best practice, were made illegal in this State. Under the old standard they had been tested for thickness and under the new standard they were being tested for strength, which highlights how ludicrous it is. Businesses trying to distribute the hot water bottles through a national pharmacy system of distribution found it to be a nightmare. The impacts, costs and inconsistencies are phenomenal. Why on earth would every State be trying to research and invent its own standards for every single product and anticipate new products and new technologies?

The solution had always been to harmonise, but harmonisation was slow and ineffective. Of course, the great barrier to handing over these powers to the Commonwealth had always been what was known as the Minister for Consumer Affairs' annual killer toy stories at Christmas time which across Australia has always been a major opportunity for Ministers to demonstrate what a great job they are doing. The perception is that the Ministers feared that handing over this really important power might deprive them of the opportunity to visit the Royal Easter Show or go to shops before Christmas and be televised announcing dangerous aspects of a Winnie the Pooh toy. I note that that problem appears to have been overcome in the legislation because, even though we are going to a national law, we have still retained the right of State Ministers to ban products. I understand they can have 30 days plus 30 day bans. Excuse my cynicism but I suspect that by enabling Ministers to hang on to that marvellous political moment we were able to actually get the policy substance happening and have it transferred to the Commonwealth, where it should have been placed many years ago. This bill will bring an end to that.

I believe that having laws that are so inconsistent and different across Australia is incredibly costly to business. I think Mr Fitzgerald found that it would actually positively impact Australia's gross domestic product by simplifying the number of rules and regulations businesses had to comply with by adopting the principle that if it is genuinely unsafe in New South Wales then it would be unsafe everywhere. The improvements to business and interstate trade are fantastic. More significantly, the law will be clearer for consumers and it will not matter where a person is, the law will apply equally to those products. It will assist consumers enormously to have consistent information that will empower them to enforce their rights. They will have a greater likelihood of knowing what is reasonable in their interactions with traders in enforcing those rights. I welcome this overdue legislation.

Dr JOHN KAYE [11.56 p.m.]: The Greens do not oppose the Fair Trading Amendment (Australian Consumer Law) Bill 2010. As the Hon. Catherine Cusack said, and the second reading speech no doubt noted, this legislation adopts the Australian Consumer Law as the consumer law for New South Wales, and presumably other States will similarly adopt the Australian Consumer Law, which is a schedule to what is currently called the Trade Practices Act, whose name will soon change. The schedule prescribes a range of important consumer protections, including prohibiting misleading, deceptive and unconscionable conduct and representations. It will regulate unfair contract terms and unfair sale practices. It will provide for consumer guarantees on goods and services and remedies where they are defective. It will create a national safety regime for consumer goods and product-related services. It will also contain a single set of enforcement powers, penalties and remedies and redress provisions applicable to breaches of the legislation.

The new provisions will include pecuniary penalties, disqualification laws, and court ordered redress to affect consumers not named in the proceedings. Choice, formerly known as the Australian Consumers Association, has strongly endorsed the Australian Consumer Law and has identified it as being stronger than existing consumer laws and providing more protection to consumers. In that regard it is hard to argue against the legislation. There are also benefits associated with common law across all Australia, as pointed out by the Hon. Catherine Cusack. However, I want to raise two issues. The first relates to the effective surrendering of power over legislation. At the moment the Australian Consumer Law is a step forward for New South Wales. As I understand it, the changes by agreement to the schedule of what is currently called the Trade Practices Act that contains the Australian Consumer Law will only be undertaken by the Federal Parliament with the agreement of the majority of States and Territories on the ministerial council. To some extent, that removes from parliaments a lot of discretion. It is a transfer of power away from the Parliament of New South Wales and away from the accountability of the Minister. Our experience, for example, in the food area has always been that ministerial councils tend to remove regulatory activities away from the accountability that parliaments can provide. In that sense, there is a step away from the Westminster system—

The Hon. Catherine Cusack: Or away from the quagmire.

Dr JOHN KAYE: The Opposition spokesperson refers to it as a quagmire. Democracy is often messy, but at least it does provide some degree—

The Hon. Catherine Cusack: It is democracy in Canberra.

Dr JOHN KAYE: It is democracy in Canberra, except the agreement is that it is not the Parliament that can make changes of its own accord; the agreement is that the Federal Parliament will only make changes in accordance with the agreement of the Ministerial Council.

