LEGISLATIVE COUNCIL

Wednesday 25 May 2011

The President (The Hon. Donald Thomas Harwin) took the chair at 11.00 a.m.

The President read the Prayers.

CYSTIC FIBROSIS

Motion by Dr John Kaye agreed to:

1. That this House notes:

   (a) that an internal clinic assessment by the Department of Health shows that the five Cystic Fibrosis [CF] clinics in New South Wales (a "clinic" being defined by the CF Standards of Care, Australia, as having over 50 CF patients) are, collectively, 78 staff members below the recommended level of staffing,

   (b) that the deficits in staffing levels are:

      (i) Sydney Children's Hospital—153 patients, staffing deficit 10.1 positions,

      (ii) Children's Hospital Westmead—276 patients, staffing deficit 14.1 positions,

      (iii) Westmead Adults—248 patients, staffing deficit 14.1 positions,

      (iv) Royal Prince Alfred (RPA)—220 patients, staffing deficit 22.84 positions,

      (v) John Hunter Hospital (Newcastle)—135 patients, staffing deficit 13.6 positions,

   (c) the challenges facing people with CF and their families,

   (d) the deep reliance on quality health care, the trauma of frequent medical emergencies and the frustration resulting from the search for appropriate treatments,

   (e) that being forced to fundraise for clinics should not be added to the long list of support activities required to sustain health,

   (f) that increased staffing levels are needed to meet the levels specified in CF Standards of Care, Australia which are essential to provide for the special health care needs of people across New South Wales with CF,

   (g) that improving the treatment provided to younger people with CF, particularly by coordinating the multidisciplinary teams required to treat and manage the condition proactively, will reduce both the impact of the disorder and long term clinical and treatment costs, and

   (h) the Cystic Fibrosis NSW's Short Straw campaign in which they call for an urgent $4 million cash injection into the five CF clinics across New South Wales.

2. That this House calls on the Government to:

   (a) support steps to establish a CF Clinic Network in New South Wales to provide quality health support, and

   (b) commit to an additional $4 million for the five CF clinics in New South Wales, including $3.5 million to raise staffing levels and $500,000 for clinical review, assessment and coordination to establish an agreed CF Clinic Network in New South Wales, and for clinic enhancement to meet the CF Australia Standards of Care over the next three years.

AUDITOR-GENERAL'S 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 Two 2011, dated May 2011, received out of session and authorised to be printed on 25 May 2011.

PETITIONS

Identity Concealment

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

Unborn Child Protection

Petition requesting that the House uphold the sanctity of human life, defend the fundamental right of children to be born and reject all attempts to initiate legislation that emulates the Victorian Abortion Law Reform Act 2008, and encourage ways and means of promoting to the people of New South Wales that every baby deserves to be protected and nurtured from conception, received from **Reverend the Hon. Fred Nile**.

Religious Education and School Ethics Classes

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

Euthanasia and Palliative Care

Petition praying that the House oppose the Greens Euthanasia Bill and any attempts to legalise or decriminalise the practice of euthanasia and calling on medical practitioners to uphold the principles of palliative care and the hippocratic oath, received from **Reverend the Hon. Fred Nile**.

BUSINESS OF THE HOUSE

Withdrawal of Business

Private Members' Business item No. 1 in the Order of Precedence withdrawn by the Hon. Amanda Fazio.

Private Members' Business item No. 43 outside the Order of Precedence withdrawn by Dr John Kaye.

Private Members' Business item No. 45 outside the Order of Precedence withdrawn by the Hon. Amanda Fazio.

BUSINESS OF THE HOUSE

Postponement of Business

Government Business—Notices of Motions Nos 1 and 2 postponed on motion by the Hon. Michael Gallacher.

Government Business—Orders of the Day Nos 1 and 2 postponed on motion by the Hon. Michael Gallacher.

LAW ENFORCEMENT (POWERS AND RESPONSIBILITIES) AMENDMENT (MOVE ON DIRECTIONS) BILL 2011

Second Reading

Debate resumed from 24 May 2011.

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [11.15 a.m.]: I rise again to strongly support the Law Enforcement (Powers and Responsibilities) Amendment (Move On Directions) Bill 2011. Again

I congratulate the Minister for introducing this very important piece of legislation. As I was saying yesterday, the people of New South Wales have had enough of alcohol-fuelled violence and antisocial behaviour in public places. Indeed, thanks to people who do not drink responsibly, in some parts of our cities and towns there is no such thing as a pleasant night after 10.00 p.m.

Indeed, in some parts of our cities and towns there is no such thing as a pleasant night out after 10.00 p.m., thanks to the presence of people who do not drink responsibly. It is not a new problem. I hark back to my time as a young person at university in Sydney and I must say, come 10 o'clock at night, I did not feel safe on some streets. I have witnessed appalling acts of violence fuelled by alcohol. For some sectors of people I encountered it seemed almost a rite of passage.

I will not go into any details—frankly, most of it is best forgotten—but this bill will act in a very positive way to discourage acts of violence on our streets. It is our police, cabbies, emergency department staff who work late at night and people in convenience stores—small businesses—that are affected by people who are binge drinking on the streets of our State. The problem is epidemic on Friday and Saturday nights. We have all seen the images to which other members have referred of alcohol-fuelled violence and the damage it inflicts on people's lives. The Liberal-Nationals believe that police should have all the necessary powers to deal with this problem, preferably without having to charge people and lock them up. The last thing we need to do in this State is to put more people in prison. We need to ensure that public safety is promoted, and this bill will seek to do that.

I note that recently in Operation Unite there were 563 arrests and 830 charges. Sometimes strong sanctions are needed. Had better move-on powers been available to police during Operation Unite, I think some of the people arrested and charged may have been able to escape that regrettable outcome. The point of police giving move-on directions is to head off risky or inflammatory situations before things get out of hand. A polite but firm, "You've had enough, it's time for you to go home", from a police officer can potentially prevent an assault, a charge of offensive conduct or a serious accident. It is that type of discretion, which our police are well able to exercise, that can often prevent a serious situation developing and simply cut it off at the very start. I believe that there is a high level of compliance with move-on directions under the current scheme and in very few cases is a person charged for not obeying a lawful direction. It is not about picking on vulnerable people, as suggested by the Hon. Amanda Fazio.

I note in particular the protocol for homeless people, which has been endorsed by New South Wales Police as well as other agencies, such as NSW Health, the rail corporation and Sydney Harbour Foreshore Authority, which have an operational presence in public places. The protocol states that a homeless person should be left alone unless they request assistance, appear to be distressed or in need of assistance, their behaviour threatens their safety or the safety of those around them, or their behaviour is likely to result in damage to property or the environment. If the homeless person requires assistance, police are to involve services directly or provide them with information about services that can assist them. I am very happy to arrange a copy of the protocol for the honourable member, should she so wish.

I note in particular that it refers to vulnerable groups such as the homeless, mentally ill, intellectual disabled or Aboriginal persons. I mentioned earlier that this bill is about better move-on powers. It is not a complex change; in fact, it could scarcely be simpler. One only needs to look at the size of the bill to understand that. The proposed amendment to section 198 of the Law Enforcement (Powers and Responsibilities) Act will remove the current limitation on exercise of the move-on power, which provides that it can only be used to break up groups of three or more people. The reality is that, if the bill is passed, a single intoxicated person or a pair who meet the behaviour test may now also be given a move-on direction. The current situation is quite anomalous: the law only applies to groups of three or more people. It seems only sensible that if one or two people meet the behaviour test police are allowed to ask them to move on.

With regard to the behaviour test, section 198 states that the relevant conduct is that the behaviour is likely to cause injury to any other person or persons, or damage to property, or otherwise give rise to a risk to public safety. The reality is that being intoxicated is not of itself, and will not be, ground for a move-on direction under this section. The removal of the minimum of three people provision will broaden the application of this valuable pre-emptive power. Police have shown that they use the power responsibly and are mindful of the circumstances of members of vulnerable communities, as I have mentioned. The O'Farrell Government has more in store to make our streets safer, and this is a small but significant first step. The bill represents the first stage of the Coalition's Making Streets Safe Again policy and I look forward to the introduction of further measures, such as the provision of sobering up centres, in the near future. Finally, the bill delivers on yet another commitment of the O'Farrell Government's 100-day plan. Accordingly, I strongly commend the bill to the House.

Mr DAVID SHOEBRIDGE [11.25 a.m.]: I speak on behalf of The Greens against this retrograde piece of legislation introduced by the new Coalition Government. The Law Enforcement (Powers and Responsibilities) Amendment (Move On Directions) Bill 2011 will amend the Law Enforcement (Powers and Responsibilities) Act 2002 in relation to move-on directions given to intoxicated persons in public places. The bill is of modest compass—with only one effective clause—but the bill will change the move-on powers for police in respect of intoxicated persons. As members know, currently these only apply to groups of three or more people who are in a public place and where a police officer believes on reasonable grounds that their behaviour as a result of intoxication is likely to cause injury or otherwise be a risk to public safety. The substantive amendment in this bill is to authorise police to move on a single intoxicated person by themselves rather than in a group.

It is said by the Coalition that this is the first part of its plan to tackle alcohol-related violence and antisocial behaviour. It is claimed by the Government that it intends to use new ways to address this complex issue. Well, nothing could be further from the truth. This is in fact a throwback to the 1970s, to a failed method of policing and a failed method of dealing with drunkenness in public places. We had some quite insightful contributions by the Hon. Marie Ficarra dealing with the effect of alcohol in our community and dealing quite openly with the impact of drunkenness on our streets and the need for any government to be mindful of ways to deal with public drunkenness and to deal in an effective but also a tolerant and careful manner with the people that the police confront on the streets.

Anyone who goes out in some of our country towns and parts of the central business district of Sydney realises what a tough job the police have dealing with people who are intoxicated on the streets—often groups of people intoxicated on the streets. It is clearly a difficult job for police officers when faced with people who are intoxicated on the streets, but this bill will make the job for the police more difficult. This bill will effectively require the police, because they have the power, to move on individuals who are intoxicated when they run into them on the streets.

The Hon. Amanda Fazio pointed out the history of legislation of this type, which has predominantly been used against marginalised groups in society. It is the single intoxicated homeless person who will be moved on by the police; it is members of the Aboriginal community, who have traditionally been targeted by the police using these kinds of powers in the 1960s and 1970s; it is people who are mentally ill and are often found to be of social difficulty on the streets that will be subject of these move-on powers. That has been the history of the matter. This is not a new way forward by the Coalition; this is a throwback to the 1970s.

It is unclear that the Government has looked at the powers for police in the Law Enforcement (Powers and Responsibilities) Act before taking this step, because there is already power under section 197 for a police officer to give a direction to a single person in a public place if that person is obstructing another person or persons, or traffic; if that person is undertaking conduct which constitutes harassment or intimidation; if that person is causing or is likely to cause fear to another person or persons, provided that is reasonable; or if that person is, for example, unlawfully supplying or intending to unlawfully supply or solicit from another person a prohibited drug, or if that person is in a public place for the purpose of obtaining, procuring or purchasing a prohibited drug. Those powers already lie with the police when someone is obstructionist, harassing or intimidating.

The Hon. Dr Peter Phelps: What about drunks sitting outside at 12 o'clock at night? Where is the power to remove a drunk at midnight?

Mr DAVID SHOEBRIDGE: I acknowledge the interjection from that great libertarian Mr Phelps, who likes to give police power over individuals, provided they are not the types of people he identifies with. He is a great economic libertarian but he is one of the most retrograde social members.

The Hon. Dr Peter Phelps: Point of order: The allegation has been made that I am not a libertarian across all sorts. I am, and if the member wishes to debate this further I am happy to do so.

The PRESIDENT: Order! The Hon. Dr Peter Phelps is making a debating point, not taking a point of order.

Mr DAVID SHOEBRIDGE: The great libertarian rises, just by himself, and places himself—

The Hon. Dr Peter Phelps: The power of one.

Mr DAVID SHOEBRIDGE: As we know, the power of one. That is the concern: this will give police the power to move on people they determine to be unpleasant and remove them from a public street. We might call this the "Law Enforcement (Phelps Responsibilities) Act 2002". The concern is, and it is a very real concern, that the bill gives enormous discretionary power to the police to target individuals who are seen to be in a socially inappropriate place. The truth of the matter is that this is a power that traditionally has been used in an unfair manner against marginalised groups. There is already sufficient power under section 197 if someone is harassing, intimidating or obstructing. This amendment allows the police to say to an Aboriginal member of the community, a mentally ill person or a homeless person sitting under a bridge drinking from a long neck, "Sorry, you're the kind of person we don't want in public", and to give a move-on direction.

That will then set up a cascade of consequences because often these people, understandably, take such directions from the police negatively. That leads to confrontation between these marginalised groups and the police and they will then find themselves being charged with a breach under section 199. It will go from being a minor issue in a public place to one of criminalised conduct. That criminalised conduct will then lead to confrontation if they refuse to comply with the police order. To be honest, homeless people often have nowhere other than a public place in which to be. If they fail to comply with the direction they then become involved in confrontation with police, assault police and resist arrest. We find that traditional trifecta with respect to these marginalised groups: the matter goes from a relatively innocuous issue involving an intoxicated individual to criminalising the behaviour and dragging marginal people into the criminal justice system. Often they are unable to make bail because they have no fixed abode and have no home at which the police can check on them. If they have no fixed abode and fail to get bail, they will go from a public place directly into our prison system. They become a major impost on the budget and we do not advance social goals one iota. We go straight back to the 1970s.

The Coalition claims that police will use this power to encourage intoxicated individuals to go home. The Hon. Matthew Mason-Cox says there is a protocol in place that police will comply with. The protocol will not overcome those broad powers of the police. To suggest there is a protocol in place that we can all rely upon when we are giving these broad discretionary powers to the police is to fail to comply with our duty as lawmakers to ensure that the law constrains our police officers and that the law produces good outcomes. We should not rely upon a departmental protocol that softens the very negative impacts of a law that this House is about to pass. This law will likely operate unfairly. This is a law that will further marginalise police officers. This is another example of the Coalition—

The PRESIDENT: Order! I call the Hon. Matthew Mason-Cox to order for the first time.

Mr DAVID SHOEBRIDGE: If the Coalition is serious about giving police extra duties and extra powers that they must enforce, one would think they would be serious about giving them a decent wage rise to match those increased powers. We hear a lot of rhetoric about law and order and the great libertarians speaking about increased police powers, but when it comes to the things that really matter, when it comes to standing up for the wages and conditions of the people who will be enforcing these unjust laws, the Coalition backs away. They are happy to give police the power; to make them go out, do a really difficult job and have confrontation with marginalised groups. The Coalition continues to foster the difficult relationship between marginal groups and the police; it makes the jobs of police and social workers harder, but when it comes to paying the police a proper wage for what they do the Coalition backs away. Again there is the hypocrisy, the mock libertarianism and mock support for the police that we get from the Coalition time and again. This matter should be the subject of further consideration before it is passed in a hurried fashion by this House. I move:

> That the question be amended by omitting the words "now read a second time" and inserting instead "referred to the Law and Justice Committee for inquiry and report".

I seek to know why the Coalition will not support referring the bill to the Standing Committee on Law and Justice. It is a matter that would clearly benefit from some further consideration. It should not be a knee-jerk reaction by the Government that pleases perhaps the far right of its constituency but that it knows full well will harm marginal groups in our society.

The Hon. MICK VEITCH [11.36 a.m.]: As indicated by the Hon. Penny Sharpe, the Opposition will not be opposing the the Law Enforcement (Powers and Responsibilities) Amendment (Move On Directions) Bill 2011. Presently, section 198 of the Law Enforcement (Powers and Responsibilities) Act 2002 provides a police officer with the power to give a direction to an intoxicated person in a group of three or more to move on if they are likely to cause injury to themselves, another person or property. The proposal presumably is to alter this

number from three to one. However, section 197 of the Act already allows move-on powers to be exercised by police against one person if that person's presence is harassing or intimidating someone or causing fear to another person, or for more specific reasons.

This proposal does not seem to go substantially beyond current provisions in section 197. However, I have a number of concerns about this bill that I would like to place on record. I believe there is potential for the bill to have a disproportionately negative impact on certain sections of the community. I draw the House's attention to a recent brief published by the New South Wales Bureau of Crime Statistics and Research in April 2011 entitled "Trends in assaults after midnight". This report found that:

> The upward trend in assault between midnight and 5.00 a.m. in NSW between 2004 and 2008 reversed following changes to liquor licensing policy after March 2008 and the NSW Liquor Act in October 2008. Assaults on licensed premises have fallen by about one per cent a month since March 2008. The fall is not restricted to licensed premises but was found to affect all location categories other than non-licensed business/commercial premises.

While supporting this bill, Scott Weber, President of the Police Association of New South Wales, said in an article in the *Sydney Morning Herald*—

The Hon. Penny Sharpe: He had some wonderful things to say this morning.

The Hon. MICK VEITCH: He had some wonderful things to say this morning on Adam Spencer's program. The article is dated 20 May 2011 in which he stated that it is "more important to impose licensing restrictions to combat alcohol-fuelled violence". Some members of this Chamber know that prior to coming into this place I worked in the disability area of the not-for-profit sector. In this role I interacted with a large number of people living with disabilities. Some people with disabilities, most notably people with cerebral palsy or acquired brain injury, may have similar symptoms to those described in the current definition of an intoxicated person. Their speech, balance, coordination or behaviour is noticeably affected by their disability. Additionally, people living with a mental illness when medicated may also manifest some of those characteristics.

The nature of the bill means that there is potential to target people with a disability who exhibit symptoms that are similar to those of an intoxicated person and result in their being unfairly treated. Of further concern is the potential for this bill to target the homeless community. Similar move-on laws that were implemented in Queensland were studied at the Homeless Person's Legal Clinic by the Public Interest Law Clearing House [PILCH] in a 2006 joint research project with the TC Beirne School of Law at the University of Queensland. The survey gathered information from 132 people who were either experiencing or were at risk of homelessness. The survey asked respondents to comment on the use of move-on powers against them including the frequency of their use, the circumstances surrounding their use and the efficacy of their use.

The key findings of the survey were that 76.5 per cent of homeless people surveyed had been told to move on one or more times in the last six months; homeless people who were sleeping rough or in squats were most susceptible to being moved on; 77.9 per cent of respondents who received a move-on direction indicated their behaviour or presence when directed to move on was innocuous and unlikely to meet the threshold requirements for lawfully issuing a move-on direction; 85 per cent of respondents who had been told to move on one or more times in the last six months were given nowhere in particular to go upon being issued with a move-on direction; 71 per cent of homeless people who were given a move-on direction complied with the direction when issued, without question or argument; homeless people surveyed had little knowledge about what constitutes a lawful police move-on direction, indicating their vulnerability to abuse of power by police; and homeless people occupying public spaces out of necessity are disproportionately impacted by move-on powers, due to their lack of secure housing. Finally, the study found:

> It is well-recognised that Indigenous Australians and young people comprise a large proportion of Australia's homeless population. Consequently, commentators agree that young people and Indigenous Australians are most likely to be moved on compared to other community members.

People with a mental illness make up a disproportionate percentage of the homeless community. I indicate that the Opposition will support the Greens motion moved by Mr David Shoebridge to refer this bill to the Standing Committee on Law and Justice. I look forward to that part of the debate.

The Hon. MICHAEL GALLACHER (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [11.42 a.m.], in reply: I thank all members who contributed to the debate. In particular, I thank my colleagues the Hon. Marie Ficarra, the Hon. Dr Peter Phelps and the Hon. Matthew Mason-Cox. I recognise contributions made by other members. In addressing some

matters raised by members opposite, at the outset I will examine some of the hypocrisy that has been stated by them. The contribution to debate by the Hon. Penny Sharpe commenced with her suggestion that the bill was much ado about nothing.

The Hon. Penny Sharpe: "... about not much".

The Hon. MICHAEL GALLACHER: The Hon. Penny Sharpe said "... the bill is much ado about not much", and followed that with the suggestion that there is no need for the legislation. Later in an interjection she used the words, "This replicates what is already there." Her suggestions are completely at odds with what has been presented by the Hon. Amanda Fazio on behalf of the Opposition. The Hon. Amanda Fazio contends that this bill represents an abuse of power in some manner by police when dealing with people to whom the legislation will apply. In the Chicken Little approach adopted by the Hon. Amanda Fazio, the sky is going to fall in because of the position police will take when dealing with homeless people, Aboriginals and other disadvantaged groups. The Opposition seeks to cover both bases: to be able to say there is nothing in the legislation in the event that the media comments on the bill with approval and the public begins to welcome it—at the same time the Hon. Amanda Fazio is saying it is all doom; it is the end of the world as we know it—in case it is revealed at a later time there are some difficulties with this legislation or, indeed, any legislation, the Opposition can say, "We told you that; we had that covered; we've got both bowers covered."

With all due respect to Mr David Shoebridge, all three members failed to recognise that the Ombudsman oversights the exercise of the powers in the bill. What all three members have done by sleight of hand is deliver a backhander to the Ombudsman by suggesting that he or she into the future will be incapable of exercising oversighting powers properly. Interestingly enough, as recently as yesterday the Ombudsman published a report on domestic violence and congratulated the police on their approach. While realising that not everything is perfect, the Government has confidence in checks and balances. When difficulties in this bill or in any legislation are identified in the future, we will take remedial steps, but the criticism expressed in this debate really is a cheap shot at the New South Wales Police Force and other agencies which do their darnedest to ensure that disadvantaged people are protected and cared for. I will deal with that in greater detail during my concluding comments.

The Greens and the Opposition also suggest that the changes proposed to section 198 of the Law Enforcement (Powers and Responsibilities) Act 2002 are not needed. Australian Labor Party members, the Hon. Penny Sharpe and the Hon. Amanda Fazio, claimed that section 197 of the Law Enforcement (Powers and Responsibilities) Act already gives police the power to move on individuals, and their suggestion was endorsed somewhat by comments made by Mr David Shoebridge. The Hon. Penny Sharpe stated, "This amendment, dressed up as a crackdown on intoxicated persons, ignores the reality that police already have these powers under section 197 of the Act."

I point out that section 197 and section 198 address different situations. The first part of section 197 deals with people causing obstruction or behaving in a threatening manner in a public place. Even the contribution of Mr David Shoebridge pointed out that the bill provides something different from the current provisions of section 197. He would know that section 197 on its face does not mention intoxication and behaving in a disorderly manner but rather deals with behaviour, for example, of someone who is blocking a footpath or road being asked to move to another place, which may be only a few feet away or only for a few minutes, or police dealing with an angry person in a taxi queue who is bullying people ahead of them.

Section 197 covers countless potential situations, but not situations involving people who are affected by drugs or alcohol. Section 197 also deals with people who are reasonably suspected of being involved in street level drug purchases or sales. While some of those people may be intoxicated by drugs or alcohol, there is no requirement for them to be so affected before the move-on direction can be given. I understand that some years ago police made very good use of the current section 197 power when cleaning up the street level drug trade in and around Cabramatta. In contrast to that, section 198 move-on powers are targeted specifically to people who are both intoxicated and behaving dangerously in public places. There are potential situations in which the same conduct could fall under section 197 or section 198, but it is simply wrong to suggest that both sections cover the same range of behaviour as those covered by amendments to section 198.

I reiterate that intoxication is not a relevant factor for the general and drug dealing move-on powers in section 197 whereas it is a prerequisite for exercise of the powers proposed to be exercised under section 198. Move-on directions under section 197 can be given to individuals as well as groups and the same powers will apply to intoxicated people when the bill is passed. What we have here is an evolvement of current legislation

that the former Government enacted, with the support of members of the House. At that stage the Coalition criticised the legislation, and I stand by the criticisms we made. However, the point must be made that the Hon. Mick Veitch, the Hon. Amanda Fazio and the Hon. Penny Sharpe did not contribute to that debate; rather they voted in favour of it. It seems that they now have found their voices. Their interest is in playing the margins.

Sadly, it has been exposed. Of course, we propose simply an adaptation—an evolvement, if you like—of pre-existing laws under section 198 to ensure that where alcohol or intoxication and disorderly behaviour are factors, police have greater flexibility. I cannot understand how anyone could object to such a sensible and obvious harmonisation of the two provisions. Concern has been expressed that these expanded powers will be used to target homeless people, including those with a mental illness. The interactions of New South Wales police officers with homeless people and so-called rough sleepers—the Hon. Mick Veitch used that expression—are guided by the protocol for homeless people in public places. This provides a code of conduct for officials of all participating agencies, not just the New South Wales Police Force, when encountering homeless people in public places.

Originally developed during the Sydney 2000 Olympic Games—under the former Labor Government—this protocol's aim is to ensure that homeless people are treated sensitively and appropriately, and to facilitate their access to housing and support services. It must remembered that the protocol, which applies to police officers, states that homeless people should be left alone unless they require assistance, they appear to be distressed or in need of assistance, their behaviour threatens their safety or the safety and security of people around them or where their behaviour is likely to result in damage to property or the environment. In effect, those opposite are having a two-way bet. The Greens always go down the path that the power will be abused. But they are saying that if the police are not following the protocol they are abusing their power. On the one hand, they talk about supporting the New South Wales Police Force and, on the other, they backhand the police by saying, "We don't trust you. We think you will abuse these powers." We see their crocodile tears when they talk about a host of issues and how we should do this and that. It is a disgrace that they play this game.

The Hon. Penny Sharpe: At least we pay them.

The Hon. Amanda Fazio: We are not going to cut back their death and disability scheme like you.

The Hon. MICHAEL GALLACHER: When they are exposed they interject and do all the rest, but my comments will stand when members of the public ask in the future: What was the Opposition's position in dealing with these matters, in supporting New South Wales police and recognising the work they do? Police are trained to be equally sensitive when dealing with people who suffer from some mental illness. The role of police in managing the mentally ill in our community is based on risk assessment and on the premise of safety for all concerned. The New South Wales Police Force policy position is outlined in the New South Wales Emergency Mental Health Memorandum of Understanding—a memorandum that, surprise, surprise, was developed under the previous Government's reign. Labor members developed the policy, but now they say it will be abused and police will start locking up people who need help. That is a scurrilous attack on our police. At the same time the Opposition is sinking the slipper in about the Ombudsman not being able to monitor things. It is a disgraceful play.

Supporting the memorandum of understanding, the New South Wales Police Force has a network of 80 active mental health contact officers and one inspector per local area command across New South Wales. These officers help to ensure the streamlined implementation of the memorandum of understanding and legislation at a local level. The changes to move-on powers contained in this bill will make no difference to these policies and practices. Police interactions with Indigenous people also have been raised during debate on this bill. These matters have been problematic in the past but the current and past few commissioners and their teams have worked hard to overcome this unhappy legacy. As with the protocol for homeless people and the mental health memorandum of understanding, New South Wales police officers are given careful instructions on how to interact with Indigenous people, whether they are victims, possible offenders or witnesses. For the benefit of Opposition members and The Greens I am more than happy to table some documents issued by the New South Wales Police Force entitled, "Let's work in partnership to keep our mob out of custody."

[*Interruption*]

The Hon. Amanda Fazio again wants to attack the integrity of these documents, which were prepared under the previous Government's regime. These documents were written so that, in this case, young offenders

from the Aboriginal community understood cautioning and interaction with police regarding warnings. They were designed also to explain why police ask them whether they are of Aboriginal or Torres Strait Islander origin. These three easy-to-get documents show that the New South Wales Police Force has come a long way in dealing with people with mental health and homeless issues, and of Aboriginal background. The Greens talk about the 1970s as if they were familiar with that decade. I suspect that the contribution of the member either was from what he read and is unlikely to be from what he recalled happening firsthand with policing in that decade or he looks much younger than he is.

Government dealings with disadvantaged groups have changed dramatically in the health or education sectors. That process must continue because we still have a way to go. When The Greens play their political games and demonstrate their little bit of marginality, we have to say that they are wrong and I shall explain why. Changes to the move-on powers will not alter any of the protocols I referred to earlier. Being merely intoxicated is not grounds for a move-on direction; the intoxicated person or persons must be behaving in a dangerous manner to themselves, to other people or to property. The legislation does not cover someone who is drunk but sleeping harmlessly on a bench or who is sitting talking to friends in a park who could be Aboriginal or someone recovering from a Bachelors and Spinsters Ball, as we heard yesterday, or both. The Labor Party knows this because it set up the protocols when it was in government. In 2007 the former Attorney General when introducing the original powers stated:

> The police will develop standard operational procedures on the new powers before they come into effect in order to ensure they are exercised appropriately in accordance with the intended purpose.

We will continue that intended purpose and those operational procedures except for the modification presented in the bill. This bill provides police with an effective enforcement tool to deal with intoxicated persons engaging in antisocial behaviour. The bill represents the first step in honouring the Government's election commitment to make the streets of New South Wales safer. I commend the bill to the House.

Question—That the amendment of Mr David Shoebridge be agreed to—put.

The House divided.

Ayes, 15

Ms Barham	Mr Kelly	Ms Westwood
Mr Buckingham	Mr Primrose	
Ms Cotsis	Mr Roozendaal	
Ms Faehrmann	Ms Sharpe	*Tellers,*
Mr Foley	Mr Shoebridge	Ms Fazio
Dr Kaye	Mr Veitch	Ms Voltz

Noes, 20

Mr Ajaka	Mr Gallacher	Mrs Mitchell
Mr Blair	Mr Gay	Reverend Nile
Mr Borsak	Mr Green	Mrs Pavey
Mr Brown	Mr Khan	Mr Pearce
Mr Clarke	Mr Lynn	*Tellers,*
Ms Cusack	Mr MacDonald	Mr Colless
Ms Ficarra	Mr Mason-Cox	Dr Phelps

Pairs

Mr Moselmane	Miss Gardiner
Mr Donnelly	Mrs Maclaren-Jones

Question resolved in the negative.

Amendment of Mr David Shoebridge negatived.

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

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

The House divided.

Ayes, 30

Mr Ajaka	Miss Gardiner	Mr Pearce
Mr Blair	Mr Gay	Mr Primrose
Mr Borsak	Mr Green	Mr Roozendaal
Mr Brown	Mr Kelly	Ms Sharpe
Mr Clarke	Mr Khan	Mr Veitch
Mr Colless	Mr Lynn	Ms Voltz
Ms Cotsis	Mr MacDonald	
Ms Cusack	Mr Mason-Cox	
Ms Ficarra	Mrs Mitchell	*Tellers,*
Mr Foley	Reverend Nile	Ms Fazio
Mr Gallacher	Mrs Pavey	Dr Phelps

Noes, 5

Ms Barham
Dr Kaye
Mr Shoebridge

Tellers,
Mr Buckingham
Ms Faehrmann

Question resolved in the affirmative.

Motion agreed to.

Bill read a second time.

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

Third Reading

Motion by the Hon. Michael Gallacher agreed to:

That this bill be now read a third time.

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

WORK HEALTH AND SAFETY BILL 2011

OCCUPATIONAL HEALTH AND SAFETY AMENDMENT BILL 2011

Second Reading

Debate resumed from 11 May 2011.

The Hon. LUKE FOLEY (Deputy Leader of the Opposition) [12.13 p.m.]: I lead for the Opposition in debate on the Work Health and Safety Bill 2011 and the Occupational Health and Safety Amendment Bill 2011. Last year there was much discussion of the national harmonisation of occupational health and safety laws. The then New South Wales Labor Government was criticised in some quarters for its position, but it was a principled position. It was then and it is now. New South Wales Labor recognises that occupational health and safety harmonisation is a good thing. It will reduce red tape and improve productivity. When in government Labor signed up to 27 priorities under the national partnership agreement to deliver a seamless national economy, including occupational health and safety harmonisation. But we were not, and never will be, prepared to compromise on safety for working people.

Labor worked with business groups, employee representatives and unions to provide workplaces and working people in New South Wales with the safest possible working environment. What does this Government want to put on the statute books as its first amendment to workplace safety legislation? It wants to water down protections, discard a level of vigilance and decimate the Industrial Court, an expert body in dealing with workplace safety issues. It is no surprise that a Liberal-Nationals Government seeks to do away with the reverse onus of proof and the union right to prosecute. Such actions are written into the DNA of the Liberals. But this legislation has been introduced eight months before it was required. We knew the Coalition Government would target the union movement and working people. We just did not know how soon it would do so. How long did it take? A mere three sitting days!

The Government could have introduced these bills on 31 December 2011. It could have consulted the union movement or working people. It could have established a relationship or made gestures of goodwill. It could have at least said "G'day". The introduction of these bills now, with not a scintilla of consultation or forewarning, is a declaration of war on unions and the workers they represent. But we have come to expect nothing less of this Government. One day it is the Solar Bonus Scheme facing the axe, the next day it is marine parks, and today it is occupational health and safety. New South Wales currently has the toughest and the best workplace laws in Australia, but the Liberal-Nationals want to change all that. What is the justification for these changes?

Some say they need to do it because of the economy; that the Government wants to facilitate the smoother running of business in New South Wales. I remind members that Labor left New South Wales with both a triple-A credit rating and a budget surplus. The economy grew by 2.2 per cent from December 2009 to December 2010, and the unemployment rate for the March 2011 quarter was 4.8 per cent on a trend basis. The former Government's policies led to the creation of 132,000 jobs last year. The new Premier's promise is to create 100,000 jobs in the four years of this Government.

Since March 2009 more than 182,000 jobs have been created in New South Wales. The number of jobs has increased for seven consecutive quarters and full-time jobs have increased for 13 consecutive months. And all this was achieved under the existing workplace and occupational health and safety laws that the former Labor Government fostered in cooperation with industry stakeholders for more than 16 years. WorkCover pointed out in notes dated 14 October 2010 that New South Wales was experiencing its lowest rate of workplace injuries since the WorkCover scheme began in 1987. In the year ending June 2009 there were 9,300 fewer work-related injuries reported in this State than in the previous year, continuing a downward trend in the State in the number of workplace injuries and fatalities. In 1995 there were eight workplace deaths per 100,000 workers. By 2009 that figure had fallen to 4.6 per 100,000 workers.

Recent figures provided by Safe Work Australia show that New South Wales had fewer fatalities than Victoria and Queensland. Between 2004-05 and 2008-09 New South Wales also experienced a 25 per cent improvement in the number of serious workplace compensated injuries and musculoskeletal claims. The number of claims per 1,000 employees fell from 17.1 per 1,000 in 2004-05 to 12.8 per 1,000 in 2007-08. One of the provisions in the Occupational Health and Safety Amendment Bill 2011 will do away with the union right to prosecute. In New South Wales unions have had the right to take court action over safety breaches in the workplace since 1943. It is a long-established and proven law. It has been used sparingly, but effectively, to raise safety standards across industry. There have been about 20 union prosecutions in New South Wales in the past 10 years.

I will refer to the banking industry. With ongoing incidences of members suffering physical and psychological injuries from violent armed hold-ups, the Finance Sector Union commenced its first prosecution of the big banks in 2002 and then three more between 2003 and 2005 following armed hold-up incidents in branches. The banks were found guilty in those key cases of failing to provide a safe workplace. However, they then set about trying to do so. There followed a huge investment by banks for the safety of their workers and customers estimated at a cost of $100 million in capital works. This started with the rollout of full height anti-jump barriers. Further work included ATM bunkers so that ATMs would not have to be refilled from public space, along with digital closed circuit television with live back-to-base monitoring. These target-hardening works were first rolled out by banks in New South Wales and then they spread nationally.

Between 2003 and 2005 when the Finance Sector Union prosecutions of the big banks were commenced a decline in armed robberies nationally occurred of 75 per cent. At the same time the New South Wales share of armed robberies in banks dropped from 62 per cent to 49 per cent. We have seen a clear and almost immediate improvement in safety in the banking industry following the initiatives taken by the Finance

Sector Union to use the occupational health and safety laws of New South Wales to prosecute the big banks. The law was used to pressure the big banks, the employers, to raise health and safety standards for both its employees and customers and it spread throughout Australia. That is a very clear example of how the union right to prosecution in the laws of New South Wales can be used sparingly but intelligently and creatively to lead to safer workplaces in New South Wales and, in turn, for those safer workplaces to spread through the country.

My question of the O'Farrell Government is: If the laws it is introducing here had been in place in 2002 would we have had such an improvement in bank safety? If these new laws had been in place in 2002 how many more victims of armed hold-ups would be facing a life of psychological trauma or worse? It is suggested by the Government that the regulator, WorkCover, will be responsible and vigilant in pursuing breaches but the Government has not put a case as to why the current right that unions have to prosecute is not being used responsibly. It has not put a case that that right has in some way been abused? I have put on *Hansard* an industry example of where a union has used the laws responsibly and intelligently and has been able to drive improvements to bank safety through the use of those laws.

I turn to the reverse onus of proof, which ensures that after a breach of the Act has been proven beyond reasonable doubt employers are expected to prove they did everything reasonably practicable to prevent an accident from occurring in the first place. In New South Wales we require the defendant—the employer—to show there were no more reasonably practicable steps they could have taken to ensure safety, rather than requiring the prosecution or workers to prove that there were. As pointed out by Justice Stein in his 2006-07 review of New South Wales occupational health and safety legislation, the rationale for this is that the employer is clearly the one in the position to know what would have been reasonably practicable in respect of its business and operations. For that reason, Justice Stein considered it appropriate that the evidentiary burden fall to the defendant. Removing this hugely reduces the likelihood of success of prosecuting an employer who has breached the occupational health and safety laws.

The reverse onus of proof provision has been on the statute book for 27 years. The provision ensures that after a breach of the Act has been proven beyond reasonable doubt employers are then expected to prove they did everything reasonably practicable to prevent the accident. Removing this reverse onus of proof reduces the likelihood of success of prosecutions of employers, thereby weakening enforcement of occupational health and safety law and the ability to improve safety outcomes for workers.

Turning to the Work Health and Safety Bill, this bill seeks to remove the Industrial Court as the arbiter for prosecutions under that Act for alleged breaches. Instead, category two and category three offences will be heard by local and district courts and category one offences will be heard by the Supreme Court. It is odd that the Government would want to do this. The Industrial Court of New South Wales has many years of experience in dealing with these matters. Justice Boland, the President of the New South Wales Industrial Relations Commission, recently addressed the Industrial Relations Society Annual Convention on this issue. In part, he said:

> The rationale for the transfer of jurisdiction has not been explained to me and I have not seen it explained.
>
> The jurisdiction has been with the Commission since 1987 when it was transferred from the Supreme Court.
>
> It is a criminal jurisdiction and in many ways a special jurisdiction, the jurisprudence of which has been developed over a quarter of a century.
>
> It is now proposed that the jurisdiction will go to the so-called mainstream courts that have no background, body of law or expertise in occupational health and safety law.
>
> In 2007 a review headed by a senior Supreme Court judge, Justice Stein specifically addressed the question of whether prosecutions should remain with the Industrial Court.
>
> On this matter, the Stein Report concluded:
>
> > "The expertise of 20 years in the Industrial Court dealing with occupational health and safety proceedings outweighs the general expertise in mainstream criminal law of the District and Supreme Courts.
> >
> > Occupational health and safety law is very specialised and the generalist courts do not have that experience and expertise. I recommend that the jurisdiction for serious occupational health and safety proceedings remain with the Industrial Court of New South Wales."
>
> It seems from the Government's point of view that it is necessary to retain WorkCover as the prosecuting authority because it has the necessary expertise in this specialist area, but not the court that has the necessary experience and expertise in dealing with the prosecutions.

What then is the justification for seeking to denigrate and decimate the Industrial Court? This legislation goes beyond anything that the Liberals and Nationals said prior to the election. In fact, it is a breach of a Coalition commitment. In the *Australian* newspaper on 11 March 2007 the Hon. Greg Pearce, who now presides over this legislation, said:

> Our system will remain with WorkCover and the Industrial Relations Commission playing their roles.
>
> We don't have any plans to go further than that. I have heard the arguments from a lot of lawyers. I am an old lawyer myself.

That is what the Hon. Greg Pearce said in 2007, yet in the first few weeks of Parliament we get this bill that does exactly what we were told in 2007 the Liberals and Nationals would not seek to do in Government, that is, remove the jurisdiction of the Industrial Court to preside over occupational health and safety prosecutions.

I foreshadow that the Opposition will have a series of amendments in the Committee stage dealing with the reverse onus of proof, the union right to prosecute and the role of the Industrial Court. The reverse onus of proof regulation has been in the New South Wales occupational health and safety system since 1983 and the union right to prosecute since 1943. Almost 70 years of health and safety legislation designed to protect working people and lead to safe workplaces and safe systems of work will be substantially reduced if this bill passes the Parliament without amendment. The Labor Party opposes the bills.

The Hon. LYNDA VOLTZ [12.36 p.m.]: I believe that the goal of all occupational health and safety programs is to foster a safe work environment. As a secondary effect they protect co-workers, family members, employers, customers, suppliers, nearby communities and other members of the public who are impacted by the workplace environment. It is therefore not surprising that I oppose the Work Health and Safety Bill 2011 and the Occupational Health and Safety Amendment Bill 2011.

The Minister introduced the Occupational Health and Safety Amendment Bill, according to the Government, to implement three specific changes to the Work Health and Safety Bill 2011, which are: removing the reverse onus of proof in work health and safety prosecutions by requiring the prosecution to prove the reasonably practicable steps a defendant could have taken to avoid breaching the general duties to maintain a safe and healthy workplace; replacing the existing provision that deems directors and managers of a corporation to be guilty of offences committed by the corporation with a duty that officers of the corporation should exercise due diligence to ensure compliance by the corporation with health, safety and welfare duties; and removing the right of unions to bring proceedings for an offence under the Occupational Health and Safety Act. According to the Government, it is proposed that those changes contained in the Occupational Health and Safety Amendment Bill 2011 will operate from the date of assent, with the exception that it is proposed that the removal of the union right to prosecute will date effectively from the introduction of the bill.