The Hon. Catherine Cusack: A majority agreement.

Dr JOHN KAYE: A majority agreement, a simple majority agreement of the council. That does raise some concerns in respect of accountability of the laws. However, I understand that if New South Wales had a government that wanted strong consumer laws and other States and Territories did not it would be open to New South Wales, with grave difficulty, to withdraw from the agreement and pass its own laws. That, of course, is very unlikely to happen. This is not a referral of powers, but the effective transfer of powers is largely a one-way street.

The second issue I wish to raise is in respect of the consumer law fund. I ask the Parliamentary Secretary to explain with respect to section 79B (3) (a), (b), (c) and (d) exactly where the payments from the funds will be going. For example, in 79B (3) (a) money payable out of the fund is money to non-party consumers in accordance with section 239 (1) of the Australian Consumer Law. Could the Parliamentary Secretary please explain what is a non-party consumer? What is an order under section 239 (1) of the Australian Consumer Law? Who has the power to make that order? Secondly, with respect to proposed section 79B (3) (b), how will the special purpose grants for improving consumer wellbeing be determined? Who will determine what those grants are and what the terms and conditions of those grants are? The way the fund has been set up seems slightly unusual. The benefits to consumers in general from those two provisions seem to be slightly unclear, as well as how those two provisions will be organised. Apart from those concerns, the Greens do not raise objections to the legislation.

Reverend the Hon. FRED NILE [12.03 a.m.]: I support the Fair Trading Amendment (Australian Consumer Law) Bill 2010. The bill will amend the Fair Trading Act 1987 to apply the Australian Consumer Law as a law of New South Wales. In October 2008 the Council of Australian Governments agreed to a new consumer policy framework comprising a single national law, which is now called the Australian Consumer Law. It is a schedule to the Trade Practices Act and is the template legislation to be applied by all States and Territories as a law of their respective jurisdictions by 1 January 2011. An intergovernmental agreement signed by the Council of Australian Governments underpins the establishment and joint administration and enforcement of the Australian Consumer Law. This law, which will now be part of the Fair Trading Act 1987 and will be the law of New South Wales, prohibits misleading, deceptive and unconscionable conduct and representations; regulates unfair contract terms and unfair sales practices; provides for consumer guarantees on goods and services, and remedies when they are defective; creates a national safety regime for consumer goods and product-related services; and contains a single set of enforcement powers, penalties, remedies and redress provisions applicable to breaches of the legislation. New provisions include pecuniary penalties, disqualification orders and court-ordered redress to affected consumers not named in proceedings.

This legislation will help promote harmonisation and national consistency in the administration of consumer protection and fair trading across Australia, and particularly in New South Wales, by adopting the Australian Consumer Law. As has been stated previously, the State Government has retained some of its own powers so that we have harmony in the main thrust of the legislation, but New South Wales can still add items where it feels that there is some necessity for action to take place. For that reason, we support the bill.

The Hon. PENNY SHARPE (Parliamentary Secretary) [12.05 a.m.], in reply: I thank honourable members for their contribution to the debate. This is a significant piece of legislation that establishes good protection for consumers across Australia in a uniform way. Most of the issues have been broadly canvassed, so I will not seek to repeat them here at this late hour. I will, however, deal with the issue raised by Dr John Kaye around non-party consumers. Non-party consumers are those who are not named in proceedings. The change in the fund allows them to be able to get compensation even if they have not been named in proceedings. In relation to the Consumer Law Fund, money is to be paid out of that fund in accordance with the relevant court orders and may be paid out of the fund for specific purposes, including special purpose grants for improving consumer wellbeing, consumer protection or fair trading. 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) [12.07 a.m.]: I move:

That this House do now adjourn.

LOCAL GOVERNMENT CODE OF CONDUCT

The Hon. MARIE FICARRA [12.07 a.m.]: I speak regarding the need for urgent reform of the Local Government Code of Conduct disciplinary system. Be it the cases of councillors Joan Van Lieshout and Katie Milne at Tweed, Tony Hall at Ku-ring-gai, Virginia Laugesen at Warringah, Michael Osborne at Newcastle or Anne Wagstaff at Hurstville, there is clear evidence that the code of conduct investigation and disciplinary process can be used by councillors, general managers and staff to persecute and silence other councillors in minority situations who are attempting to ensure transparency and accountability in local government.