Differences exist between jurisdictions in occupational health and safety because State governments have had the greatest experience and history in delivering workplace safety. As with other issues, such as the delivery of education and health, State governments have been the legislators of those laws since the establishment of colonial government. The earliest occupational health and safety regulations relate to New South Wales and the mining industry. Those on the other side of both Chambers believe that these reforms are about only one thing—clearing up red tape and lessening the cost burden to business.

When introducing this bill in the other Chamber Andrew Stoner stated that workers will benefit from the enhanced protection provided by modernised laws and rights that are easier to understand and apply. The reality is that this is not true. It is a fundamental misunderstanding of those who think that workplaces are one size fits all. If members opposite had spoken to all the stakeholders they might have a better understanding of the complexities of our diverse economy in New South Wales and why it has developed that way. As the Hon. Luke Foley pointed out, it is perhaps not a matter of saying "G'day" to the union movement; it might be more a case of the workers saying, in the words of the Coalition's tourism guru, Scott Morrison, "Where the bloody hell are you?"

Of the 12 million people who had worked at some time in the last 12 months, 5.3 per cent experienced a work-related injury or illness during that same period. The majority, 88 per cent, of the 640,700 people who experienced a work-related injury or illness continued to work in the job where the injury or illness occurred. Approximately 5.2 per cent had changed jobs and the remaining 6.9 per cent were not employed in the reference week. More than half the people who experienced a work-related injury or illness, 55.6 per cent, were men. This can be partly attributed to the nature of their work and to the fact that a larger proportion of those who worked at some time in the last 12 months, 54 per cent, were men. However, after this factor is removed, men were still

more likely than women to experience work-related injury or illness. In 2009-10, 5.5 per cent of men who worked in the last 12 months experienced a work-related injury or illness, down from 7.4 per cent in 2005-06. The proportion of women who experienced a work-related injury or illness in the last 12 months was the same as in 2005-06, at 5.1 per cent.

In 2009-10 approximately 53 people experienced a work-related injury or illness in the last 12 months per 1,000 people who had worked at some time in the last 12 months, a decrease from the 2005-06 estimate, which was 64 people per 1,000. It is important to note the improvements in the figures for workplace health and safety. Both men and women experienced the highest work-related injury or illness rates in the 45-49 year age group—72 per 1,000 people who had worked at some time in the last 12 months—followed by the 20-24 age group with 63 per 1,000 people. People aged 54 years and over recorded the lowest rate of work-related injuries or illnesses at 30 per 1,000 people, but that also relates to the removal from the workplace of people in that age group as they retire. The younger age groups, 15 to 19 years, experienced a decline compared with the 2005-06 figures but again that goes to the changing nature of that age group in the workplace. In 2009-10 females had a higher rate of work-related injury or illness than men in the 15 to 19 years and 55 years and over age groups.

Among the States and Territories, the Northern Territory had the highest work-related injury or illness rate at 61 per 1,000 people, followed by Queensland with 59 per 1,000 people. Western Australia recorded the lowest rate of 40 per 1,000 people who had worked in the last 12 months. Certainly New South Wales was not far off that figure. According to the Australian Bureau of Statistics, of the 640,700 people who experienced those work-related injuries, 90 per cent were employees and 10 per cent were owner managers; 28 per cent were working under shift arrangements; and 82 per cent had received occupational health and safety training in the job prior to their work-related injury or illness. By comparison, of all employed persons 82 per cent were employees and 18 per cent were owner-managers, of whom 30 per cent were working on a contract basis and 16 per cent were working under shift arrangements.

The occupation groups with the highest rates of people who experienced a work-related injury or illness were labourers, 88 per 1,000 employed people; machinery operators and drivers, 86 per 1,000 people; community and personal service workers, 84 per 1,000 employed people; and technicians and trades workers, 78 per 1,000 employed people. Of the 356,500 men who experienced a work-related injury or illness in the last 12 months, 30 per cent were technicians and trade workers, 19 per cent were labourers and 15 per cent were machinery operators and drivers when the injury or illness occurred. Eighteen per cent were employed in the manufacturing industry, 16 per cent in construction and 10 per cent in transport, postal and warehousing when the injury or illness occurred.

Among the 284,300 women who experienced a work-related injury or illness, 24 per cent were professionals, 21 per cent were community and personal service workers and 14 per cent were sales workers. Twenty-three per cent were employed in the health care and social assistance industry, 14 per cent in retail and trade and 13 per cent in education and training when the injury or illness occurred. Members will have noted that the distribution of work-related injuries or illnesses across the different occupations and industries will be influenced by the total number of men and women who work in those particular occupations and industries. As we know, clustering does occur in those industries.

The industries with the highest work-related injury or illness rates were accommodation and food services, at 84 per 1,000 people; electricity, gas, water and waste services, 79 per 1,000; and agriculture, forestry and fishing and arts and recreation services, both 77 per 1,000 people employed. The industries with the lowest rates were financial and insurance services, at 23 per 1,000 employed people. These figures will all become relevant later when we look at unions' right to prosecute.

The most common types of injuries or illnesses sustained were sprains and strains, 30 per cent; chronic joint or muscle conditions, 18 per cent; and cuts or open wounds, 16 per cent. Men had a higher incidence of cuts or open wounds than women, at 19 per cent and 12 per cent respectively, while proportionally more women experienced chronic joint or muscle conditions, at 21 per cent of women compared with 15 per cent of men. This may be at least partly due to differences in the occupations and industries that I have already spoken about. The work-related injury or illness most commonly reported across the majority of occupation groups was sprains or strains, with the exception of technicians and trade workers, who reported cuts and open wounds as the most common injury or illness sustained. Sprains or strains were also the most commonly reported work-related injury or illness sustained across the majority of industries, followed by cuts and open wounds and chronic joint or muscle conditions. Of the work-related injuries or illnesses, 27 per cent were sustained through lifting, pushing or pulling an object, 25 per cent by hitting, being hit or cut by an object, 13 per cent through falls on the same level and 8 per cent through repetitive movements.

Workplace Australia statistics for work-related fatalities in 2007-08, which are the most recent available, show a total of 442 work-related traumatic injury fatalities in Australia, a decrease of 6 per cent from the 2006-07 total of 469 but above the five-year average of 439. Just under half of all work-related injury fatalities, 219, resulted from traffic accidents. Of the 442 people who died of work-related injuries, 289 were injured at work, 98 while travelling to or from work, and 55 as a bystander to someone else's work activity. Nearly one quarter of those fatally injured in 2007-08, or 69 people, worked as truck drivers. Another 16 per cent, or 46, were labourers and related workers; 11 per cent, or 31, were farmers and farm managers; and 12 per cent, or 35, were tradespersons and related workers. The fatality rate for truck drivers was 16 times the rate for all occupations and the rate for farmers and farm managers was nearly six times the rate for all occupations.

Half of those fatally injured while working were employed in three industries: road freight transport, 54 deaths; agriculture, 51 deaths; and construction, 40 deaths. In the road freight transport industry there were 34 deaths per 100,000 workers, lower than the 2006-07 peak of 38.2 but still above the five-year average of 30.2. In agriculture the rate was 16.8 deaths per 100,000 workers, the highest rate in the industry since 2003-04, when it reached 18.5. Also above the all-industries average were fatality rates in the mining and construction industries, with 5.5 and 4.2 deaths per 100,000 workers respectively.

The largest number of working fatalities in 2007-08 occurred in the most populous states of New South Wales, where there were 84, Victoria, where there were 72, and Queensland, where there were 76. Workers in those three States comprise 77 per cent of Australia's working population. In 2007-08, 73 per cent of working deaths occurred in those three States. This figure is slightly lower than the five-year average. I should note that in New South Wales there were 10 fewer working fatalities in 2007-08 than in the previous year, and 60 per cent fewer than the high level recorded in 2005-06. Over the years the decrease in fatalities in New South Wales has been significant.

As I previously stated, one of the changes in the legislation is removal of the onus of proof. In New South Wales the onus under the Occupational Health and Safety Act was borne by a defendant, who was required to demonstrate that it was not reasonably practicable to comply with an occupational health and safety duty. The Coalition claims that that has long been a concern for stakeholders, but does not specify which stakeholders. However, I have no doubt that the wife, the mother, the husband or the son of a worker who does not come home one night are the stakeholders to whom members opposite should be referring most often. According to the Coalition, the review panel recommended that the general work health and safety duties apply only in so far as is reasonably practicable. In addressing the reverse onus of proof I will revisit the Department of Primary Industries report on the Gretley mine disaster to provide some background information and a better understanding of the onus of proof.

At approximately 5.30 a.m. on 14 November 1996 employees of the Newcastle Wallsend Coal Company, which is a wholly owned subsidiary of Oakbridge Pty Ltd, were engaged in work on the night shift at the company's mine, the Gretley Colliery. Four men of a team of eight were in the process of developing a roadway known as C heading in an area of the mine called 50/51 panel, and were operating a continuous mining machine. The remaining four members of the team were in a crib room that was a little distance away. Suddenly, with tremendous force, water rushed into the heading from a hole in the face made by the continuous miner. That machine, which weighed between 35 and 50 tonnes, was swept some 17.5 metres back down the heading, where it jammed against the sides. The four men were engulfed by the water, swept away and drowned. The remaining team members survived the disaster by being in the crib room, which itself was flooded.

The deceased men were Edward Samuel Batterham, who was a mining deputy aged 48 years; John Michael Hunter, a miner aged 36 years; Market Kenneth Kaiser, a mechanical fitter aged 30 years; and Damon Murray, a miner aged 19 years. The water came from the long-abandoned old workings of the Young Wallsend Colliery. The mine was working to a plan that had been approved by the Department of Mineral Resources. The plan showed that the Young Wallsend Colliery was more than 100 metres away from the point of holing in. It is now clear that the plan was wrong. At the commencement of the night shift at 11.00 p.m. on 30 November 1996 the Young Wallsend Colliery was only seven or eight metres away. The workings of the old mine were full of water. The water extended to the surface by means of the mineshafts, thereby providing what is known as a head of water. The head of water had the effect of significantly increasing the water pressure.

The hazard of inrush is well known. It arises from the penetration of a reservoir of water or other material which flows in the course of mining. Once penetrated, the reservoir naturally empties into the mine. It

may do so with great force, especially if it has a high head of pressure. When inrush occurs fatalities are likely. Once a mine is abandoned it is likely that over time water will accumulate in the void. Abandoned mines are recognised as a potential source of danger from inrush. When people are mining in the vicinity they cannot be ignored. Steps must be taken either to drain the water or to maintain a barrier of unworked coal around the abandoned mine that is sufficient to prevent the escape of water. Whatever the strategy may be, it is fundamental that the company form an appreciation of the location and extent of the abandoned mine.

A mine that is full of water cannot be entered and surveyed. Its location must be determined from plans and other documents that may be available in relation to it. However, research plainly must be undertaken and a judgement formed as to the reliability of the material that is uncovered. The strategy of avoiding inrush is likely to be different depending upon the level of confidence that the mine management has in the accuracy and completeness of the material it gathers relating to the abandoned mine. One of the plans held by the Department of Mineral Resources in respect of the Young Wallsend Colliery was a copy of the mine plan. The plan carries the inscription indicating that it was "Copied from the colliery plan at the Coalfield Office by Herbert Winchester 21st March 1892". The plan depicts areas of coal that apparently had been extracted. The lines on the plan were in two colours, red and black. The areas extracted were depicted in red and are different from those depicted in black. The workings in one colour appear to have been superimposed upon workings depicted in the other colour.

The department also has two other plans among its records relating to the Young Wallsend Colliery. Plainly they were of a different era—much more modern—but they are both copies, not originals. They are reproduced on plastic sepia material. They are inscribed with "Young Wallsend Coal workings Top Seam" and "Young Wallsend Coal workings Bottom Seam". Neither plan is dated nor identifies the person who created it. At the foot of the plan the only words there are "Traced from Record Tracing 21st March 1892". The plan separates the two different colours from the old plan. The area depicted as the top seam corresponds with the area in black on the old plan. The bottom seam corresponds with the area depicted in red. It appears that whoever produced the top and bottom seam sheets made an examination of the old plan and made two assumptions upon which the drawing sheets two and three were produced. First, it was assumed that the two colours, red and black, indicated workings in two separate schemes, and then it was assumed that the area depicted in black, which is the oval shape, was the top seam known as the Young Wallsend seam, and the area in red was the bottom seam, which was known as the Borehole seam. Both assumptions were wrong.

A drilling program undertaken since the tragedy suggests that all workings were in one seam. There is no question that the workings depicted in red were workings in the top seam but they were shown on sheet two as being in the bottom seam. The red workings extended for more than 100 metres beyond the black in both an easterly and westerly direction. The Gretley Colliery was working the upper seam. Hence the colliery, whose planning is based upon the erroneous top seam sheet, was always more than 100 metres closer to the eastern edge of the abandoned colliery than was thought. On 14 November 1996 the new workings of the Gretley Colliery holed into the abandoned Young Wallsend Colliery, thereby causing the inrush. Putting to one side the fundamental issue of what the different colours in the mine's plan referred to and ignoring the faint pencil note on the plan that suggested the red workings were in the Young Wallsend seam, what emerges from a close examination of the old plan is that the black workings were the critical workings from the viewpoint of the Gretley mine. They were the workings assumed to be in the Young Wallsend seam, which was the seam being worked by the mine.

In respect of those workings, there were significant signposts of inaccuracy that ought to have been recognised. They ought to have caused the colliery to approach the plan with a good deal of circumspection. The important matters were: firstly, unlike the red workings, there were no dates on the black workings; secondly, there is no survey information in respect of the location of the faces; thirdly, Mr Adam, but not other surveyors, immediately was suspicious of the symmetry of the black workings which stood in contrast to the red, indicating it is an idealised or stylised plan rather than an accurate survey plan; and, finally, there were problems in the depiction of the south-eastern quarter of the workings such that it was not possible to determine which areas had been extracted and which were solid coal. The company's submission repeatedly stated that the plan of the Young Wallsend Colliery was accurate at the point of inrush, and so it was. The point of inrush corresponded almost exactly with the eastern extremity of the red workings. However, the same cannot be said for the black workings. The drilling program undertaken since the inrush demonstrated that the plan of the black workings is quite inaccurate. Where one would have expected a void according to the plan, solid coal was found and voids were found where none had been charted on the plan.

Moreover, any examination of the old plan for the purposes of determining the accuracy of the black workings cannot ignore the red workings. Likewise the depiction of red workings suggested a number of

problems. First, the shape of the red workings is odd and obviously incomplete. Two arrowheads are connected by a number of single roadways. The roadways show openings to cut-throughs but no more. It would have been impossible to ventilate the workings simply from the roadways shown. Secondly, the incomplete nature of the workings is the more obvious because of the pencil comments that are attributed to the chief inspector on the plan on 18 January 1963. The plan includes a number of pencil lines that presumably represent the chief inspector's surmise as to the extent of workings not shown on the plan. Thirdly, the opening of the air shaft on the red workings does not coincide with the air shaft on the black. Fourthly, the plan shows a roadway to the north and at the end of the roadway a date of 4 April 1912. Fourthly, the plan shows a roadway to the north and at the end of the roadway a date of 4 April 1912. An adjacent pencil note is difficult to read, but certainly includes the words "Staple Bottom Seam 62' ".

[*The President left the chair at 1.00 pm. The House resumed at 2.30 p.m.*]

Pursuant to sessional orders business interrupted at 2.30 p.m. for questions.

QUESTIONS WITHOUT NOTICE

POLICE AWARD NEGOTIATIONS

The Hon. TONY KELLY: My question is to the Minister for Police and Emergency Services. Will the Minister confirm that the process he outlined in this House on 11 May for negotiations with the New South Wales Police Association will continue in light of the following comments made by Scott Weber, President of the New South Wales Police Association, on 2BL at 8.00 o'clock this morning:

> We are half way through our current pay round and all of a sudden the new Government has come in and cut us off at the knees.

The Hon. MICHAEL GALLACHER: I am meeting with Scott Weber tomorrow morning. I met him a week ago and in the meantime I have had a number of pleasant phone calls, which will continue because they know that this Government supports police. They know that this Government will deliver what is deliverable and achievable. Those opposite are scared because, just like an onion, the layers are being pulled away one after the other exposing their fraud and their mismanagement of the New South Wales budget. Opposition members are most scared that the Minister for Finance and Services is slowly dissecting the former Government's inability to maintain wages control. Coalition members will continue to meet with their local Police Association representatives and I will continue to meet with Scott Weber and work to expose what we all know to be Labor's mismanagement and incompetence in handling the New South Wales budget. I look forward to having more to say about this issue.

ERSKINE PARK LINK ROAD

The Hon. CHARLIE LYNN: My question is directed to the Minister for Roads and Ports. Will the Minister update the House on the progress of the Erskine Park Link Road in western Sydney?

The Hon. DUNCAN GAY: Today I am pleased to announce that the New South Wales Liberal-Nationals Government has awarded the contract to build the $55 million Erskine Park Link Road. Before the election we promised that we would complete the link road and in less than two months we have awarded the contract to deliver that promise. Precisely seven years ago, in May 2004, Bob Carr promised a link road between the Erskine Park employment area and the Westlink M7 during a speech to the Sydney Futures Forum.

The Hon. Charlie Lynn: Another broken promise.

The Hon. DUNCAN GAY: Obviously another broken promise and obviously well delivered at a futures forum because it was going to happen well into the future—the people had to wait for a Coalition Government to deliver it. In 2009 Nathan Rees promised to fund and deliver the road at a cost of $80 million. We heard another promise by Kristina Keneally to commence construction on this vital link before the end of 2010. Promises, promises, promises. Over the past seven years successive Labor governments have broken promise after promise.

Erskine Park Link Road is crucial for the development of this area and will provide a major boost for jobs and infrastructure in western Sydney. When finished the link road will reduce traffic on local roads by

redirecting trucks from residential streets to the M7 and M4 motorways. The 3.1 kilometre four-lane divided road between Lenore Lane, Penrith, and Old Wallgrove Road, Blacktown, will consist of an 80-metre long dual bridge across Ropes Creek, three intersections, and major earthwork, draining and road surfacing work.

The Hon. Charlie Lynn: A great start.

The Hon. DUNCAN GAY: It is a great start. Work will commence as soon as possible. With the main work site established in late July it is expected that the link will be completed in 2013. Unlike Labor, the Liberal-Nationals Government is committed to delivering the infrastructure that western Sydney needs to grow the local community and reduce traffic congestion on local roads. The people of Sydney know that they were taken for granted over the past 16 years. That is why at the recent election Stuart Ayres won Penrith with a swing of 25.6 per cent, Tanya Davies won Mulgoa with a swing of 23.2 per cent, Andrew Rohan won Smithfield with a swing of 20.3 per cent and Bart Bassett won Londonderry with a swing of 19.2 per cent. The result was a resounding rejection of Labor in western Sydney.

Compare this Government getting the Erskine Park Link Road project started within five weeks to the Labor bickering and blame game. Labor members are blaming all their ills on Albo. Frankly, he is Albo the good—he gave them $300 million for the M4 but they could not spend it. Why? They had no plans or ideas. Now all they want to do is try to shift the blame onto Albo—poor old Albo.

The Hon. Michael Gallacher: Albo the affable.

The Hon. DUNCAN GAY: Albo the affable. Albo the good. We understand he is much misunderstood in Labor circles, but it is unfair to blame Albo for the succession of Labor Ministers with no plans. Eric Roozendaal had a box of envelopes on which to write his plans. We have seen the offices of some of the others and the sketches on the back of the bathroom doors. [*Time expired*.]

ALCOHOL-RELATED VIOLENCE

The Hon. DAVID CLARKE: My question is directed to the Minister for Police and Emergency Services. Will the Minister advise the House of the results of the New South Wales Police Force's participation in Operation Unite, the national day of action against alcohol-related crime?

The Hon. MICHAEL GALLACHER: I thank the member for his sobering question. On 13 and 14 May police across Australia and New Zealand participated in two days of action against alcohol-related crime. Police targeted alcohol misuse and associated crime, violence and antisocial behaviour. Alcohol misuse is a huge problem for the community and a massive challenge for police. As I have stated previously, around 70 per cent of police engagements on our streets have some relation to alcohol misuse. That is why exercises such as Operation Unite are so important.

Let me state upfront that Operation Unite is not designed to discourage people from going out and having a drink—quite the contrary. Police target the troublemakers, not those community members who drink sensibly and are personally responsible for their own actions. Yet again the men and women of the New South Wales Police Force did a fantastic job during Operation Unite. The results show that they were kept extremely busy.

However, it is encouraging that there was a reduction in arrests and charges from what we saw during the last Operation Unite in December 2010. This year police arrested 563 people and charged them with a total of 830 offences related to alcohol-fuelled crime and antisocial behaviour. Last December police arrested 723 people and charged them with a total of 1,314 offences. This year police laid 12 charges for assault police and 26 charges for resist arrest. Last December police laid 24 charges of assault police and 44 for resist arrest. This year police charged 47 people with assault. Last December the number was 81.

Police conducted 32,485 random breath tests this year during Operation Unite. They booked 207 motorists for drink-driving across the State and 23 people were charged with driving whilst disqualified. Last December police conducted 37,876 random breath tests. They booked 276 motorists for drink-driving and 36 were charged with driving whilst disqualified. Police also conducted 4,799 business inspections and detected a total of 299 licensing breaches and 18 security breaches. Last December, during Operation Unite, police conducted 4,436 business inspections and detected a total of 301 licensing breaches and 16 security breaches.

Reductions in the number of charges for alcohol-related crime are encouraging. Of course, we need to allow for the fact that there may well have been more people out last December when it was warm, rather than on a particularly cold weekend in May. Whatever the reasons for the decline in some numbers, there are still a large number of people across the State who refuse to heed the message to drink responsibly. Those troublemakers are a massive drain on the time and resources of our police and health professionals; they ruin it for everyone else.

That is why I have introduced a bill to make it easier for police to stop trouble before it starts. Operation Unite will be conducted by police into the future in order to change behaviour. It is about saying to the people that this Government—indeed, this Parliament—supports such measures to ensure they can go out and have a good time but that they must do so responsibly, without destroying the lives of others in the course of the night, or putting themselves or property at risk. This is about changing people's behaviour. We have focused for so long on responsible service of alcohol; we need to start looking at responsible consumption of alcohol.

SOLAR BONUS SCHEME

Reverend the Hon. FRED NILE: I ask the Minister for Roads and Ports, representing the Minister for Resources and Energy, a question without notice. Is it a fact that the Government's proposed reduction of the 60¢ rebate for solar panels to 40¢ will cause hardship to more than 120,000 New South Wales consumers who signed contracts for the 60¢ solar bonus rebate? What plans does the Government have to assist those consumers who have, in good faith, in many cases taken out large loans of $20,000 to $30,000 to fund their solar panel installations and are now facing severe financial hardship?

The Hon. Rick Colless: Is that a dorothy dixer?

The Hon. DUNCAN GAY: Well, it is an important question, and one I am surprised the Opposition did not ask. As Reverend the Hon. Fred Nile knows, Opposition members are a tad embarrassed.

The Hon. Tony Kelly: You don't answer our questions.

The Hon. DUNCAN GAY: I don't answer your questions because you don't ask me any! You shadow me, but since day one you have not asked me one question. But I look forward to one; I need the scrutiny.

The Hon. Mick Veitch: I did not think you were going to respond to interjections?

The Hon. DUNCAN GAY: I am sorry. My staff have chastised me for doing that. Reverend the Hon. Fred Nile has asked an important question, and it is one that certainly addresses Government members.

The Hon. Eric Roozendaal: Oh, answer the question.

The Hon. DUNCAN GAY: Welcome back. You have less than a month to go. Keep calm. Superannuation is coming around; you won't have to worry about hardship, you will be all right. You have less than a month to go, so keep it cool—15 working days for you.

The PRESIDENT: Order! Members will come to order.

The Hon. DUNCAN GAY: Thank you, Mr President.

The Hon. Eric Roozendaal: You have nothing to say.

The PRESIDENT: Order! I call the Hon. Eric Roozendaal to order for the first time.

The Hon. DUNCAN GAY: This important question reflects the concerns of many in the community, including Reverend the Hon. Fred Nile and members on this side as well. The Premier announced yesterday, along with the Minister, that we would be looking at a scheme to address that hardship, and so we should. This is not something that we wanted to do; it has been forced upon us. It is a tough decision, and it is a decision that had to be made to clean up the mess that this lot opposite, who are creating all the noise across the Chamber, left us. The fact is that there is a $5.2 billion black hole in the State's finances, and this Government has a commitment to restore the economy and get the finances back on track. We also have a responsibility to the 2.8 million households who are not part of the solar scheme, to try to bring their spiralling electricity prices under control.

This lot opposite do not care about those households. They do not care about the fact that the solar scheme is predicated on passing that cost on to pensioners, the small businesses and the farmers—the people of this State who are struggling. Members opposite call out and heckle from the sidelines, but they do not give a damn about the people in this State who are really struggling. They passed everything on, and this Government is taking the responsible attitude. The scheme has blown out more than five times. We could not let it go unchecked. The former Minister now tries to pretend that he was not the responsible Minister—playing the Labor blame game. The Opposition has been blaming Albo for the roads, and it is now going to blame that amiable, nice bloke Paul Lynch. Everyone knows that Paul is one of the nicest human beings in this Parliament.

[*Interruption*]

I take that back. Members on my side say I am misleading Parliament.

The Hon. Michael Gallacher: Withdraw.

The Hon. DUNCAN GAY: I withdraw—so do those on the other side.

The Hon. Michael Gallacher: The lynch mob.

The Hon. DUNCAN GAY: The lynch mob, yes. The fact is that Robertson forecast the scheme would have 33,000 customers; there are now 160,000. That is why there is a problem, and that is why we are taking action. [*Time expired.*]

POLICE AWARD NEGOTIATIONS

The Hon. LUKE FOLEY: My question is directed to the Minister for Police and Emergency Services. Will the Minister honour the commitment that he made in a letter to the New South Wales Police Association dated 20 March that "police would keep their rights to collective bargaining, awards and an independent umpire"?

The Hon. MICHAEL GALLACHER: I say at the outset that if I had the extra money I would give it to the NSW Police Force. But the reality is that I do not have the extra money. For all the claims from those opposite that they were somehow looking after public sector workers and would continue to monitor the roll-out of this scheme over the next few days, we must look at how this State has come to be in the position that it is in. It is because those opposite, when in government, proved to be the tenants from hell. They allowed the premises that they were in charge of to be run down and trashed. They absolutely destroyed the place by neglect, and left it for the next tenant to fix the mess.

This Government will have to use the political capital that it has amassed to clean up the mess that Labor created. We are committed to a productive, effective public service. We want a productive and effective NSW Police Force. I gave a commitment in the lead-up to the election. We will continue to ensure that the conditions of New South Wales police are protected. Members opposite have nothing on which to claim innocence, because we are simply adopting the wages policy of the previous Labor Government—the very wages policy that the Labor Government introduced in 2007. We are taking the same approach to wages and entitlements and conditions. Members opposite are suggesting that we misled the NSW Police Force and that we will cut back on services.

Before anyone will take the Opposition seriously in this State or anywhere else, members opposite will have to explain to the people of New South Wales why they misled the people of New South Wales into believing that the financial state of our economy was much better than it truly is. It is an absolute disgrace that they are now suggesting that somehow what happened prior to March was not of their doing, that somehow they are honest brokers in this debate. The people of New South Wales have asked us to fix the economy and turn the State around. As I said to the President of the New South Wales Police Association, I will continue to work with the association, as has been spelt out, within the parameters of the wages policy that has been announced. There is an opportunity for us to work together to achieve future pay increases. But as we have said, we will do so based on savings that can be achieved. These are the very same things that Morris Iemma said when he spoke about the former Government's wages policy. In September 2007 he said:

> This policy is intended to maintain real wages by allowing for increases of 2.5 per cent per annum. Additional increases are available when employing—

[*Time expired.*]

PUBLIC SECTOR WAGES POLICY

Mr DAVID SHOEBRIDGE: My question is addressed to the Minister for Finance and Services. Given that the Industrial Relations Amendment (Public Sector Conditions of Employment) Bill proposes to give the Minister effectively absolute power over public sector wages and conditions, will he publicly guarantee that the Coalition Government will never use these newly proposed powers to reduce wages or conditions for the more than 400,000 public sector workers in New South Wales?

The Hon. GREG PEARCE: I will not take a point of order to the effect that legislation has been introduced and therefore it is out of order to ask questions about it. I think Mr David Shoebridge is interested in the principle of the legislation, so I am happy to address that. However, I cannot address the bill because that is not allowed under the standing orders.

The Hon. Penny Sharpe: It's good for your people to be told what will be factored in.

The Hon. GREG PEARCE: Would the Hon. Penny Sharpe like me to answer the question or does she simply want to interrupt?

Mr David Shoebridge: I'm interested.

The Hon. GREG PEARCE: The position is that the previous Government recognised that its path to unsustainable expense growth would drive the economy and the budget into a situation that would threaten the delivery of services and infrastructure. Indeed, only two months ago we saw an extraordinary result when the people of New South Wales threw out the previous Government in an unprecedented way because of its waste, its inability to manage the economy and its lack of investment in infrastructure, leaving aside its scandals and reputation. The previous Government then introduced its policy: wage increases of 2.5 per cent to keep real wages, plus increases on top of that where savings were achieved.

Mr David Shoebridge: What about in the future?

The Hon. GREG PEARCE: I am getting to that. The problem was that the agreed extra wage increase was paid up-front. Notwithstanding memorandums of understanding that were signed and consent awards that were made, those pay rises were paid even though the identified savings, or at least half of them, were not achieved. If I was in the private sector and I overpaid an employee because he or she had submitted an incorrect time sheet or if it was a bonus scheme and the money was paid, frankly, I would ask for the money to be paid back, and it would be adjusted. That will not happen in this case. After their representatives made solemn promises that they would achieve the savings, but then did not, employees were not asked to pay back the money.

In the future we will be transparent. Yesterday I quoted from the decision of the Industrial Relations Commission in the State wages case and some of the evidence that the commission chose to put in its judgement about the complaint of the unions that they had to do back-room deals to get anywhere with the previous Government. We will publish a regulation that will set out the wages policy. Of course, the policy will be slightly different because it will require that the savings be established and signed off in the Industrial Relations Commission. So the Industrial Relations Commission will be signing off on those savings. For the information of the Hon. David Shoebridge—

Mr David Shoebridge: Not honourable.

The Hon. GREG PEARCE: I am sorry, the member is not honourable. The member is dishonourable—no, he is not dishonourable. The beauty of the system is that we are open and accountable. We are committed to this regulation. Either House of Parliament can move to disallow the regulation, but the policy will be debated in public, not behind closed doors. There will not be deals between mates and factions. [*Time expired.*]

Mr DAVID SHOEBRIDGE: Mr President—

The Hon. Duncan Gay: The less than honourable—

Mr DAVID SHOEBRIDGE: The Minister for Roads and Ports should withdraw that.

The Hon. Duncan Gay: You are not honourable so you must be less than honourable.

The PRESIDENT: Order! The Minister for Roads and Ports will come to order.

Mr DAVID SHOEBRIDGE: I ask a supplementary question. Will the Minister elucidate his answer by giving a guarantee about the next policy and the Government's position as to changing the policy in the future without having to come back to the House?

The Hon. GREG PEARCE: I thank the member for asking me to elucidate my answer because I had not finished. This is important. The process will be accountable and transparent. Members opposite can try to disallow their former policy and they can explain why they were thrown out of government. They can explain their policies of the last 16 years. They can justify trying to turn their policy back on its head. Go ahead—let us keep that dream alive. Let us remind ourselves every week of the Labor Government's failure. And Mr David Shoebridge and the other crossbenchers can do the same thing.

That will mean that for the first time Mr David Shoebridge will be accountable. If he argues against our wages policy he will have to explain how he was partly responsible for the $900 million shortfall over the past several years. Instead of simply mouthing his policies and concerns, Mr David Shoebridge will feel a bit of Marrickville and a bit of Bob Brown. If he wants to oppose the regulation he will have to take some responsibility for the outcomes of his decisions. He will have to explain why we do not have new schools, why services must be cut and why taxes, fees and charges must be increased. He will have some accountability, and I look forward to it.

POLICE SALARIES

The Hon. PETER PRIMROSE: My question is addressed to the Minister for Police and Emergency Services. Will the Minister guarantee that there will be no cut in real take-home pay for police officers as per the commitment he gave to the Police Association before the election?

The Hon. MICHAEL GALLACHER: Yes.

OCCUPATIONAL HEALTH AND SAFETY

The Hon. SCOT MacDONALD: My question is directed to the Minister for Finance and Services. Will the Minister inform the House about how occupational health and safety legislation affects the State's compliance with the national partnership on the seamless national economy? What effect might this have on the budget?

The Hon. Luke Foley: Point of order: The bill is before the House.

The Hon. Dr Peter Phelps: To the point of order: The question itself related to a general understanding of occupational health and safety legislation, not any specific bill that may or may not be before this House.

The Hon. Luke Foley: Further to the point of order: Standing Order 65 (3) (a) makes it clear that questions must not refer to debates in the current session. The bill is before the House today.

The Hon. GREG PEARCE: To the point of order: The question does not refer to any particular piece of legislation. It asks the general question of how occupational health and safety legislation affects the State's compliance with the national partnership on the seamless national economy. The question is actually about the national partnership on the seamless national economy, and then the effect that that may have on the budget.

The Hon. Amanda Fazio: To the point of order: I support the point of order taken by my colleague the Hon. Luke Foley. The question is out of order because it relates to occupational health and safety and the Council of Australian Governments [COAG] process, and the bill before the House is in terms of harmonisation of occupational health and safety as prescribed by the Council of Australian Governments process. There can be no doubt that the subject matter of the question is covered by the bill that is before the House. Therefore, it must be ruled out of order.

The PRESIDENT: Order! Questions must not anticipate discussion upon an order of the day. The question asked by the Hon. Scot MacDonald does not specifically relate to legislation so I will allow it. However, I direct the Minister not to anticipate discussion on legislation that is before the House.

The Hon. GREG PEARCE: The national partnership on the seamless national economy that was initiated I think in 2008 and signed onto by the former Government in December 2009 offered New South Wales up to $144 million in reward payments that were to come into its budget to be used for hospitals and services conditional upon it implementing a series of national reforms, including occupational health and safety reforms. The Commonwealth, on advice of the Council of Australian Governments Reform Council, will consider these reward payments over two budgets: up to $80 million in 2012-13 and up to a further $64 million in 2013-14. That is extra new money from the Commonwealth to go into the State's budget to be spent on services, infrastructure and all the other things that we need it to be spent on, provided that we proceed with the Council of Australian Governments reforms. New South Wales must make two submissions—

The Hon. Amanda Fazio: Point of order: The Minister is referring in his answer to the Council of Australian Governments reforms. The Council of Australian Governments reforms are the subject matter of a bill that is before the House. I ask you to direct the Minister to refrain from referring to the bill that is before the House.

The PRESIDENT: Order! I remind the Minister of my earlier ruling and ask him to strictly adhere to it.

The Hon. GREG PEARCE: New South Wales is required to submit a progress report to the Council of Australian Governments Reform Council by September 2011 and then the Council of Australian Governments Reform Council will report to the Commonwealth by February 2012 to allow the Commonwealth to determine how much of the $80 million in reward payments for reform will be received by New South Wales in 2012-13. Interestingly, members of the Opposition have quoted some letters today. I love quoting letters. Indeed, I have an interesting letter from someone called Julia Gillard to someone called Kristina Keneally. I will quote what Mrs Gillard said to Mrs Keneally after October 2010. Mrs Gillard wrote: "The New South Wales Government has been at the table every step of the way and signed onto important reform agenda in good faith." Why did she say that? Because they had changed their position.

The Hon. Amanda Fazio: Point of order: Mr President, your previous ruling indicated that the Council of Australian Governments reform agenda on occupational health and safety is, in fact, the subject of a bill before the House. I ask you to ask the Minister to stop referring to the bill before the House. I also ask you to ask him to refer to the Prime Minister in an appropriate manner and not as "Mrs Gillard", which I think is demeaning and sexist.

The PRESIDENT: Order! I refer the Minister to my previous ruling.

The Hon. GREG PEARCE: I apologise if I said "Mrs Gillard"; I meant Ms Gillard. Ms Gillard said: "I also note that we have a long-standing agreement which was developed through an extensive consultation period and I am disappointed to see this now come into question." [*Time expired.*]

LEAVING CARE PLANS

The Hon. JAN BARHAM: My question is directed to the Minister for Finance and Services, representing the Minister for Family and Community Services. Will the Minister advise what percentage of children and young people in the care of the Minister have leaving care plans? Do all leaving care plans make provision for care leavers to be assisted in applying for the Federal Government transition to independent living allowance?

The Hon. GREG PEARCE: Once again I thank the honourable member—are you honourable?

The Hon. Jan Barham: Yes.

The Hon. GREG PEARCE: I like the honourable Greens. Actually, I am really pleased to see that they have got over their little rebirthing period when they stopped wearing ties and there were two factions. This is an important and detailed question and I will refer it to the Minister and obtain an answer as soon as I can.

POLICE SALARIES AND CONDITIONS

The Hon. TONY KELLY: My question is directed to the Minister for Police and Emergency Services. Is the Minister aware that Scott Webber of the Police Association said on radio this morning that Government plans will affect "the way we do business"? What action has the Minister for Police and Emergency Services taken to safeguard the operating systems and procedures of the New South Wales Police Force?

The Hon. MICHAEL GALLACHER: I was not aware of that conversation on the radio. I have not had a chance to listen to it. In Opposition members have plenty of time to surf the radio dial–Triple M, Triple J, et cetera. I reiterate my already stated confidence. I think we have got it right. We got it right when we adopted the Labor Party's wages policy. The only difference between us and the Labor Party is that we will instate that policy. We will implement Labor's policy to guarantee future wages growth in this State. That is the difference between the Government and the Opposition. I acknowledge that the Police Association has a very strident view in relation to its members, and Government members respect that. We are prepared to continue to work with the Police Association. I will continue to work with the Police Association towards an outcome. The 2.5 per cent provisions is not the end of it. As the Minister for Finance and Services has said, if one can make the savings that have been achieved in other areas of the public service, one can achieve a top-up, above that 2.5 per cent.

It really is a fair and reasonable proposition that the Government is putting not only to the police force but also right across the public sector, because we want to ensure that jobs will be available into the future and that there will be wages growth into the future. To do that, we have to make a realistic decision about wages. It is not simply a matter of saying, "Pull the money out." I reiterate the point made by Morris Iemma in his 2007 memo about Labor Party policy: that it was intended to maintain real wages by allowing for increases of 2.5 per cent per annum and that additional increases were available where employee-related costs are achieved. In other words, once savings are achieved, additional increases are available. Additional savings will realise additional increases. He did not say "will be achieved" or "may be achieved" in the future—he said "are achieved". He was spelling out in clear language a very sensible position on wages policy to those who were listening: When you make those savings, the Government is prepared to come back to the table and say, "You've done a great job and we are prepared to go further." And that is exactly what the Minister for Finance and Services has put.

I cannot understand why members opposite are so offended by their own policy. As I said earlier, the only difference between them and us on this matter is that we will implement the policy. We will put it into place. That is the difference; that is the reality. A dot point to Labor's wages policy in 2007 was that "any increases to employee related expenses, including wages, allowances, superannuation, et cetera, exceeding 2.5 per cent per annum, must be funded through employee related reform measures and cost savings". Again, they are their words, and we will implement that policy. Surely we can all work together to get this legislation through this afternoon—after all it is Labor policy. The same situation applies to occupational health and safety legislation. We are giving back to them a policy written by Labor and they do not like it; they are trying to look for wriggle room. What a disgraceful situation the Opposition has got itself into. It stands for nothing; it has no wages policy. As the Minister for Finance and Services said, our policy will give the members opposite an opportunity to support their own ideas. All the members of the Opposition, along with The Greens, had better get out their calculators and starting working things out, because the spotlight will be turned on them real quick.

COTTON HARVEST

The Hon. SARAH MITCHELL: My question without notice is directed to the Minister for Roads and Ports. Can the Minister please update the House on how the New South Wales Liberal-Nationals Government continues to support the State's cotton harvest?

The Hon. DUNCAN GAY: I thank the honourable member for this very good question. It is one that I would have expected from members on the other side of the House had there been any real Country Labor members left among them, but sadly they are denuded. As I informed the House last month, after years of drought and near zero water allocations, this season is proving to be a bumper harvest for the New South Wales cotton industry. Cotton Australia estimates the harvest in northern New South Wales to generate around $1.3 billion in revenue or more than half the total forecast of the Australian cotton crop. This equates to thousands of jobs in country New South Wales. The former Labor Government ignored and neglected the people and communities of rural and regional New South Wales for more than 16 years—

The Hon. Trevor Khan: They do not care.

The Hon. DUNCAN GAY: They do not care at all. No industry suffered more under successive Labor governments than agriculture. That is why Country Labor was savaged by the voters in March. This Government takes a vastly different approach to the people and communities of country New South Wales from that taken by Labor. We respect them and their industries. We recognise that the cotton industry helps underpin the local economies of Moree, Narrabri, Wee Waa, Gunnedah and Narromine, just to name a few—and we know that The Greens support the cotton industry. That is why I directed the Roads and Traffic Authority to sit down with the industry—

The PRESIDENT: Order! The Hon. Trevor Khan will come to order.