At Ku-ring-gai council, despite Supreme Court intervention in favour of Councillor Tony Hall, the pursuit of him continues by rival councillors and politically aligned staff. Tweed Shire Council, after coming back from dismissal, had a woman of great integrity as its mayor, Councillor Joan Van Lieshout. Immediately upon her seeking to hold the council's general manager, Michael Rayner, and certain councillors to expected standards of ethical behaviour, a campaign of vilification and politically motivated complaints was launched against her by Councillor Dot Holdham and Mr Rayner. However, the code of conduct committee on 30 September 2009 determined that it did not believe any breaches were sufficiently serious to warrant disciplinary action. Why was this matter not dismissed as vexatious, politically motivated and trivial the minute it was received?

At Warringah council the case of Councillor Virginia Laugesen evidences how the system can be manipulated. In October 2009 Councillor Laugesen attended a public meeting over a proposal to rezone the Oliver Street car park at Freshwater. That meeting was chaired by a Warringah council planning department senior manager, David Kerr, who is a friend and colleague of Warringah council mayor, Michael Regan, who also works in the adjoining Manly council's planning department. Residents were irate about how Warringah Council staff had arrogantly dismissed their concerns. Councillor Laugesen appropriately represented her constituents' concerns.

Media reports and residents tell me that Councillor Laugesen has been the subject of harassment from Wake up Warringah Party Leader and Warringah Mayor Michael Regan and his fiancée and party official agent, Bronwen Thomas, who also works at Manly council. Evidence reveals they use Manly council resources, such as a council vehicle for political campaigning prior to the last election, and also Manly council computers to make adverse comments about Councillor Laugesen and other Warringah councillors on the *Manly Daily* website. Bronwen Thomas has also verbally attacked several minority Warringah councillors at public events.

After the public meeting, documents presented to me by staff whistleblowers indicate that Bronwen Thomas, who was at that meeting, telephoned Michael Regan that night to complain about Councillor Laugesen. Michael Regan later that night telephoned David Kerr. It is apparent from Warringah Council's papers of its meeting last night that David Kerr lodged a complaint against Councillor Laugesen. What is also apparent from the report is the Code of Conduct Committee's refusal to consider Councillor Laugesen's evidence of a conspiracy between David Kerr, Michael Regan and Bronwen Thomas to submit a politically motivated and vexatious complaint. I am also advised that another person sought to give evidence of a previous false and vexatious complaint made by David Kerr against a community group; however, the Code of Conduct Committee refused to hear that evidence.

Last night a motion was moved at the Warringah council meeting that this matter be referred to the New South Wales Ombudsman and the Independent Commission Against Corruption to investigate the involvement of councillors and staff at Warringah and Manly councils in the matter. Councillors voted 5-5, with Mayor Michael Regan failing to disclose his significant conflict of interest and using his casting vote to defeat the motion to ensure that he, Bronwen Thomas and David Kerr were not referred to the Independent Commission Against Corruption and the New South Wales Ombudsman. Meanwhile, the Code of Conduct Committee's investigation into Councillor Laugesen cost Warringah ratepayers over $19,900.

The General Manager of Warringah council, Rik Hart, in accordance with the code, had the power to take no further action or even mediate the complaint. However he continued to facilitate this ordeal for Councillor Laugesen, who had previously not supported his contract renewal and made adverse comments about his performance. I believe that Mr Hart has made veiled threats of code of conduct breaches against councillors who refused to support his contract renewal and have questioned his performance.

The Division of Local Government for too long has been in denial that its code of conduct disciplinary system is systemically flawed. It needs immediate review by properly skilled and, more importantly, independent professionals to stop the farce and the waste of ratepayers' money as well as the trauma caused to many councillors across the State who continue to suffer great injustices in the representation of their communities.

HUMAN ORGAN TRAFFICKING

Reverend the Hon. Dr GORDON MOYES [12.12 a.m.]: As parliamentary leader of Family First I speak on the growing concern about human organ trafficking around the world. As global demand for live transplants keeps growing, the shadowy organ trading business is rapidly expanding, dominated by unscrupulous brokers and facilitated by inadequate national legislation, widespread corrupt practices and a general lack of public awareness of the extent of the trade. China, India, Pakistan, Egypt, Brazil, the Philippines, Moldova, and Romania are the world's leading providers of trafficked human organs. If China is known for harvesting and selling organs from executed prisoners, then the other countries have been dealing essentially with living donors, becoming stakeholders in the fast-growing human trafficking web.