The Hon. DUNCAN GAY: —to better understand road safety and maintenance issues surrounding the use of newly imported John Deere 7760 cotton pickers. As a result of this consultation, the new pickers will be provided with a class one permit to allow them to be driven for a maximum of 80 kilometres. This will allow the safe and efficient movement of pickers between farms. For trips longer than 80 kilometres, the machines must be carried on a low loader and cannot be driven under their own power. Under the exemption, the new pickers are not permitted to cross timber bridges or bridges unsuitable for higher mass limit semitrailer loads. These safe and sensible exemptions will be in place for the entirety of the 2011 cotton harvest. These exemptions follow on from those announced before Easter to allow oversized vehicles involved in the 2011 cotton harvest to travel on the Newell Highway for three days of the five-day long weekend holiday period.

I am very pleased that Cotton Australia and the Roads and Traffic Authority have been able to work closely together on this issue under the new Government. This is just another example of how the New South Wales Liberal-Nationals Government is moving quickly to change the culture of the Roads and Traffic Authority to one of customer focus and looking after community needs. I thank the Hon. Sarah Mitchell, the member for Murray-Darling, John Williams, the member for Tamworth, Kevin Anderson, and the Minister for Western New South Wales, Kevin Humphries, for their continued sound advice on this issue. They are all tremendous supporters of the New South Wales cotton industry.

FIRE HAZARD REDUCTION

The Hon. ROBERT BORSAK: My question without notice is addressed to the Minister for Police and Emergency Services and, despite the weather outside, it relates to fire hazard reduction programs around the State. Does the Minister agree with the group that calls itself the New South Wales South East Region Conservation Alliance claiming that science has proved that hazard reduction strategies in the south-east region of this State are not effective? Further, is there any truth in its claim that the risk of bushfire is increased by thinning and drying out forests? What possible risk is there to animals, as asserted by the group, by the use of helicopters in hazard reduction strategies?

The Hon. MICHAEL GALLACHER: There is no doubt, when you talk to the experts in the New South Wales Rural Fire Service, they will say that they expect this State to be at a higher threat level this year than it has been in the past simply because of the rainfall. We may wonder why that would be the case. Although the rainfall is promoting growth, it is also preventing fire reduction personnel, who are crucial for the protection of key parts of our State that have a heightened threat, from getting machinery into some areas. They cannot get themselves into some areas to carry out fire reduction programs. So the claims that we continue to hear from those who are against fire reduction—

The Hon. Cate Faehrmann: They are not against fire reduction.

The Hon. MICHAEL GALLACHER: Those who are again fire hazard reduction are failing to learn from experiences in Canberra, Katoomba, Warragamba and Victorian. Great expertise resides in our rural fire service personnel, who are internationally recognised. We are continuing to build that expertise such that in years to come we will be in a far greater position through mapping to identify areas at risk and to take the necessary steps to minimise that risk. That these groups continue to get in the way of the hazard reduction programs that this State needs is evidence of their sheer ignorance of the experiences of recent years. We must learn from such tragic events. There will always be those who find reasons to protest about anything, but what should not be protested are the measures we can take to reduce risk to communities and individuals and to protect property and lives. I thank the honourable member for his question and advise that if he requires any further detail, I am more than happy to provide it.

POLICE ASSOCIATION OF NEW SOUTH WALES

The Hon. MICK VEITCH: My question is directed to the Minister for Police and Emergency Services. What meetings has the Minister had with the New South Wales Police Association in the last month and what was the outcome of those meetings?

The Hon. Luke Foley: They stripped him of his membership; that was the outcome.

The Hon. MICHAEL GALLACHER: I have been a member for 31 years and I will continue to be a member for another 31 years. It is a proud organisation that represents police workers in New South Wales, and

members on this side of the House acknowledge that organisation and respect the contribution that it makes to making our community safer. Government members are prepared to continue to meet with the association to expose the mishandling of and risks to future wages policy that Labor members created when they were in government. The member asked how the meeting proceeded. I advise him that we came into the office, sat down, and had a chat for about three-quarters of an hour. I thought it proceeded quite amicably, such that I look forward to meeting with the association again tomorrow—and I will continue to meet with the association over the weeks and months to come.

POLICE DOGS

The Hon. JENNIFER GARDINER: My question is directed to the Minister for Police and Emergency Services. Can the Minister inform the House on the latest news from the Dog Unit of the New South Wales Police Force?

The Hon. MICHAEL GALLACHER: That question has sent a shiver down the spine of some members in the Chamber. The New South Wales Police Force Dog Unit was formed in 1932 but disbanded in 1954 before recommencing in the modern day operational sense in 1979. It is the largest police dog unit of any police service in Australia and its canine officers include German shepherds, Belgian Malinois—I think they are Belgian shepherds—rottweilers, labradors and English springer spaniels. The dogs are an integral part of the New South Wales Police Force working as general purpose dogs, drug detection dogs, human remains detection dogs and dogs used in the identification of firearms and explosives.

The Hon. Duncan Gay: They need that over there.

The Hon. MICHAEL GALLACHER: No, they only search for life. The dogs support our police on a day-to-day basis as they undertake these dangerous tasks. I am sure the Hon. Amanda Fazio will be keen to hear about these canines because she has a great respect for dogs, particularly police dogs. To put this into perspective, in 2011 alone general purpose dogs have been used in 1,734 incidents, and firearms and explosives dog teams have been deployed to 101 incidents. On 1 April 2011 the dog unit welcomed the birth of seven labrador detection puppies and invited the public to name them via a "police puppy poll" website on Facebook.

One of the puppies was named Ace, after the former member Arthur Chesterfield-Evans—and, not surprisingly, it is a drug detection dog. There are years of experience there. Other names included Aussie and Astro. One was named Angel, obviously after the Hon. Amanda Fazio, and other names included Abbey, Ally and Amber. These seven-week old labrador pups have made history, being the first litter of detection dogs born in the unit's breeding program. They stay with their mum until they are 12 weeks old before being placed with special puppy raisers until they are old enough to begin detection training. The puppies will then be trained in either drug, explosive or cadaver detection, with the successful graduates sworn in as canine constables.

This program follows the success of the general purpose dog breeding program, which has seen 15 litters of German shepherd pups born since 2006, including its latest litter of nine puppies born on 13 May 2011. New South Wales Police Force dogs are some of the best trained in the world. There are 31 general purpose dogs, 30 detection dogs and two human remains detection dogs. I congratulate the New South Wales Police Force dog unit on its efforts to improve the quality of its dogs, and look forward to hearing about the progress of the new litter. I invite members to look at "Puppycam" and see the puppies for themselves. When more puppies are born I undertake to update the House on their progress.

COALMINING

The Hon. ROBERT BROWN: My question is addressed to the Minister for Roads and Ports, representing the Minister for Resources and Energy. Does the Government share the view of the Climate Commission economist Roger Beale that a sudden phase-out of coalmining would spark—

Dr John Kaye: Point of order: The question is asking for an expression of opinion and is therefore out of order.

The Hon. ROBERT BROWN: To the point of order: I did not use the word "opinion"; I asked about the Government's view.

The PRESIDENT: Order! Having been shown a copy of the question, I rule that the member was seeking an opinion. Accordingly, the question is out of order.

FREEHILLS LEGAL ADVICE

The Hon. SOPHIE COTSIS: My question is directed to the Minister for Finance and Services. Has the Minister or any member of his staff met with or received advice, either formal or informal, from the law firm Freehills since the 26 March 2011 election?

The Hon. GREG PEARCE: As honourable members know, I was a partner in Freehills for 18 years. I became a partner when I was 28, which in those days was pretty well unheard of. When I left—I do not have the file with me—I was noted in at least four of the international magazines that assess lawyers in different categories as being one of the leading lawyers in each of those categories. Unlike "good time" John Hatzistergos, who has run away the minute things have turned, I have spent my time here working through opposition. I am sure that the Hon. Sophie Cotsis will enjoy that experience also. I find it offensive that the member's question seeks to impute some sort of improper motive either to me or to a very honourable law firm and its members.

Dr John Kaye: Point of order: The Minister is clearly debating the question; he is not answering the question.

The Hon. GREG PEARCE: I quite often speak to my—

The PRESIDENT: Order! Is the Minister addressing the point of order?

The Hon. GREG PEARCE: No.

The PRESIDENT: Order! That is not a point of order.

The Hon. GREG PEARCE: Quite often I have conversations with my former partners and with employees whom I know. I know that some of my staff members know people who work at Freehills and have discussions with them. I imagine that the Hon. Sophie Cotsis has discussions with union officials and other people in the Labor Party.

The Hon. Amanda Fazio: Point of order: My point of order goes to relevance. The Minister was asked if he or any of his staff had received formal or informal advice from Freehills since the State election. It did not ask whether he or his staff had had any conversations with Freehills. I ask you to draw the Minister back to the subject matter of the question and advise whether he has received any formal or informal advice from Freehills since the election.

The PRESIDENT: Order! I remind the Minister that his answers must be generally relevant at all times.

The Hon. GREG PEARCE: I inform the House that I have not had any formal advice from that firm.

The Hon. Shaoquett Moselmane: Informal?

The Hon. GREG PEARCE: I do not know what informal advice means. I am sure I have heard suggestions, as I have from many other people. Frankly I do not see how I can answer that question further. As to my staff, I imagine the situation would be entirely the same.

The Hon. MICHAEL GALLACHER: If members have further questions, I suggest they place them on notice.

NATIONAL PARK TOURIST FACILITIES

The Hon. GREG PEARCE: On 5 May 2011, the Hon. Robert Brown asked me, representing the Minister for the Environment and Minister for Heritage, a question without notice regarding National Park tourist facilities. The Minister for the Environment provided the following response:

> I am advised that the Victorian Competition & Efficiency Commission's Inquiry into Victoria's tourism industry in July 2010 reached similar conclusions to the 2008 NSW Taskforce on Tourism and National Parks. Both inquiries have found that our national parks have an important role to play in providing inspiring experiences that appeal to domestic and international tourists alike.

This Government is committed to ensuring that NSW is a leader in nature based tourism in Australia. We are committed to maximising the balanced use of our national parks to attract more people to experience what the state has to offer.

Over the next four years our Government will fund new and revitalised facilities and services for people to experience and enjoy national parks. This includes providing a variety of high quality and unique accommodation and tour experiences in partnership with private operators. We want to attract new visitors to parks, and encourage all visitors to stay longer in adjacent townships and regional areas.

Our Government has committed to a $40 million package to improve management of our parks and to improve visitor access and education services. This will fund improved walking tracks, camping areas and lookouts and make our parks more attractive to first time visitors and keep regular users seeking out new destinations across the state for their family holidays.

As part of this package we are committed to improving the National Parks and Wildlife Service (NPWS) website. This will help the NPWS communicate effectively with both new and loyal visitors using the full range of social networking and digital tools.

Questions without notice concluded.

COURTS AND OTHER LEGISLATION AMENDMENT BILL 2011

Bill received from the Legislative Assembly, read a first time and ordered to be printed on motion by the Hon. Greg Pearce, on behalf of the Hon. Michael Gallacher.

Motion by the Hon. Greg Pearce 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.

WORK HEALTH AND SAFETY BILL 2011

OCCUPATIONAL HEALTH AND SAFETY AMENDMENT BILL 2011

Second Reading

Debate resumed from an earlier hour.

The Hon. LYNDA VOLTZ [3.33 p.m.]: Before debate was interrupted, I outlined shortcomings in the depiction of red workings on the old plan. However, the red roadway extended considerably further than any black roadway in the vicinity. It was also drawn to a different alignment. There was no staple shaft shown in the black workings or on sheet three, which reproduces the workings. The separation between the Young Wallsend seam and the Borehole seam at the central shaft was 61 feet. The pencil note beside the word "staple" stated 62 feet. A staple shaft ordinarily connects one seam with another. One would expect such a connection to be shown in both sets of workings. Its absence in the black workings ought to have disturbed a surveyor who was examining the plan.

Another aspect to which attention should be drawn affects the entire plan. The portion boundary had been drawn twice. The first boundary was found to be incorrect and was redrawn by a mining surveyor, Mr E. Thomas, on Plan M14136, and the plan is so inscribed. The mistake is disturbing. One cannot know whether the person responsible for it also was responsible for depicting some of the workings. An expert surveyor, Mr Adam, was called before the inquiry and reached the following conclusion:

The variation and inconsistencies of the workings shown on the two plans identified as "Young Wallsend Workings Top Seam" and "Young Wallsend Workings Bottoms Seam" are such that, as a practising surveyor, I would have grave doubts about the accuracy of the information contained on these two plans.

Having dealt with the question of accuracy, the remaining issue was whether the plan was complete and up to date. A surveyor approaching the old plan in respect of the Young Wallsend Colliery should have taken account of the following: first, it was not the original mine plan but a copy; second, there was no plan of abandonment; third, it was an old plan, not signed, not certified and drawn at a time when it may or may not have been prepared by someone with qualifications or experience in surveying; fourth, there were no survey books from which the plan might be verified; fifth, nothing was known of the history of surveying at the mine; sixth, there were puzzling and anomalous features in both the black and red workings; and finally, there is nothing on the plan to indicate that it was up to date.

The company directors were prosecuted. The Gretley defendants were found guilty in August 2004 and were sentenced in March 2005. I point out that this decision was the subject of much comment by employer organisations, particularly the Australian Chamber of Commerce and Industry [ACCI], which released a major policy statement that was profoundly critical of occupational health and safety legislation in Australia both in relation to the way it was drafted and for the way it was being interpreted. The chamber's statement did not refer specifically to Gretley but the text emphasised the situation in New South Wales. The chamber's statement was described as a blueprint for the next 10 years. Among the reasons it gave for releasing its blueprint was the following:

> There is a lack of balance in some existing legislation and court decisions. The trend across jurisdictions has been to broaden legal duties beyond reasonable limits, increase penalties, extend liability to individuals in the management and supply chain and to seek to punish rather than prevent.

The chamber's statement was the most detailed criticism at the time of that campaign. In particular, it addressed the issues of reasonableness, the reverse onus of proof in criminal matters and absolute duties. However, the chamber was not the only organisation to respond. An organisation called Employers First mounted a campaign specifically against the New South Wales legislation. It claimed:

> There is no doubt that employers/directors/managers who have failed to provide perfectly safe workplaces with zero risk, will be sent to gaol - after having been deemed guilty before they even go to court, denied the presumption of innocence and the right to a jury trial, suffered the reverse onus of proof and the suicidal job of trying to prove the impossible defences under the Act.

The Australian National University [ANU] undertook an examination of issues raised by the Australian Chamber of Commerce and Industry. In particular, it was noted that the standard of reasonable foreseeability applied in the Gretley case was such that most ordinary mine managers would not qualify as reasonable. The Australian Chamber of Commerce and Industry made this statement:

> The concepts of "reasonably practicable", "foreseeable" and "control" had been significantly distorted in several Australian jurisdictions to the point where they no longer reflect what is reasonable, practicable and achievable ...
>
> To foresee the unforeseeable, to know the unknowable and to control the uncontrollable is simply not reasonable.

Those statements obviously were inspired by the situation in New South Wales, specifically the findings in the Gretley prosecution. The Australian Chamber of Commerce and Industry implicitly argues that the Gretley judge was expecting the managers and surveyor to foresee the unforeseeable, or perhaps more precisely to foresee what was not reasonably foreseeable. It is important to note that this issue goes beyond the Gretley case; indeed, beyond occupational health and safety law. The law of negligence has moved well away from the idea of a reasonable person as simply an ordinary person. Numerous High Court decisions have been made about that. The Australian National Union said that the campaign by the Australian Chamber of Commerce and Industry and other parties expressed great concern about the so-called reversal of the onus of proof in the New South Wales Occupational Health and Safety Act. As noted earlier, the Institute of Public Affairs expressed outrage about the reversal. It said:

> [Under the Act] managers are presumed guilty until proved otherwise. Incredibly, they have to prove they are innocent.

It was suggested that this was contrary to the basic principles of criminal law. The Australian Chamber of Commerce and Industry policy paper included the following comment:

> Nor should there be a deemed guilty or reverse onus of proof in any civil or criminal proceeding for OHS breaches, nor any other basis on which employers, directors, management personnel or employees are treated less favourably than the defendants in prosecutions under any other equivalent law or legislation ... All parties charged with OHS offences should be accorded natural justice and, in criminal cases, the standard presumptions and protections of the general criminal law.

The New South Wales Act reverses the onus of proof in two ways: first, in relation to major duty holders, such as employers, which normally will be corporations and, second, in relation to individual senior officers of the corporation. A central provision of section 8 of the Act is the following:

> An employer must ensure the health, safety and welfare at work of all employees of the employer.

This is for the prosecution to prove, and it must do so according to the normal criminal standard, beyond reasonable doubt. Once this is established section 28 of the Act provides the following defence:

> It is a defence to any proceedings against a person for an offence against a provision of this Act or the regulations if the person proves that:
>
> (a) it was not reasonably practicable for the person to comply with the provision; or
>
> (b) the commission of the offence was due to causes over which the person had no control and against the happening of which it was impracticable for the person to make provision.

Subsection (a) is the relevant information. The defendant does not need to establish the case with the rigour that is imposed on the prosecution. It must prove its point only to the civil standard, that is, on the balance of probabilities. In other words, it must show that its claim is more probable than not—this is not an onerous requirement. If it truly was not reasonably practicable for the defendant company to comply with the section, it should be relatively easy for it to establish the point. Nevertheless, in theory the situation involves a stark reversal of the onus of proof, with defendants required to establish their innocence.

The Hon. Matthew Mason-Cox: Did you write this?

The Hon. LYNDA VOLTZ: You will have to listen. The reason for reversing the onus in New South Wales appears to be largely practical. It is more efficient for the holder of the duty of care rather than the prosecution to have to establish what was reasonably practicable. A duty holder could be expected to know more about the cost and benefits of the various alternatives open to him or her at any time than anyone else. The reverse onus applies also in relation to certain personal defendants. Section 26 deems certain individuals to be guilty whenever the corporation is guilty in the following terms:

> (1) If a corporation contravenes ... any provision of this Act ... each director of the corporation, and each person concerned in the management of the corporation, is taken to have contravened the same provision unless the director or person satisfies the court that:
>
> (a) he or she was not in a position to influence the conduct of the corporation in relation to its contravention ... or
>
> (b) he or she, being in such a position, used all due diligence to prevent the contravention ...

The fact that individuals are deemed guilty in this way means that there is no need for the prosecution to prove anything except to prove beyond reasonable doubt that the person was concerned in the management of the corporation. In the Gretley case managers and surveyors were found to be persons concerned in the management of the corporation, but the prosecution failed to convince the judge that shift managers were such persons. Section 28 also provides a defence. The relevant element is that the defendant used all due diligence to prevent the offence by the corporation, that is, exercised an appropriate level of care. The defendant must prove this but, again, he or she needs only do this on the balance of probabilities to avoid conviction. In principle, this should be relatively straightforward if the defendant did indeed use all due diligence. As other Australian jurisdictions reverse the onus of proof in this way, New South Wales is not unique. Again, the justification for the reversal would seem to be that it is easier for the defendant than the prosecution to present the necessary information.

It is clear from the above discussion that the phrase "reverse onus of proof" is somewhat misleading. It suggests a transfer to the defendant of the burden of proof normally carried by the prosecution. However, the situation is not symmetrical: The defendant does not have to prove innocence as conclusively as the prosecution must normally prove guilt. It can be argued that the matter is of little practical significance; at least it appeared not to be in the Gretley case as that trial did not work in the way formally envisaged in the Act. In the case of the corporate defendants, the judge stated formally that they had failed to discharge the onus placed on them of proving that it was not reasonably practicable to ensure safety. However, the reality was that the prosecution had not simply left it to the defence to establish this point; it had shouldered the onus itself and taken very active measures to prove that it was reasonably practicable for the companies to avoid the breach. It called two expert witnesses, who described what reasonable managers and surveyors would have done.

Reasonable surveyors would not have relied on the plans provided by the department, and reasonable managers would have probed their surveyors' actions more carefully. The judge accepted this evidence. Furthermore, he found that the evidence provided by the prosecution demonstrated that the defendants had not behaved in accordance with this model of reasonable behaviour. In short, the prosecution established to the satisfaction of the judge that the companies had not done what was reasonably practicable. It did not simply assume reasonable practicability and leave it to the defence to prove otherwise; it actively set out to prove that the companies had not done what was reasonably practicable and the judge found the prosecution evidence to be compelling. It can be concluded that even if the Act had formally placed the onus on the prosecution to establish reasonable practicability, the outcome of the trial would not have been much different in relation to corporate defendants.

The situation was much the same with respect to personal defendants. The discussion above treats the behaviour of the surveyors and managers as the behaviour of the companies. This is in accordance with the established principle that a corporate employer can only conduct its activities through human agents such as managers, supervisors, employees and contractors. The company was convicted in part on the basis of the behaviour of these individuals. In the Gretley case this same behaviour resulted in charges against individuals as

well. The onus of proof was formally on them to establish that they had exercised all due diligence. The judge found that they had failed to produce any such evidence. On the contrary, the evidence produced by the prosecution established that they had not exercised all due diligence. As in the case of the companies, even if the onus had been on the prosecution to prove that these individuals had failed to act with due diligence, the outcome would probably not have been much different.

In the Gretley case the issue of just where the onus of proof lay turns out to have been a red herring. Earlier in the report the Australian Chamber of Commerce and Industry raised the reverse onus in criminal law. The Australian National Union also looked at this issue. The critics assert that reversing the onus of proof, as is the case with occupational health and safety law, is contrary to the basic principles of criminal law. However, it is the fact that whatever may be the principles of criminal law, in practice the onus of proof in many instances is reversed in order to achieve policy or regulatory objectives.

The Hon. Matthew Mason-Cox: Give me some examples.

The Hon. LYNDA VOLTZ: I will outline some of these instances for the Hon. Matthew Mason-Cox, as he has asked. The New South Wales Summary Offences Act makes it an offence to live on the earnings of prostitution. How is the prosecution to prove that a person who lives with a prostitute is living on the earnings of prostitution? The issue is resolved by assuming that this is the case, unless the defendant can show that he or she has lawful means of support. In this way, the onus of proof is reversed and the defendant is required to establish his or her innocence. Moreover, the offence is a serious one in that the maximum penalty is 12 months in jail. Even so, the law is willing to reverse the onus of proof in order to ensure that the provision can be effectively enforced.

A second example for my colleague's information comes from the same Act and concerns the possession of knives in public places, particularly in schools. The provision makes it an offence to carry a knife unless the person concerned can provide a reasonable excuse. Here again the onus is on the accused to prove their innocence. Here again the offence is not trivial; it can lead to 12 months imprisonment. In drug law, the law normally treats the possession of a drug for the purpose of sale as a more serious offence than possession for one's own use. But the prosecution establishes that the accused intended to sell the drugs simply by assuming that any quantity of drugs above a certain threshold is intended for sale. The accused is, however, given the opportunity to rebut this assumption. Again, therefore, the onus of proof is reversed.

The onus of proof is also reversed for financial offences committed by company directors. Where a company is insolvent—that is, unable to pay its debts—directors have a duty to prevent the company from incurring further debts. If a company does incur a debt while insolvent, its directors are guilty of an offence unless they can prove they had reasonable grounds to think the company was solvent or, if they suspect that it was insolvent, that they took reasonable steps to prevent it trading. These are only some of the examples that show that occupational health and safety law is not in any way unique in placing the onus of proof on defendants to prove certain things in order to avoid conviction.

The critics claim that the reversal of onus of proof under the Occupational Health and Safety Act is unjust. If that is so, then many other statutes are unjust in the same way. The fact is that effective law enforcement relies on placing the onus of proof on defendants in various circumstances. Governments have decided that holding senior officers personally liable for safety offences committed by their companies, unless they can show that they exercised due diligence, is an effective way of encouraging corporate compliance.

The campaign triggered by the Gretley convictions centred on three specific concerns about the way the New South Wales Occupational Health and Safety Act had been formulated and interpreted: the legal concept of reasonableness, the reverse onus of proof and the absolute nature of the duty of care. The reverse onus and the absolute nature of the duty have been shown to be of little substance. The offence as a whole does not impose absolute liability and the reverse onus of proof does not constitute a problem in and of itself. The defendants in the Gretley prosecution were unable to demonstrate that they had acted reasonably, but this was not because they bore the onus of proof; it was because they had not in fact acted reasonably, according to the legal definition of reasonableness.

Had the legal notion of reasonableness been more in accordance with common usage, the defendants in the Gretley case would not have had much difficulty establishing that they behaved reasonably in relation to the plans provided by the department. However, even using a common sense meaning of reasonableness, it is far

from clear that the response to the warning signs was reasonable. Had the prosecution highlighted these issues, the defendants would have been hard-pressed to establish that they had acted reasonably regardless of which meaning of the term was used.

I return to the Minister's second reading speech when he said that the Work Health and Safety Bill explains what is reasonably practicable to provide guidance to duty holders. According to the Minister, the Occupational Health and Safety Bill 2011 makes amendments to the provisions of the Occupational Health and Safety Act dealing with general duties of employers, controllers of premises, plant or substances, and designers, manufacturers and suppliers of plant, to provide that the duty is to ensure health and safety only insofar as is reasonably practicable. These changes are consistent with the approach of the Work Health and Safety Bill and have the effect of moving from the defendant to the prosecution the onus to demonstrate whether it is reasonably practicable in a particular case to ensure health and safety. According to the Minister, it is the intention of the Government to bring New South Wales into line with every other Australian jurisdiction except Queensland.

As I have noted, between them Queensland, New South Wales and Victoria already have 77 per cent of the workforce. The Minister said that the second change from the current law in New South Wales recommended by the review panel and to be implemented by the Work Health and Safety Bill 2011 concerns the duties of directors of corporations. The Occupational Health and Safety Act currently provides for a director of a corporation to be liable for breaches of the Occupational Health and Safety Act committed by the corporation. This provision has long been of concern to stakeholders.

If one were to believe the second reading speech of the Minister one would believe that every stakeholder has been calling for all these changes. But let us look at what the Australian Council of Trade Unions, one of these stakeholders, said in its submission. The Australian Council of Trade Unions said in its submissions on these reforms that the union believes that there has been an amount of largely ideological hysteria in relation to the application of general duties provisions and in particular the absence of this clause, except as a ground of defence, in the New South Wales legislation. It has been suggested that New South Wales imposes an overly onerous duty on employers. The union rejected this suggestion.

The New South Wales Act appears to have been targeted by employer groups for reasons beyond this particular provision. For example, both the New South Wales and Queensland legislation place a mandatory duty on employers, with the use of reasonable practicality—or reasonable precaution in the case of the Queensland Act—only available as a defence. This approach should be adopted in the model occupational health and safety legislation. Duties should not be limited by the phrase "so far as reasonably practicable" in the model laws. This defence appropriately remains open to an employer in a court.

The Australian Council of Trade Unions noted that a number of eminent labour lawyers, familiar with recent case law, make similar points. For example, in his submission Neil Foster of the University of Newcastle stated that reasonably practicable is a "good standard for the defence under the model Act". The union also draws attention to an opinion prepared by Breen Creighton, formerly a professor of labour law at Latrobe University and a partner with Corrs, Chambers Westgarth for WorkCover Victoria in which he correctly reflects that the New South Wales Act establishes a series of general duties which, on their face, are unqualified. However, section 28 provides a defence to any proceeding for breach of those duties if the accused can prove that it was not reasonably practicable to comply with the provision. The prosecution still has to prove beyond reasonable doubt that there has been a breach of duty. It is then for the defendant to prove the section 28 defence, on the balance of probabilities. This suggests that the reverse onus in New South Wales is properly described as only a partial reversa1.

Finally, but not least, the Australian Council of Trade Unions drew the attention of the review to the extensive and detailed submission of Professor Ronald McCallum, Dean of Law at the University of Sydney, to the Stein review of New South Wales occupational health and safety law. Professor McCallum reviewed the case law on the application of the reverse onus of proof in the United Kingdom and Australia and found that this approach was not, as had been suggested, in any way unique to New South Wales or a breach of human rights; nor in his view had it placed an onerous burden on employers. The union urged the review to carefully consider the weight of evidence provided by those authorities, especially when compared to the lack of substantial evidence that marked submissions critical of this approach. Further, a key piece of the alleged evidence cited with regard to the superiority of particular models of legislation is unconvincing.

The suggestion that the Victorian legislation delivers superior occupational health and safety outcomes in terms of workers compensation claims loses all credence once the different rules governing the making of

claims is recognised. The use of "reasonably practicable" clauses has also been widely criticised in the European Union, where it had been dropped from European Union directives following debates in 1987 to 1989 when both the commission and a big majority of the member States and the European Parliament categorically chose to drop this clause, which had been a feature of community health and safety directives. The Australian Council of Trade Unions noted the submissions of some employer groups, such as the Australian Bankers Association, which had called for greater freedom of employers to control risks but also the use of the term "reasonably practicable" in offence provisions. This seems to distil to a request to give employers more flexibility about the decisions they make relating to occupational health and safety, but with a diminished legal responsibility should those decisions prove to be wrong.

I now address one of the third key changes that the Minister raised in his second reading speech, that is, the union right to prosecute breaches of work health and safety law. The Minister outlined that the Work Health and Safety Bill 2011 would remove the automatic right of unions to prosecute for breaches of the work health and safety law. The Occupational Health and Safety Amendment Bill removed this right from the law of New South Wales, effective from the date of the introduction of the bill into Parliament. The ability as of right of an industrial organisation to bring proceedings for an offence under work health and safety law is not permitted in the majority of Australian jurisdictions, according to the Minister, although it probably covers the majority of workers in Australia given the number of workers on the east coast. For some reason, the Minister believes that. He said:

> In addition, I am satisfied that removal of this right will not result in any weakening of enforcement.

In the five years from 2005 to 2011 fewer than 50 prosecutions were made by employee representatives. By way of comparison, WorkCover NSW undertook 693 successful prosecutions in the four-year period between 2006-07 and 2009-10. One could say that the union movement has been judicial in the use of the right that it was given. There is no way the union movement can be accused of being heavy handed in prosecuting breaches of the law. Let us look at some of the prosecutions brought by unions and the outcomes. The first case relates to the New South Wales Department of Tourism and an incident that occurred in 1996. A clerk working with Tourism NSW, which was known as the Department of Tourism at that time, suffered an occupational overuse injury caused by a combination of large workloads and the provision of inadequate information and inadequate ergonomic equipment to the employee, as well as inadequate lighting. The defendant was told of the risk and ways to improve the workstation but delayed making the improvements. The department pleaded guilty to the prosecution brought by the union and was fined $8,000.

The union had been educating members and employees of the risks of repetitive strain injury and occupational overuse injuries for nearly two decades as knowledge of the condition became available and new technologies, such as computers with keyboards and mouse, were introduced in the workplace. Job re-engineering was successful in the late 1980s and early 1990s, but occupation overuse injuries were still occurring, despite well-known safety practices to prevent the occurrence of such injuries. This was partly due to new technologies and workstation interface. I make the point that it is unknown whether there were any WorkCover prosecutions relating to these types of injuries. Overuse injuries were becoming an issue not only in offices with different types of technologies.

Another group with an extremely high incidence of occupational health and safety injuries is sheep shearers. Sheep shearers have the highest incidence of occupational injury and disease claims. They have 150 compensation claims per 1,000 workers per year, and manual handling is implicated in about 80 per cent of these claims. It has been calculated that back injuries to shearers cost the Australia wool industry $76.4 million per year or 15.9 per cent of the labour costs of shearing. So addressing these kinds of new technologies and new ways of doing things is vital in reducing overuse injuries. Overuse injuries occur not only in white collar jobs but also in blue collar jobs, such as shearing. There has been a significant redesign of shearing sheds and how crutching and shearing are performed these days.

Equipment, generally known as sheep handlers, is becoming reasonably well used for crutching sheep. Although the introduction of this equipment has reduced some injuries it has created other problems, particularly the association with handling equipment to assist with crutching as there is a tendency for the handpiece to be operated close to the upper body and face of the operator. In conjunction with the proximity to these parts of the body there is increasing potential for the handpiece to strike a metal object, and the consequences of a handpiece locking up while the handpiece is close to the upper body and face can be extremely serious. It is hard to define the categorisation of these muscular stress injuries but according to statistics they make up about 6 per cent of all claims and up to 10 per cent of all claims. So when there had been no prosecutions the union used its right to prosecute in this example to improve safety in the workplace.

The next case was against the Roads and Traffic Authority [RTA]. An incident occurred in 1998 when a maintenance patrol person employed by the Roads and Traffic Authority was required to perform maintenance at remote roadside rest areas, including changing the liquid petroleum gas [LPG] cylinders in the barbecues at the rest areas in the Broken Hill region. The employee had not carried out these activities for a period and was not informed by the employer that changes had been made to the gas barbecue, which included the change from one gas cylinder to two gas cylinders. The employee was not trained or given written instructions on how to change the gas cylinders when there were two; nor was he made aware of the requirement to alter the system of work for checking the gas contents of the cylinders.

The employer did not alter the system of work that formerly required lighting the barbecue, failed to conduct a risk assessment and failed to provide written procedures for changing the gas. As the employee was out of the communications area, and the radio in the truck was faulty, he was unable to ask for assistance prior to changing the gas cylinder or after he was engulfed by a fireball and had to drive himself towards Broken Hill unaided with second-degree burns to 12 per cent of his body. The Roads and Traffic Authority, which had prior convictions, pleaded guilty and was fined $80,000.

Many employers have excellent overarching safety paper documents. They meet the requirements of a good safety system in theory but in reality in the workplace there is either no practice of good safety or large holes in the system when it comes to risk assessing the work that is conducted. The Roads and Traffic Authority employs a range of specialised workers who undertake specialised but high-risk work. Following the decision the Roads and Traffic Authority implemented a director of safety position and a team of safety personnel to start the process of improving safety in the organisation. Part of what the safety team has done now is implement safety systems, including safe operating procedures, safe work method statements, and risk assessments for most of the tasks they undertake. This prosecution is typical in that it was for traumatic physical injuries but it was designed to make the employer take safety more seriously across the organisation.

The next prosecution I refer to is against the Department of Education and Training. The incidents occurred in a School for Specific Purpose school for students with special behaviour challenges. Several students had particularly violent behaviour patterns but the risk assessment conducted on one student was not forwarded to the relevant staff supervising the students at the school. On the day of the teachers strike a teacher's aide was required to look after one student with violent behaviour. The aide stated that she did not want to be left alone with the students but the supervising teacher left her alone with them. The aide was then seriously assaulted by one student as she tried to protect the other students. She had difficulty summoning emergency assistance as no duress alarms were available and she had to try to reach the opposite side of the room to use the telephone.

On return to the school after a period of absence the aide suffered another assault. The aide was diagnosed with post-traumatic stress disorder and medically retired. The Department of Education and Training pleaded not guilty but was found guilty of three of the five charges. The department opposed sentencing and appealed and was fined $160,000. On many occasions the department has taken on a philosophy that the right of the student to have education overrides the department's responsibility for the safety of staff. For many years the union has witnessed a continuation of assaults on staff in school facilities. The non-teaching staff who are union members do not have a role in the discipline or placement of staff or students as this is solely delegated to the teaching staff. Therefore the teaching aides had no ability to effect controls regarding the enrolment and placement of dangerous students in their schools and classes.

The changes that were instituted included a range of provisions. One specific change following that conviction was acknowledgement that occupational health and safety legislation overrides that of privacy, which is one reason this incident occurred. The next incident was against the Police Force. The incident occurred in 2001 when a technical officer was working on a new winch fitted to the front of a police vehicle. When the technical officer had his head near the winch the siren also near the technical officer's head was triggered by a senior constable as a practical joke.

The police had not provided any administrative controls advising police to check for co-workers in the vicinity before enabling sirens; nor had any hearing protection been issued. The technical officer suffered severe trauma to the ear resulting in severe permanent tinnitus. He was medically retired. The charges related to: failure to prevent discharge of siren; failure to ensure that personnel were aware of the activation; failure to have a noise control policy; failure to provide information, training and education to persons about sirens; failure to provide personal hearing protectors; and failure to identify areas that hearing protection should be worn. The Police Force defended the case and was found guilty and fined $150,000.

The next case was against the Department of Community Services [DOCS]. The incident occurred in a department office during a client interview. The client had her child removed from her care due to the behaviour and mental health problems of the mother, the client. This included alleged drug use and threatening use of a motor vehicle just days prior to the incident. A relatively inexperienced case worker was assigned the client and conducted an interview with her. During the interview the client attacked and stabbed the case worker with a knife. The other staff in the office were required to use reasonable force against the client to disarm and restrain her and provide aid to the case worker. At least one of the other staff suffered a form of psychological injury from witnessing this traumatic event. It was found the department could easily have prevented the client from attending the centre, ensured a proper a risk assessment was carried out on the client's history, and had an adequate alert-warning system and emergency plan in place. The department should have provided a security guard, had police present, or ensured the interview room was adequately fitted out to prevent the client from being able to reach caseworkers. The department defended the case and was found guilty and fined $200,000.

It is important to note that caseworkers—social workers—have long been suffering from large case loads. Their work involves attending dwellings and removing children and putting them into care as well as meeting with parents and managing their care of the children. Many of the clients have a criminal or violent history of potential. The former State Government was trying to address that after significant pressure from reductions within the department under the Greiner Government. The department was implementing a recruitment program to increase the number of caseworkers by nearly 1,000. It would take some time to train all the staff in safety and ensure that the premises and systems of work do not put these staff at risk—ensuring offices are properly designed and safety procedures are implemented. It is imperative that we protect the staff that protect our community's children. The union brought this prosecution specifically to raise the problem that these people in the Department of Community Services face at the coalface.

The next case involved the Department of Education and Training and the Department of Juvenile Justice. The charges revolved around an education facility in a juvenile justice centre over a period of approximately one week. The case involved several episodes of proven violent assault and traumatic behaviour against teachers and teachers' aides, special staff, including an escape. There were three charges relating to particulars: failing to have adequate juvenile justice staff to monitor student behaviour; failing to undertake a risk assessment of class composition and in particular the presence of a detainee; failing to provide adequate information about records of violence actual and threatened by detainees and incident prevention or reduction strategies; failing to provide adequate information instruction and training including self-defence and assault response; failing to provide adequate emergency communication equipment; and failing to provide adequate social support in the form of consultation regarding safety concerns both before and after safety concerns were raised.

Several staff members were injured as a result of those failures. The injuries involved different forms of psychological injuries including post traumatic stress disorder. One member had not returned to the workplace since 2004 when the incidents occurred, and at least two other staff are on continued part-time treatment. The defendant was found guilty on three charges, and a penalty of $550,000 was imposed. The case prompted the improvement of both physical and psychological safety measures in these workplaces. There is some evidence that staff, in order to cope with working at these centres, left the workplace rather than remaining and trying to improve the safety of the workplace.

The charges that are aimed at improving the physical safety of employees deal with the fact that trained youth officers who monitor and control the behaviour of detainees were available in the juvenile justice centre. However, in the school detainees are placed together with unprotected Department of Education and Training staff without risk assessment and without the presence of a youth officer who received relevant training and is able to use reasonable force if necessary. Additionally, it is alleged the education staff were not trained in basic self-defence activities we have alleged are necessary for this work. The other aspects of the physical charges related to the ability to provide additional controls for detainees if a risk assessment on these detainees was conducted and they were considered to be of risk, such as exclusion from the class.

The Hon. Catherine Cusack: What about all the staff who got the sack at Kariong?

The Hon. LYNDA VOLTZ: I note the interjection from the Hon. Catherine Cusack who I know shares my ability to say what I think.

The Hon. Melinda Pavey: You never got tested, love!

The Hon. LYNDA VOLTZ: I got tested. You might want to go back and check *Hansard.*

The Hon. Melinda Pavey: They pulled it. You had the power job! Remember?

The Hon. LYNDA VOLTZ: Yes, after I spoke. I acknowledge the interjection but I would say it was after I went on the record in *Hansard*.

The Hon. Catherine Cusack: Those Kariong workers were put through hell by the Government.

The Hon. LYNDA VOLTZ: The next case involves the Department of Corrective Services. I acknowledge why the member thinks that it is important that union prosecutions remain. That department has been increasing the number of jails and inmates in the State over the past 15 years. The numbers of employees working in jails has not kept up with the increased prison population. Safety procedures in some jails did not ensure the ability to prevent risk to health and safety from violent inmates. An inmate with a history of violent assaults on police, prison officers and inmates was transferred to Silverwater minimum security jail but under a low classification. Before 11 December 2006 he was then identified as continuing violent and was earmarked for reclassification to a higher security level. When informed of this he turned on his escort prison officer and violently assaulted the officer, hitting and kicking his head and chest.

Another escort officer present called for assistance but the inmate was able to sustain significant head injuries to the officer. The inmate when confronted with other officers pushed the officers aside and then went through several parts of the jail to an oval. He then incited other inmates to follow him and when officers tried to detain the inmate the other inmates assaulted the officers. A riot ensued that saw more than 50 inmates attack and surround approximately half a dozen prison officers. I raise these union prosecutions to highlight the importance of retaining these provisions of the Occupational Health and Safety Act.

The Hon. Matthew Mason-Cox: How about union persecution?

The Hon. LYNDA VOLTZ: Union persecution? The Minister wants to remove those provisions and argues that the unions are not prosecuting enough. Now you are saying that it is union persecution. The Financial Sector Union has brought three cases against three of Australia's largest banking corporations for failing to adequately protect workers against occupational health and safety risks resulting from armed robberies. The cases are: *Financial Sector Union v ANZ Banking Group, Financial Sector Union v Westpac Bank* and *Financial Sector Union v Commonwealth Bank*.

The background to these prosecutions and impact of the prosecutions are of considerable importance. In 1998 there were more than 180 armed robberies in New South Wales and in 85 per cent of these incidents bank workers were either molested or assaulted. In all cases the extent of the risk of exposure to armed robberies in each of the branches was known to the corporations and in each case they failed to expedite measures to protect bank workers. One prosecution followed after five similar incidents which had occurred at five separate branches of the same banking corporation.