They remove kidneys, lungs, pieces of liver, corneas, bones, tendons, heart valves, skin and other sellable human parts. The organs are kept in cold storage and airlifted to illegal distribution centres in the United States, Germany, Scandinavia, the United Kingdom, Israel, South Africa, the United Arab Emirates, Saudi Arabia and other rich, industrialised locales. This has prompted a serious re-evaluation of international guidelines and given new impetus to the role of the World Health Organisation in gathering epidemiological data and setting basic normative standards. There is no reliable data on organ trafficking but it is widely believed to be on the increase, with brokers reportedly charging between $100,000 and $200,000 to organise a transplant for wealthy Americans.

Donors—frequently impoverished and ill-educated—receive as little as $1,000 for a kidney although some may receive up to $5,000, and there are reports of people being killed for whatever body part is required. The illegal trade in body parts is largely dominated by kidneys because they are in greatest demand and they are the only major organs that can be wholly transplanted with relatively few risks for the living donor. An unknown number of kidneys are being trafficked today for cash from disadvantaged citizens in a range of countries to "organ tourists" from other nations such as Australia who go to those countries to receive the donated body part. Donors may survive the loss of one kidney, albeit often with serious detriment to their health. Only in China do the "donors"—virtually all of whom are Falun Gong or convicted criminals—perish during the transplantation operation because their vital organs are removed. The World Health Organisation is urging governments:

> ... to take measures to protect the poorest and most vulnerable groups from 'transplant tourism' and the sale of tissues and organs, including attention to the wider problem of international trafficking in human tissues and organs.

In China in mid 1999, organ price lists were openly posted on Chinese websites and Chinese hospitals openly boasted about money being made from the sale of organs. Many Falun Gong practitioners were sent to labour camps without any form of hearing and became a major source of organs for patients from China and around the world. Falun Gong practitioners today comprise about two-thirds of China's tortured victims and half of those are in forced labour camps across China. Since 2001, practitioners have been killed in the thousands so that their

organs could be trafficked. Two outstanding people from the United States and Canada, David Matas and David Kilgour, in their book *Bloody Harvest*, estimate that approximately 41,000 transplants were performed between 2000 and 2005.

So, have the efforts of China and people around the world to stop these appalling crimes against humanity made any difference? The government of China now accepts that the sourcing of organs from prisoners is improper, and the Belgian and Canadian parliaments have introduced extraterritorial legislation banning tourism for transplant reasons. In the same way that we in Australia have legislation against paedophile tourism we need legislation banning organ transplant tourism. Unfortunately, such developments have not yet ended the trafficking in human organs across China. It is essential for civil society to be actively engaged in combating this heinous activity. I call on the Australian Government to so legislate. [*Time expired.*]

COONAMBLE MULTIPURPOSE HEALTH SERVICE

The Hon. CHRISTINE ROBERTSON [12.17 a.m.]: Last Wednesday, 17 November, I had the pleasure of attending the opening of the Coonamble Multipurpose Health Service [MPS] by Dr Andrew McDonald, Parliamentary Secretary for Health, in my duty electorate of Barwon. I am not sure where Mark Coulton, the Federal member for Parkes, was but I know that Kevin Humphries was in Tamworth for some reason. It was a bit odd. The Coonamble Multipurpose Health Service development provides improved access to a mix of health and aged care services to meet the needs of this rural community. The $13 million project was made possible under the joint partnership of the State and Commonwealth governments.

The Multipurpose Health Service model allows for the integration of all or most public health and aged care services provided within a particular community, ranging from acute hospital care to residential aged care, community health and Home and Community Care services, with the opportunity for others to be involved, such as child health and mental health services. Funds from all separate services are pooled so that people get the best from both Commonwealth and State services.

Coonamble Multipurpose Health Service is yet another example of what can be achieved with a committed and motivated community and staff. The discussion and planning started in 2002 and, as many of the locals reminded me, was a fairly long and winding process. I remember that last year someone decided that some political interference would be fun, and the whole development threatened to fall over. I had forgotten this, but apparently I had the temerity to tell people to shut up or they would lose the Multipurpose Health Service. I was reminded of this by the locals on Wednesday when they were so happy and excited. In the end the community won and the people of Coonamble have an excellent facility to serve their needs for the next 50 years. A section of the original hospital has been cleverly integrated into the building by the architects and it looks fantastic.