In 2000 the Finance Sector Union wrote to all New South Wales banking corporations requesting improvements to workplace design and, in particular, the installation of full height anti-jump barriers to bank counters. From 2000 to 2003 the average number of bank robberies per annum was 79.75, which represented 7.9 per cent of the total number of banks operated by all banking corporations. The New South Wales regulator was informed of each of the incidents that resulted in a prosecution undertaken by the Finance Sector Union but the regulator did not take any action against the banking corporations involved. In response to the action taken by the Finance Sector Union in the period from 2004 to 2007 the number of bank robberies fell to 28.75 per annum, a 64 per cent reduction in these incidents, with only 2.2 per cent of banks being affected. Union prosecutions in a number of cases have led to significant reforms to occupational health and safety in those industries and/or employers affected by the prosecutions.

The Hon. Trevor Khan: Gosh, that's a scientific analysis.

The Hon. LYNDA VOLTZ: I acknowledge the interjection, but if you look at installation of full height anti-jump barriers to bank counters, I think you will find that they have had a significant impact. The next case is *Andrew Ferguson v Nelmac*.

The Hon. Trevor Khan: Let's hear about that one. Where is Andrew now? What is he doing?

The Hon. LYNDA VOLTZ: The Master Builders Association and yourself would be happy to know he is back out organising the workplaces. Breaches were allegedly committed by the defendant on 4 April 1996

at Myrtle Gully in rural New South Wales, where the defendant was under contract to the Roads and Traffic Authority of New South Wales to construct a bridge to form a new section of the Princes Highway approximately 50 kilometres south of Nowra.

The Hon. Dr Peter Phelps: He could swap factions.

The Hon. Matthew Mason-Cox: Yes, he just has to swap factions.

The Hon. Dr Peter Phelps: He can do a Searle.

The Hon. LYNDA VOLTZ: I can't see him going any further than where he is. At the time of the alleged breaches Mark Poi, an employee of the defendant, was tragically and fatally injured. At the relevant time Mr Poi was employed as a carpenter and was working in the course of his employment. At 7.20 a.m. on the day in question he stepped upon the plywood formwork covering a part of the construction which was referred to as the key opening and fell through that opening, landing on the gully floor 16 to 18 metres below. As a result of that fall Mr Poi sustained serious injuries and died immediately or within minutes after the fall. The key opening measured 1420 millimetres by 750 millimetres and was located in an area of construction of the bridge.

The reality is that WorkCover is not able to cover every incident and on occasion this has required unions, which are in constant contact with workers in the workplace, to prosecute on their behalf. In particular, there are safety issues that are picked up by unions in an industry where there is evidence of breaches and the ability for unions to prosecute is a way of changing behaviour to ensure a safer workplace—the example of the banking industry is a perfect one. But those on the other side would rather point-score than talk about what happens at the coalface of industries.

A case in point is the death of Joel Exner. He was a 16-year-old male who began working as a roofing labourer on 13 October 2003, just three days prior to his death. It is understood he may have previously worked with a roof tiler on residential housing; however, he had no experience on large commercial building sites. Joel was working on the Costas building as an employee of J B Metal Roofing Pty Ltd. He was supervised by Andrew Jones and was working with other roof labourers. The employees were laying metal sheets of roofing, which were to be overlapped with other roofing sheets and then screwed down onto metal purlins which form part of the roof structure. Underneath the metal roofing sheets a wire mesh is required to be installed. The mesh serves two purposes: it is intended to provide safety to workers while fixing the metal sheets and its second purpose is to support insulation that is placed on the mesh immediately before the metal roof sheeting is affixed to the purlins.

The metal sheets, when delivered, have a plastic protective cover that has to be removed prior to the sheets being affixed. At about 8.20 a.m. on 15 October 2003 a piece of the protective plastic covering would appear to have become entangled on the wire mesh. The deceased walked onto a metal purlin 80 millimetres wide in an attempt to secure and remove the plastic. Eyewitnesses gave evidence that Mr Exner appeared to have lost his balance and fell from the purlin onto the wire mesh. The evidence suggests that the wire mesh held his weight momentarily; however, it then gave way, causing Mr Exner to fall some 12 metres onto compacted dirt. The injuries he received as a result of that fall directly caused his death. The Hon. Greg Pearce chose to use this case to score some cheap political points. He said in *Hansard* on 11 May 2011:

> In some cases unions have commenced proceedings only to discontinue them, and WorkCover has pursued the prosecutions later. In 2005 unions discontinued four prosecutions against Australind Holdings, J B Metal Roofing and two individuals following a fatality. These cases were later pursued by WorkCover and successfully prosecuted, with fines totalling in excess of $400,000. This illustrates two points: WorkCover is the expert prosecutor in such cases; and having a union right to prosecute potentially opens employers to having to defend themselves against prosecutions brought by multiple prosecutors. In the case of the prosecutions by WorkCover the full $400,000 in fines went to consolidated revenue and was available to be spent by the Government on programs for the people of New South Wales. It did not go into the coffers of a single union.

The union wrote to Greg Pearce saying:

> It has come to the attention of the CFMEU that you have made statements in Parliament in which you appear to have deliberately distorted the facts surrounding the Union's prosecution in relation to the fatality at work of Mr Joel Exner and their subsequent withdrawal …
>
> The CFMEU has undertaken a small number of prosecutions, ever mindful that to do so is an important step. We also do not accept that the Union lacked expertise in this area. In *Andrew James Ferguson v Nelmac Pty Limited* … the Union successfully prosecuted the defendant for breaches of the Occupational Health and Safety legislation in a professional and effective manner.

> The matters of which you speak were not *"later pursued by WorkCover"* in the way describe namely implying that for some reason the Union abandoned its prosecution which then WorkCover took up. Had your office checked the facts, that are detailed below, you would have realised that the Union was left with no option but to make the decision that it did. This was not an easy, or trite one, to make. For the record the chronology of events are as follows, which can be confirmed with WorkCover New South Wales. Our file on the matter shows the following.
>
> The CFMEU's Andrew Ferguson, State Secretary, filed proceedings against Australand Holdings, J B Metal Roofing, Garry James Denison and James Nicholson Denison on 18 September 2005.
>
> On 13 October 2005, WorkCover commenced competing proceedings against the same defendants.
>
> On 18 October 2005, by way of notice of Motion, WorkCover through Inspector Rodney Dubois sought an order for the Union's prosecutions to be stayed on the basis that it would be in the public interest for WorkCover to have carriage of all matters relating to the fatality and that this particular inspector had carried out the investigation.
>
> Discussions occurred between the Union and WorkCover.
>
> The Union and WorkCover agreed that the Union would withdraw its prosecution. It was particularly of concern to the Union not to be involved in protracted litigation with WorkCover over our right to prosecute rather than getting on with the prosecution in substance in respect of this tragic fatality. Any technical argument about competing prosecutions would not, in the Union's view, have advanced the interests of the deceased family in ultimately getting justice in this prosecution for the death of Joel Exner. Nor would it have improved safety for the rest of the industry. The principal negotiator for WorkCover was John Watson, the general manager of the OHS Safety Division at the time …
>
> You have not fairly and accurately reported this matter in Parliament and we request an immediate retraction of any adverse implication and clarification in Parliament of the true nature of the facts. To use the conduct of WorkCover in this case to justify an attack on the right of Unions to prosecute is misplaced. The Union conducted itself with responsibility and professionalism in the carriage of this matter. That you would erroneously report the circumstances of this Union's involvements in the prosecution of this fatality and use the tragedy of the fatality of the young man Mr Joel Exner as a political football to score a point in Parliament is reprehensible.

Hopefully, the Minister will clear up that matter in his reply. If the Minister did not want it raised he should not have raised it in this House. I look forward to the Minister's response to that issue.

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [4.29 p.m.]: I strongly support the Work Health and Safety Bill 2011 and the Occupational Health and Safety Amendment Bill 2011. As members would be aware, the object of the Occupational Health and Safety Amendment Bill 2011 is to amend the Occupational Health and Safety Act 2000 to adopt proposed national work health and safety reforms pending the enactment in New South Wales of the proposed Work Health and Safety Act 2011 in three critical areas.

Firstly, the general duties under the Occupational Health and Safety Act to ensure health, safety and welfare will be qualified by the inclusion of the words "so far as is reasonably practicable", thereby requiring the prosecution to prove what was reasonably practicable and removing the need for the defendant to establish that it was not reasonably practicable to comply with the duty. Secondly, a duty will be placed on officers of a corporation to exercise due diligence to ensure that the corporation complies with health, safety and welfare duties, with this duty to replace the existing provision that deems directors and managers of a corporation to be guilty of offences committed by the corporation. Thirdly, the secretary of an industrial organisation of employees will no longer be entitled to institute proceedings for an offence under the Occupational Health and Safety Act that concerns members of the organisation.

I note also that the object of the Work Health and Safety Bill 2011 is to provide the basis for New South Wales' participation in the national harmonised system of work health and safety. The bill enacts the nationally agreed model Work Health and Safety Act in this State. It will be supplemented by model work health and safety regulations and codes of practice in due course. Certainly it is a long-overdue adoption of the national framework in New South Wales.

I note in particular that the Labor Opposition has very much been of a mind to filibuster in relation to this important legislation. The New South Wales Government is committed to providing a safe and healthy working environment for all the State's workers, which might come as a surprise to those on the other side for some reason. Indeed, members will recall that on 3 July 2008 all States, Territories and the Commonwealth agreed to harmonise their work health and safety legislation. Under the Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety, signed by the Council of Australian Governments, all jurisdictions must adopt their own laws that mirror the model legislation by December 2011.

The Government cannot agree to amend the Work Health and Safety Bill to permit union prosecutions without breaching its Council of Australian Governments obligations. There is significant Council of Australian

Governments funding attached to the National Partnership Agreement to Deliver a Seamless National Economy. Over the five-year life of the partnership agreement New South Wales is eligible to receive a total of $176.673 million in funding for the delivery of the agreed suite of priorities. Indeed, occupational health and safety is the number one reform priority under this partnership agreement.

Members will be aware that the Work Health and Safety Bill introduced by this Government complies with the intergovernmental agreement. The previous Labor Government signed this intergovernmental agreement and supported the Work Health and Safety Bill until it reversed its promise to pass harmonised laws last year. Members will recall the community outrage and that of a range of business organisations at that time. I refer to a number of press reports in that period, particularly one in the *Sydney Morning Herald* on 18 October 2010, which is headed "Keneally unwilling to make a 'Sophie's choice'", by Sean Nicholls and Philip Coorey. I note in particular that Prime Minister Julia Gillard described being forced to choose between signing up to a uniform national workplace and $144 million in Federal grants as, in the words of Kristina Keneally, a "Sophie's choice". The article goes on to state:

> "I would hope that the Commonwealth and the Prime Minister isn't seriously suggesting that I have to make some sort of *Sophie's Choice* type decision here, some sort of *Sophie's Choice* the movie type decision here, between workers' safety and $140 million," Ms Keneally told a press conference this morning.

That was on 18 October: a Sophie's choice decision between Labor's self-interest and $140 million for the people of New South Wales. In reality, it was a selfish choice decision between unions and their support for a New South Wales Labor Government, which at that time was in dire need of support and had been abandoned by all other interest groups and community groups and indeed most of the State of New South Wales, and the public interest represented by the $140 million that would be payable under the national partnership agreement. In the face of all the outrage in the community and among business organisations the then Premier put the unions first in support of Labor's re-election campaign rather than acting in the interests of the public of New South Wales, which one would think would be the responsible decision of a government at any time.

The article goes on to say that Ms Gillard threatened to dock the Government more than $140 million in funding and accused it of compromising worker safety and business productivity by refusing to honour a deal to introduce uniform national workplace safety laws. That certainly was not the first time, nor will it be the last, that the Labor Party has abandoned a deal. The article says that in a stinging response to the ambush by Ms Keneally, the Prime Minister said the Premier should put the national interest ahead of her own. We should understand this: A Labor Prime Minister accused a Labor Premier at the time of putting the interests of the union movement ahead of the interests of the public in her own State.

Members of the Labor Party here have risen to speak in complete denial of what happened at that time, suggesting they were acting in the community and public interest. It is simply outrageous. Some of the contributions we have heard today have been nothing short of delusional, particularly the comments by the Hon. Luke Foley. I will come to them in a moment; they deserve special recognition. The article goes on to say that the Prime Minister dismissed Ms Keneally's claim that breaking the deal was about worker safety and said, "Inconsistent laws cause confusion and costs for business." The Prime Minister went on to say:

> National model occupational health and safety laws will save businesses around $179 million per annum and, importantly, improve safety for workers.

The Prime Minister endorsed the national approach to improve safety for workers and save businesses over $179 million a year and also promised to give New South Wales in the vicinity of $140 million, yet the then Premier, Kristina Keneally, rejected this out of hand in the interests of ensuring union support at the upcoming election on 26 March 2011. That is what this was all about. Here we have crocodile tears being shed by members opposite as a national framework we are debating today, supported by every State in the country, supported by the Commonwealth—

The Hon. Dr Peter Phelps: Even the Labor ones.

The Hon. MATTHEW MASON-COX: Even the Labor ones, supported by a Federal Labor Government.

The Hon. Dr Peter Phelps: The Tasmanian one, which has a Labor-Greens alliance.

The Hon. MATTHEW MASON-COX: A Labor-Greens alliance, which we also see on the opposite side at the moment. They are speaking in voluminous tones about how they can frustrate the passage of this bill

once more with another filibuster. I see they have another book ready to come to their aid against legislation that has been endorsed in every Parliament of this country and is finally being considered in this Parliament. It is a great credit to Barry O'Farrell, the Liberal-Nationals Coalition and the responsible Minister, the Hon. Greg Pearce, who have shown courage in the first days of this Government in presenting this critical legislation.

This legislation is long overdue and has been frustrated by those on the other side for their own self-interested political purposes. I know the Hon. Peter Primrose does not like to hear that, but it is the truth. Another article under the headline "Renegade Premier's workplace deal angers PM" by Phillip Coorey and Alexandra Smith was published in the *Sydney Morning Herald* on 15 October 2010. At that time Ms Gillard noted that the agreement on workplace safety rules was one of her greatest achievements as Minister for Workplace Relations. She stated:

> A deal is a deal and the federal government requires this deal to be honoured.

I note comments made by a number of business organisations that also were outraged at that time. It is very important for members opposite to understand the absolute hypocrisy of what they are saying. A spokesman for the Australian Chamber of Commerce and Industry, David Gregory, said that the former Premier's actions were not about workplace safety but "about pandering to union demands". The article on 15 October 2010 also stated:

> A federal Labor source said that the Premier's actions made a mockery of her claim that NSW was dedicated to economic reform. "It sends the message that NSW is continuing to go backwards."

Comments by the Business Council of Australia and the Australian Industry Group were similarly scathing. Heather Ridout of the Industry Group said the announcements by Ms Keneally were "extremely retrograde" and out of step with the community's interests. All the commentary at that time shamed the New South Wales Government for not acting in the interests of the community that it was meant to represent, but it did not. At that time the former Premier snubbed priorities that certainly were part of nation building.

The national laws will maintain our strong work health and safety framework, keep businesses accountable, reduce red tape for employers, and mean that no matter where people work or do business in Australia, the same laws will apply. That is something that the Opposition cannot understand. Businesses that transact and carry out work across State and Territory borders have to deal with different jurisdictions that have put forward their own version of occupational health and safety laws. Those laws are inconsistent, contradictory and increase the cost of doing business. This legislation represents a massive step forward in reducing duplication, red tape and inconsistency.

Earlier I referred to comments made by the Hon. Luke Foley that this important legislative reform "has not been through an extensive consultation process". To say the least, that comment is delusional. As members opposite know, industry and unions have been actively engaged in each and every step of the harmonisation process. The model legislation was developed by Safe Work Australia, which is a tripartite body with representation from industry, unions and government. The composition of Safe Work Australia has ensured that stakeholders are a key part of the harmonisation decision-making process. In addition, both the model Work Health and Safety Act and draft regulations were released for significant periods of public comment. The submissions informed amendments to the Act, which then was endorsed by the Workplace Relations Ministers' Council in December 2009. Substantial consultation has ensured that the model legislation will reduce red tape for employers while ensuring a strong work health and safety framework is maintained to protect workers.

Stakeholders have known for several years about the reform and have known that some elements of the current legislation, such as the unions' right to prosecute and reversal of the onus of proof, would not be included in the model Act for more than 18 months. Yet, as I noted earlier, the Hon. Luke Foley has claimed there has been a lack of consultation or warning. It is simply incredible that the member would make such a comment. The model Act reflects contemporary practice within most Australian jurisdictions. It is worth noting that that was acknowledged by the High Court in its decision last year in *Kirk v New South Wales Industrial Relations Commission*. I will not deal in detail with the facts of that case, but it is worth noting the High Court's comment that failure of the prosecution to state the measures that should have been taken by the defendants, Mr Kirk and the Kirk Group, to prevent the incident that was the subject of the claim, made establishing a defence under the Act impossible as the defendants could not answer with particularity why such measures were not reasonably practicable.

This legislation goes right to the heart of that issue. The legislation will make laws workable, consistent and crystal clear so that employers and employees understand their obligations and so that we have one, not two,

potentially prosecutorial organisations. We will have the relevant and publicly funded WorkCover prosecuting under the legislation, not unions, who seem to cloud the issues. The legislation avoids what I consider to be an anomalous situation in which a union can share in proceeds of actions brought under legislation. Members opposite have adopted a self-interest position that has no basis in reality and smells of complete contradiction. The reality is that members opposite have been involved in consultation and, as members of the previous Government, also were involved for a number of years in the development of this legislation.

The current Government has received support for these reforms from major associations in key industries across New South Wales, such as the Minerals Council, the New South Wales Farmers Association, the Australian Industry Group and the New South Wales Business Chamber. Those organisations represent more than half a million employers and more than 100,000 businesses. They all recognise the problems caused by different laws in different States. They acknowledge the reality that businesses operate across State and Territory borders. I wish members opposite also would acknowledge that reality as well as the cost imposed on business by inconsistent regimes in different jurisdictions. This legislation represents a great reform that will ensure business is not constrained by ridiculous costs caused by inconsistent legislation in different jurisdictions.

The Federal Government has indicated support for the bills. The Minister for Tertiary Education, Skills, Jobs and Workplace Relations, Senator Chris Evans, has welcomed the actions of the New South Wales Government in introducing the bills.

The Hon. Greg Pearce: Hear, hear.

The Hon. MATTHEW MASON-COX: It is magnificent that the Federal Government welcomes the action of this Government in introducing legislation that has been a long time coming and changes that are long overdue. This legislation will enhance the environment for all stakeholders in the very important area of workplace safety. The legislation represents commonsense reforms that have been 30 years in the making. Reform is long overdue. It is time to make New South Wales a national leader again. I commend the bills to the House.

Mr DAVID SHOEBRIDGE [4.49 p.m.]: At the outset of my participation in debate on the Work Health and Safety Bill 2011 and the Occupational Health and Safety Amendment Bill 2011, I make the point that there are aspects of harmonisation of laws that The Greens support. Indeed, The Greens support a general move towards harmonisation of occupational health and safety laws across Australia, but what we do not support and will oppose most vigorously are significant elements in both bills. The Occupational Health and Safety Amendment Bill 2011 is an example of political overreach by the Government. It is not required under any harmonisation agenda but, rather, is a pre-emptive attack on fundamental rights that should exist for all working people in New South Wales.

For more than a century, Australian workers and their unions have fought for the best possible health and safety standards. They have fought for rest breaks, protective clothing and protection against things such as asbestos fibre. They are just some of the gains that have been made to improve the safety conditions of workers. Our world-class workplace safety laws now are under direct attack from the Government. Among the first pieces of key legislation introduced by the Government will be laws that ultimately, if they are passed without amendment, will seriously undermine the safety of workers in New South Wales.

The Work Health and Safety Bill 2011 and its cognate bill, the Occupational Health and Safety Amendment Bill 2011, will do a number of things that will cause significant damage to workplace safety in New South Wales. First, they will remove the capacity of unions to prosecute for breaches of occupational health and safety laws. They also will remove the reverse onus that applies under existing laws. I will deal with both issues in more detail in due course. Rather remarkably, it will seek to take the jurisdiction for work health safety matters away from the most experienced tribunal that currently deals with them: the Industrial Relations Court. This legislation represents an attack on workers. In fact, it represents an attack on the very idea of organised labour and will become a direct assault on existing occupational health and safety standards in New South Wales if it is passed in its current form.

I am sure that all of us are aware of many statistics and figures, but one figure should show how important it is to have world-class safety laws in New South Wales and across the country. Even with the standards we currently enjoy, on average every week one worker in Australia is killed just on construction sites. When we include the number of workers who die from industrial diseases and in other workplaces, thousands of Australian workers are dying because they simply go to work and do not come home. Making prosecutions harder by removing the onus of proof in workplace safety cases will result in fewer prosecutions and in less

pressure on employers to deliver safe workplaces. This undermining of occupational health and safety standards is occurring because of a Federal push to harmonise safety laws at a standard lower than that which exists in New South Wales. I said before that in principle The Greens support a national harmonisation of occupational health and safety laws, but harmonised laws must reflect the higher safety standards that currently operate under New South Wales law.