Commissioned on 12 August 2010, the Coonamble Multipurpose Service is already benefiting the local community with a more streamlined approach to health care. Every member of the staff played a part in moving to the new building and they were proud of what they had put together. Elizabeth Burnheim, the health service manager, ran a tight and effective team of health professionals while fully integrating the community of which she is a part. A number of stakeholders, including members of the local community, Coonamble Health Council, the Greater Western Area Health Service and local staff were involved in designing the facility. We were welcomed to country by Ted Fernando, a member of the Health Service Advisory Committee throughout the planning and implementation stages.

The Coonamble Multipurpose Service includes an emergency care service; eight acute inpatient beds, including an area for closer observation; 17 residential aged high care places; and three chairs in the renal dialysis service. On-site renal dialysis services in multipurpose services are an exciting innovation across country New South Wales. Other services include respite and palliative care inpatient services; radiology services; physiotherapy services; clinical and operational support services; a wide range of community based services, including audiometry community aged care services; and specialist consultation rooms.

I have to relate an impressive story about radiology in Coonamble. Stella Cleary, a radiologist, has been in Coonamble for 30 years. For 28 of those 30 years she has been on call seven days a week, 24 hours a day, except for occasional holidays through a relief process. Two years ago another radiologist came to town and Stella now has regular relief. Country members in this Chamber know of the importance of radiology services in getting equal service for people in country New South Wales in both diagnosis and treatment planning,

including when and if people need to be moved to referral hospitals for appropriate treatment. These days, with telemedicine, X-rays form a major part of the assessment service. This is an exciting and wonderful example of country health service delivery by real local country health professionals. Thank you Stella!

There is also fantastic on-site accommodation for visiting professionals. Looking back and remembering the months that I spent, often in dubious country motels, in a regional health job, I was remorseful about the fact that on-site accommodation was not a feature 10 years go. I was impressed with the opening of yet another state-of-the-art health care centre that will provide integrated, modern facilities to country communities in New South Wales. Multipurpose services are a joint initiative of the State and Federal governments. The model is recognised as the best approach to providing state-of-the-art health care that is sustainable in smaller rural centres. I commend the members of the Coonamble Multipurpose Service advisory committee, staff and especially the community for providing a local perspective so vital in making this project a reality.

WOODSREEF ASBESTOS MINE SITE

The Hon. TREVOR KHAN [12.22 a.m.]: Tonight I refer to the recently released New South Wales Ombudsman's report entitled "Responding to the asbestos problem: The need for significant reform in NSW." The Ombudsman, in his executive summary, notes:

> Australian Bureau of Statistics figures show that 397 people died in fatal road traffic accidents in NSW in 2008, with 1,464 deaths Australia wide. As tragic as these figures are, the annual road toll is expected to be dwarfed by future cases of asbestos-related deaths. While 1,014 people died from mesothelioma in NSW during the five year period between 2002 and 2006, it is estimated that by 2020 Australia will have 13,000 cases of mesothelioma, for which there is currently no known cure, and a further 40,000 cases of asbestos-related cancers.

I referred to that part of the executive summary because it is worthwhile noting that in chapter 6 the report deals with the case of Woodsreef Mine—a mine located some 20 kilometres north-east of Barraba township in the Tamworth electorate. The report observes:

> Asbestos was mined in NSW from the 1890s until 1983 when the only remaining asbestos mine at Woodsreef near Barraba was closed. The Woodsreef mine exemplifies the serious challenges facing NSW in relation to the management of asbestos, including a lack of responsibility for the site and the scale of the problem.
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> The Woodsreef mine is situated approximately 20 km north-east of the Barraba township. Mining has occurred at Woodsreef since asbestos was discovered in the region of the Peel Fault system in the early 1900s. The large scale mining operations were conducted by the Chrysotile Mining Corporation of Australia between 1972 and 1983. During the period the mine was in operation around 500,000 tonnes of chrysotile asbestos was produced. At its height the Woodsreef mine employed some 400 workers. The entire mining area, including tailings and over burden stockpiles covers approximately 400 hectares.
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> The Woodsreef mine is the only known asbestos mine site in NSW which has yet to be remediated. With the failure of the mine in 1983, the then owners abandoned the site and it later became part of the Derelict Mines Program (DMP) administered by the Department of Industry and Investment (DII). While the DII manages the site under the DMP, as we have previously stated there is no government agency that has a legislative responsibility for the site.
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> The Woodsreef site includes an abandoned eight storey building where the processing of asbestos occurred when the site was operating. The building is in a severe state of disrepair, is deteriorating rapidly and is heavily contaminated with 100 % friable asbestos fibres.
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> There are four mining pits at the site which remain open and unfenced and contain water. The largest of those pits is approximately 500m wide, 1km long, and 150m deep to the surface of the water.
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> To the south of the mill house is a mound of asbestos tailings reaching a height of 75m which is said to contain approximately 24 million tonnes of tailings. There are three separate waste rock dumps located around the open pits. Together these dumps contain 75 million tonnes of rock.
>
> An unsealed road (Crow Mountain Road) divides the rock tailings, the mill house and the asbestos tailings mound. The public has access to this road and it is used regularly by several neighbouring properties.

The report describes a serious problem that requires attention. In 2009 the Department of Industry and Investment submitted a proposal to the Government for funding to remove the buildings and processed asbestos. That proposal amounted to $5.5 million to carry out the critical removal of the buildings and friable asbestos waste. Funding was not approved in the 2010-2011 budget. In light of the Ombudsman's report, it is time for the Government to attend to this issue without delay and to respond to the report as soon as possible.

RELIGIOUS SCHOOLS

Dr JOHN KAYE [12.27 a.m.]: In September this year Jennifer Buckingham, a Research Fellow with the Social Foundations program at the Centre for Independent Studies, published a monograph referred to as "The Rise of Religious Schools in Australia." Ms Buckingham's work will please the faith-based school lobby and the political parties that support continued growth of their public funding, but it fails to address critically the long-term consequences of policies that push kids from secular to sectarian education. The monograph is one part data and five parts propaganda. Its conclusions are driven more by the author's politics than by a genuine inquiry into the impacts of the growth of religious schools and the government policies that are causing it. Most of the conclusions require massive leaps of faith. The data presented does not justify the supposed individual and society benefits of religious education.

Ms Buckingham maintains that her monograph "debunks the myth that the Howard government was responsible for the largest growth in the non-government schools". Ms Buckingham conveniently ignored the spectacular increases in Federal Government funding of private education since 2000. Across Australia religious schools are receiving $225 million more each year after inflation. The impressive rates of growth in wealth and in facilities, smaller classes and specialist opportunities inevitably will attract parents to Catholic, Jewish, Muslim, Adventist, Anglican and fundamentalist schools. By swapping between the share of students in religious schools, which is growing dramatically, and the rates of change in absolute numbers of children in education, Ms Buckingham misses the obvious reality. In a highly competitive education market, schools with better resources are more attractive, and prosper accordingly. Ms Buckingham maintains:

> Islamic and Exclusive Brethren schools receive a large amount of media attention, yet no evidence exists that should concern a free and pluralist society.

Ms Buckingham diverts attention away from the overarching issue of the segregation of children by religion and ethnicity by focusing on the performance of just two of the more controversial types of faith-based schools. Brethren schools were an unfortunate choice if Ms Buckingham wanted to allay fears about the social and individual consequences of faith-based education. Discouraging girls from higher education is a serious assault on a free and pluralist society. Ms Buckingham maintains:

> Adults who attended non-government schools report higher rates of civic participation than people who attended government schools.

The author jumps from statistics about the behaviour of graduates of non-government schools to conclusions about the individual and social benefits of a faith-based education without any regard for the other socioeconomic factors that might lead to greater civic participation and tolerance. Her conclusions that graduates from religious schools are more tolerant, have more socially liberal attitudes and participate more frequently in civic activities ignore the stark differences in family, economic and social backgrounds between public and non-government schools. Ms Buckingham also maintains:

> School choice, for religious, discipline or other reasons, should be a celebrated principle of our multicultural society.

The report justifies its core conclusions with a combination of carefully chosen statistics and the writings of the boosters of non-government education, including the Right's pin-up boy, Milton Friedman. This is an excellent piece of propaganda but has little merit as critical analysis. Real challenges face a society where increasing numbers of children are educated in a segregated environment. The debate would have been better served by a report that critically analysed the data and sought out the pitfalls.

NATIONAL WEEK OF DEAF PEOPLE

The Hon. HELEN WESTWOOD [12.32 a.m.]: Recently I had the pleasure of launching the updated Info Bytes series in the lead-up to National Week of Deaf People. The Info Bytes series is an initiative to help the Australian deaf community better understand workplace rights and entitlements. This ensures that deaf employers and employees are kept up to date with workplace rights. New South Wales Industrial Relations has worked closely with the Deaf Society of New South Wales to update a series of short videos on the national industrial relations system in Auslan, the primary or preferred language of the majority of deaf people who have been severely or profoundly deaf since early childhood. It is the native language, that is, the language acquired from birth, of only a minority of deaf signers. For most adults in the deaf community, Auslan is acquired either as a first language at some time during their school years, or as a second language in later life.

In New South Wales, more than 10 per cent of the population are completely or partially deaf, that is around 663,000 people, many of whom are job-seekers or of working age who need to be able to access

important workplace information on rights and entitlements. New South Wales Industrial Relations is dedicated to helping all employers and employees better understand essential information concerning every aspect of the work life cycle. I am proud that this Labor Government is funding these valuable resources for our deaf communities. A big thank you also goes out to the Deaf Society of New South Wales, in particular to Jasmine Roza, Richard Aarden and Tony Clews, who have been instrumental in helping to develop the video series. Developing valuable resources using Auslan is a way to bridge the knowledge gap, bringing not only New South Wales Industrial Relations and the deaf community closer together, but also employers and employees. These efforts were recognised earlier this year when the Hon. John Robertson chose the Auslan initiative as the overall winner of the Department of Services Technology and Administration's Minister's award, further highlighting the New South Wales Government's support for this project.

The theme of the 2010 National Week of Deaf People was about the rapprochement of cultures. The Auslan Info Bytes video series certainly taps into that theme. Members may recall that as part of National Week of Deaf People I again hosted a series of events here at Parliament House this year. These events resulted from a collaboration between the Deaf Society of New South Wales, Deaf Australia, Parent Council of Deaf Education and myself. We had a number of days in both Houses experiencing an interpreted question time, which certainly was entertaining for the observers, informative for the deaf community, of course, and a challenge for the interpreters. Students, teachers and parents from Thomas Pattison School, St Ives High School, the Royal Institute for Deaf and Blind Children together with members of the deaf community and their members of Parliament all enjoyed valuable interaction.

One of the highlights this year was the robust panel discussion on deaf education, which was facilitated by the ABC's James O'Loghlin. The panellists consisted of a broad mix of expertise: Mr Colin Allen, World Federation of the Deaf board member; Dr Breda Carty, Lecturer in Special Education and also a deaf adult and Auslan user; Louise Cullen, a representative from the New South Wales Department of Education and Training; Bernadette Coleman, a representative of the Victorian Department of Education and Early Childhood Development; Sarah Lysaught and Sarah Billing, two parents of deaf children; and Gemma Jones, an inspiring young deaf woman who recently finished school. National Week of Deaf People is an opportunity for the deaf community to come together to celebrate their language culture and achievements.

I need to thank a number people for making this exciting week happen. I thank you Madam President; the Speaker of the Legislative Assembly, the Hon. Richard Torbay; and Mr Peter Primrose, MLC, the Minister for Ageing, Minister for Disability Services, Minister for Volunteering and Minister for Youth for launching the event. I thank also Sheena Walters and Jasmine Rozsa from the Deaf Society; Kate Matairavula from Deaf Australia; Kate Kennedy from the Parent Council of Deaf Education; Kate Cadell from the Legislative Council and all the attendants; Greg Kelly, Deputy Sergeant-at-Arms in the Legislative Assembly; the Parliamentary Education and Community Relations section, particularly Graham Spindler; and, of course, the wonderful interpreters and volunteers who attended with the schoolchildren. The deaf community would not have the opportunity to attend Parliament and fully participate as it did during this celebration week without them. It was such a delight to see the kids meet politicians from their local areas and generally interact with other members of the deaf community. It has been such a resounding success over the past two years that I would advocate that National Week of Deaf People should become a permanent fixture on the parliamentary calendar.

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

Motion agreed to.

The House adjourned at 12.37 a.m. Thursday 25 November until 11.00 a.m. on the same day.