Federal Labor in a large part has been driving the harmonisation agenda. Federal Labor has been looking around the country for a medium standard of occupational health and safety laws, not for the best laws that apply or the safest and highest standards, which are those existing New South Wales. Effectively, Federal Labor is aiming to reduce workplace safety laws and the standards in New South Wales to a lowest common denominator, particularly in relation to the reverse onus of proof and the union right to prosecute. As I stated earlier, the bill contains elements that The Greens support. Some consultation and committee measures can be supported and, indeed, will be modest advances. I do not detract from that. But both bills contain substantial elements that ought to be remedied by this upper House so that harmonisation does not cause this drastic reduction in standards in New South Wales.

It is a great pity that New South Wales Labor members did not stand up against their Federal colleagues 18 months ago when they signed off on a harmonisation agenda that gave away the union right to prosecute. That was an enormous failure by the Labor Party across Australia and we are now seeing the results. Federal Labor gave away the union right to prosecute. All strength to those in the New South Wales Labor Party who are now standing up for the union right to prosecute. However, I cannot help but think, 18 months down the track, that the battle was lost when the documents were signed. The fight should have been taken up 18 months ago by New South Wales Labor. One most remarkable feature is that these bills go beyond even what is required for the harmonisation agenda.

The agreement to harmonise occupational health and safety laws does not compel this State Government to remove the jurisdiction of the Industrial Relations Court. Obviously, this decision was cooked up during consultation between this Government and employer groups. Employer groups do not like the Industrial Relations Court because it treats workplace health safety matters seriously. The Industrial Relations Court has a record of handing out substantial fines and of handing down substantial judgements that require remedial work by employers. No wonder big business in New South Wales wants to remove the jurisdiction of the Industrial Relations Court. The consistent high standards that the Industrial Relations Court under the Act has imposed on employers have led to great safety advances in New South Wales.

The harmonisation agenda does not require the removal of the Industrial Relations Court's jurisdiction. The Coalition Government is hiding behind the harmonisation agenda to strip away the jurisdiction of the Industrial Relations Court without adequate explanation other than that it would rather give it to the already burdened Local, District and Supreme courts. That will result in greater delays for matters being heard by tribunals that do not have the experience of the Industrial Relations Court. In fact, it will probably produce a raft of litigation as these civil courts seek to develop a new set of principles to apply to industrial law as opposed to those matters being dealt with by the existing tribunal that has a body of expertise and knowledge of work health safety. Not only is it a surprise to the general public, to The Greens and to unions that this Government was removing its jurisdiction; it was a surprise to the Industrial Relations Court.

One would have thought that basic comity would have required the Attorney General or the relevant Minister to consult the court before it introduced a bill that stripped away its jurisdiction so radically. That was not the case. The Minister's excuse for not consulting the court was that when he was cooking up the bill—when he was cooking up this attack on the court's jurisdiction—the president, Justice Boland, was on leave. As we know, Justice Boland has now responded. We know also that he was on leave for only two weeks. In that time the vice-president of the court assumes responsibility, according to the Act. One would have thought the Government would have read the Act before it so blindly disregarded consultation with the court. The Act states that the vice-president assumes the role and obligations of the president. The Government had an obvious person with whom to consult, but chose not to. Justice Boland, in a letter to the Minister, said:

> In any event, a brief inquiry with the office of Industrial Relations would have revealed that the Industrial Relations Act 1996 provides that in my absence the vice-president will be acting president.

Justice Boland said that the commission's vice-president did not receive any communication from the Minister. He further stated:

> I am afraid that I am left to conclude that you had no intention of meeting with me or consulting with this institution regarding the changes to the OH&S laws and, in particular, the transfer of the jurisdiction. I am simply puzzled as to why you saw the need for such secrecy.

The people of New South Wales should be equally puzzled. If a government intends to make such a drastic change in a court's jurisdiction, the most experienced court that has held that jurisdiction for decades, and give it to courts that have never dealt with those cases, one would have thought that basic consultation would have been had beforehand if not simply to get an idea of what damage the Government intended, to get an understanding of the extent of the court's work, and to get an understanding of the length and number of cases that the Government proposed to refer to the Local, District and Supreme courts. There was no consultation because this Government thinks it can do what it likes without consulting key stakeholders. This approach is a shame and an indictment on the Government. I acknowledge that removing the reverse onus of proof is part of the national harmonisation agenda. But this is another example of Federal Labor and its State Labor colleagues giving in to pressures to remove one of the key requirements of New South Wales law.

The Hon. Dr Peter Phelps: And Greens in Tasmania and the Australian Capital Territory.

Mr DAVID SHOEBRIDGE: I acknowledge one of the more irrational interjections from the Hon. Dr Peter Phelps because he will realise that Tasmania never had the reverse onus that applies in New South Wales. In fact, there has been no retraction of standards in Tasmania. However, New South Wales will have a reverse in standards. Section 8 of the Occupational Health and Safety Act 2000 sets out the current duty of employers:

> **8 Duties of employers**
>
> (1) **Employees**
>
> An employer must ensure the health, safety and welfare at work of all the employees of the employer.
>
> That duty extends (without limitation) to the following:
>
> (a) ensuring that any premises controlled by the employer where the employees work (and the means of access to or exit from the premises) are safe and without risks to health.

Our law should maintain that obligation on an employer to ensure premises are safe and without risk to health, but that obligation will be stripped away by these bills. Section 8 (1) (b) of the Act provides that the duty of the employer to ensure the health, safety and welfare at work of all its employees extends to ensuring that any plant or substance provided for use by the employees at work is safe and without risks to health when properly used. Again, that obligation and requirement to ensure that level of safety will be lost with the passing of this bill. Under subsection 8 (1) (c) the obligation is extended to ensuring that systems of work and the working environment of the employees are safe and without risk to health.

Subsection (1) (d) provides that the duty extends to providing such information, instruction, training and supervision as may be necessary to ensure the employees' health and safety at work. Lastly, subsection (1) (e) provides that the duty extends to providing adequate facilities for the welfare of the employees at work. These are basic obligations that an employer should have. The obligation to ensure is one of the key standards contained in the current Act. Removing the reverse onus and inserting a qualification of reasonable practicality will have the effect of gutting and stripping from the Act the assurance that employees should have that when they go to work they can feel that they will return home safely. Subsection (2) of section 8 provides:

> An employer must ensure that people (other than the employees of the employer) are not exposed to risks to their health or safety arising from the conduct of the employer's undertaking while they are at the employer's place of work.

The obligation that employers must ensure the safety not only of their own employees but also of strangers who attend their workplace is one of the key statutory requirements that protect our safety here in New South Wales. It applies to not only employees but also customers who visit a bank, which I will speak about in due course. The obligation applies to customers visiting shopping malls and shopping centres, and those travelling to and from work on buses and trains. The obligation to ensure the safety of others at workplaces is essential to occupational health and safety and workplace health and safety; that is, it extends beyond employees to strangers and ordinary citizens who go about their duties expecting government to have in place laws that ensure they will be kept safe. This Government will strip away that obligation in the guise of the harmonisation agenda.

The removal of jurisdiction of the Occupational Health and Safety Amendment Bill from the Industrial Relations Commission—again not required by the harmonisation laws—is an over-reach by this Government. That is matched by another over-reach that is found in the Occupational Health and Safety Amendment Bill, and that is the immediate attack on the union right to prosecute. Even if under the harmonisation agenda the union

right to prosecute is to be removed from January 2012, why is it—other than for a bare, political attack upon organised labour—that this Government is seeking to strip away the union right to prosecute as soon as the bill becomes law?

We know that a number of potential prosecutions are being investigated and prepared by union secretaries. Because of this guillotine law introduced by the Government, those actions will be lost. Current prosecution actions will not be run. Employers who have breached their duties will not be prosecuted because WorkCover has not taken up the mantle and this guillotine—not required by the harmonisation agenda—is to be imposed. It is being introduced without consultation with the unions and with minimal consultation with the broader stakeholders in New South Wales. It is introduced as a direct political attack by this Government on organised labour. Government members should be ashamed of themselves. They should support The Greens amendments that seek to remove that provision from the bill.

I shall speak further about the union right to prosecute. There have been broad political attacks upon unions' past prosecution history. Those attacks have been unfounded. They have been made in ignorance of the important advances in workplace health and safety that union prosecutions have brought about in this State. One key example is a prosecution that was brought by the Australian Services Union [ASU] here in New South Wales. It was the 2006 case involving Mercy Centre Lavington Ltd and its employee Christian Thompson. In that case the defendant pleaded guilty to a prosecution brought by the union. I am grateful to the submission of the Australian Council of Trade Unions from which I take these basic facts regarding the case of a worker in a New South Wales disability service, the Mercy Centre.

The Hon. Dr Peter Phelps: Where you take your instructions from.

Mr DAVID SHOEBRIDGE: It is a serious matter. Those opposite who are considering stripping away the union right to prosecute should listen to exactly what New South Wales will lose as a result of the bill. The worker was attacked twice by intellectually disabled residents in a group home. That may not trouble those opposite, but the worker was attacked twice by intellectually disabled residents in a group home. The first attack occurred in 2002 when a resident stabbed the worker with a syringe. Ten months later the same worker was bashed by another resident. The employer, knowing the strength of the union's case, pleaded guilty in the first instance but then appealed the penalty. The penalty that had been imposed on the employer for allowing these two attacks on a worker was the relatively modest sum of $27,300, but the employer thought it appropriate to put the worker through the stress and anxiety of appeal and to test the union. The appeal was found to be without merit and was rejected by the Full Bench of the Industrial Relations Commission. That is the court from which those opposite want to remove jurisdiction.

The case resulted from an environment where attacks on staff had been occurring regularly. The attacks included kicking and punching and verbal abuse of staff. The Australian Services Union found that the problems faced at this one centre, the Mercy Centre in Lavington, which ran a number of group homes for intellectually disabled persons, were typical of the industry and that many of those working in the industry were facing those kinds of assaults. The Australian Services Union studies found that some 300 New South Wales group home workers had been assaulted in the two years before the union commenced its prosecution. This demonstrated that there was a very substantial problem in the industry. The prosecution was brought.

The Chief Magistrate characterised both instances as giving rise to issues of staffing levels and planning where individual residents were known to behave violently. The judgement noted that the first attack on the worker could have had life-threatening consequences, which all members would acknowledge with a needle-stick injury, and that the worker had received little training in self-defence. There was also a finding that there had been inadequate supervision, a failure to ensure the health and safety of both staff and residents. Of course, that is an obligation that the bills will remove from the law.

Having succeeded in that prosecution and put the industry on notice, the union used that successful prosecution as a precedent to negotiate safer worker practices, improved staffing levels, improved training—improving the lot not just for the workers in the disability service sector but also for the customers and persons who suffer from disability and deserve to have a fair level of staffing and well-trained employees to look after them. This was a great case of a union prosecution—where WorkCover failed to act. This was a great case of a union strategically using prosecutions to drive home greater safety for workers and for those involved in the industry.

Probably the best known example of strategic prosecutions by unions to drive home safety in an industry was that brought by the Finance Sector Union in the period between 2002 and 2005. The Finance

Sector Union, which mainly covers employees in the banking and credit union industry, has 55,000 members across the country. In 1998, just here in New South Wales, the Finance Sector Union saw its members exposed to some 180 armed robberies. In 85 per cent of those robberies the bank staff were either molested or assaulted. We are talking about a very grave risk to occupational health and safety—people going to work in a bank and facing armed hold-ups, being assaulted, having guns pointed at them and hearing threats made to their lives. It is not only the workers who face those risks; customers of the banks also face the risks. This is a very substantial, industry-wide issue.

The union commenced a series of strategic prosecutions, with five successful prosecutions between 2001 and 2005. All the prosecutions were for breaches of the New South Wales occupational health and safety laws, because the union knew that the New South Wales laws were the toughest. The union knew that a prosecution under the New South Wales laws would drive a change in practice in the banking sector across Australia. The ANZ bank was prosecuted twice, the Commonwealth Bank of Australia [CBA] was prosecuted twice and Westpac was prosecuted once. By 2007, as a result of those prosecutions, the number of bank robberies in New South Wales fell from 180 in 1998 to just 34; and in 2009, after the practices had been in place for the better part of five years, the number of bank robberies in New South Wales fell to just four. What were the prosecutions and what led the union to take this kind of strategic prosecution against the finance industry?

The first case involved a robbery that occurred on 24 August 1999 at the Wellington branch of the Commonwealth Bank. A union secretary brought the prosecution against the bank, alleging that the bank had breached what was then section 15 of the 1993 Act, which was the obligation on employers to ensure the health, safety and welfare of all its employees at work. On 24 August 1999 there was an armed hold-up at the Wellington branch of the Commonwealth Bank. The offenders were able to access the tellers' cash area; they simply jumped over the counter. They grabbed the cash that was with the tellers because there was nothing to stop them doing so.

The Hon. Dr Peter Phelps: In the olden days bank tellers were armed with pistols. Perhaps the member should speak to Mr Borsak and Mr Brown.

Mr DAVID SHOEBRIDGE: I note that the Hon. Dr Peter Phelps is taking this matter lightly. The people were working in the bank, probably for a fairly modest salary. Because of a known risk by the bank of having cash with the tellers, the employees were subject to armed robbers entering their workplace, jumping over their bench and having a gun in their faces, facing the threat of death. The Hon. Dr Peter Phelps might think that he can make a political point on that and treat it lightly. I for one do not. In issuing its decision, after the bank eventually pleaded guilty, the court found that the Finance Sector Union had written to the bank prior to the hold-up advising it of its concerns about the level of security at the branch. Indeed, there were a number of other known incidents in the town. In effect, the court found that the robbery was well and truly foreseeable. It found that no real risk assessment had been conducted in response to the union putting the bank on notice of the risks at the Wellington branch.

The bank had adopted a process of reactive risk assessment, which did not go anywhere near to meeting the obligations under section 15 to ensure safety. There is a real question as to whether that reactive response would meet the reduced standard that is provided in this legislation. The court found that the system of effective risk management required by the Act is not met merely by responsive actions. There must be a system for searching for and identifying all possible risks and instituting safety measures to guard against those risks. The measures taken after the event could have been taken before the event. Shortly after the incident the bank introduced a new proactive risk assessment process in response to the prosecution. The bank provided that evidence in mitigation.

A month after the incident a risk assessment was carried out and as a result anti-jump barriers from counter to ceiling and security cameras were installed at the Wellington branch. What was the outcome? The outcome was a fine of $25,000, which was paid to the informant, the Finance Sector Union, which ran the case. In fact, that case identifies that as early as 1999 the lack of anti-jump barriers presented an actual risk to the health and safety of employees. The bank knew that but it did not put anti-jump barriers in place. Workplace health and safety improved as a result of the prosecution, including the installation of barriers and security cameras. There was a cultural change at the bank when it moved from a reactive to a proactive approach to risk assessment. Indeed, the union continued to agitate about the inadequate anti-jump barriers and other related security concerns present in bank branches from that time onwards. The prosecution was successful, a modest fine was paid, and change happened in the bank. So as the bank was safer for workers, the bank was safer for customers. But at the same time the other banks were failing, and another robbery on 17 June 2002—

The Hon. Dr Peter Phelps: How is it safer for customers; they cannot get behind the barriers?

Mr DAVID SHOEBRIDGE: I note the interjection of the Hon. Dr Peter Phelps. I will explain it to him in the simplest possible terms. If a robber knows he will not be able to get to the cash with the teller—

The Hon. Dr Peter Phelps: Like if the tellers were armed?

Mr DAVID SHOEBRIDGE: —because there are anti-jump barriers and other measures to reduce the amount of cash available, the robber will not risk the serious criminal consequences of entering a bank with security cameras that record his face and anti-jump barriers that would prevent him from getting to the cash. Indeed, those protective measures greatly reduce the number of robberies. If an armed robber does not rob the bank, that is the best way of protecting the safety of customers. Arming the tellers, as the Hon. Dr Peter Phelps seems to suggest, would not protect the safety of customers.

Some kind of an escalation of arms between bank tellers and customers would have to be one of the most objectionable suggestions I have heard in this debate on occupational health and safety in New South Wales. It shows the kind of Neanderthal approach to occupational health and safety that dominates the right-wing of the Coalition and its absolute disregard for the real achievements of occupational health and safety laws over the past decade. The second robbery event occurred on 17 June 2002 at the Brookvale branch of the ANZ bank. A prosecution was brought by the Secretary of the Finance Sector Union, Jeff Derrick.

The Hon. Greg Pearce: What year was that?

Mr DAVID SHOEBRIDGE: The robbery occurred on 17 June 2002. The decision was handed down on 21 November 2003. If the Minister wants it, the case number is IRC432 of 2003. Once again, a prosecution was brought by a union secretary standing up for his members—Jeff Derrick, the Secretary of the New South Wales-Australian Capital Territory branch of the Finance Sector Union of Australia. In that case the bank, upon seeing the strength of the union's case, pleaded guilty to a charge that it had breached what was then section 8 of the Occupational Health and Safety Act, which I cited earlier in my contribution. During the armed hold-up at the Brookvale branch on 17 June 2002 armed offenders had jumped the counter and scaled an inadequate anti-jump barrier by accessing the gap between the top of the barrier and the ceiling to force their way into the tellers' cash handling area.

An anti-jump barrier was in place but it did not go to the ceiling. That enabled the armed robbers to jump over it and get in there with their guns. Once again in a deeply frightening situation the bank staff were in a very enclosed space, with armed robbers intent upon taking the money at almost any risk and almost any cost. In finding the bank guilty of the breach, the court found that, among other things, since 1999 the Finance Sector Union had been in regular written contact with the ANZ urging the bank to replace its inadequate anti-jump barriers and advising that it needed full-height barriers that would bar entry to offenders. The bank had been told that in correspondence.

In June 2001 the ANZ had promised to correct the security risk posed by those poorly designed barriers, but it had not done so. It had not taken prompt action. Indeed, the bank still had not done so by the time this offence happened. At the same time the court found that in March 2002—this is a finding by the court—armed offenders had held up the Annandale branch of the ANZ bank and done exactly the same thing. They had jumped over the top of the anti-jump barriers, and in a frightening situation the staff were effectively imprisoned with armed robbers. The court found that the risk assessment was not sufficiently proactive. Although an adequate risk assessment had been done at the Brookvale branch, it had not been acted upon. In effect, the ANZ had failed to expedite the remedial works required or even taken adequate short-term measures to protect staff from what was now a clearly foreseeable risk—a risk the union had put the bank on notice about time and again.

That delay was taken into account when a substantial penalty of $156,000 was imposed on the bank. That case clearly shows that the union had repeatedly requested the ANZ bank to address the issue of poorly designed anti-jump barriers. The union had done so for three years prior to the incident, and for three years it had been effectively ignored by the bank. In fact, the Finance Sector Union continued to advocate branch security improvements. While the bank belatedly recognised those risks, it failed to take timely action to remove them. As a result the presiding judge found the risk could have been averted if very simple remedial works had been carried out. The union took the decision to prosecute to secure a better and safer workplace not only for its members but also for customers. As a consequence of the prosecution action the ANZ installed higher security measures that included much more effective counter to ceiling anti-jump barriers. That commitment to upgrade

branches was carried out nationally by the ANZ—and all strength to it—at a cost of some $4 million in bank branches across Australia. That was a real achievement from union prosecution that happened only because of the tenacity of the Finance Sector Union.

The third prosecution brought by the Finance Sector Union arose from two robbery events, again in relation to the ANZ, on 2 December 2002 and on 29 April 2003. Geoff Derrick, Secretary, Finance Sector Union, New South Wales Branch and the Australian Capital Territory brought that prosecution in the Industrial Relations Commission in Court Session, as it then was, and now the Industrial Relations Court of New South Wales, a court whose jurisdiction the Coalition wants to take away. Again, faced with the strength of the union case, the ANZ pleaded guilty to a breach of section 8. Armed holdups occurred at the Peakhurst branch of the ANZ bank on 21 March 2003 and on 29 April 2003. On 21 March 2003 armed offenders held up the branch with a baton, took the security guard hostage, jumped the sales desk and attempted to force a staff member to open the security door leading to the area behind the counter's teller—an obviously frightening event for those involved.

On 29 April 2003, one month or so later, again armed defenders gained access to the area behind the sales desk. They kicked in a door that provided access from the public area to the sales desk and then they used a sledge hammer to gain entry to the tellers' area. One can only imagine the fright that those employees must have had with armed intruders in the bank branch smashing down the door with a sledge hammer and then coming into them armed with firearms to take the bank's money. The offenders had already attacked that branch twice previously—on 2 August 2002 and 4 November 2002. In the space of just six months the employees at that branch faced four instances of armed hold ups. One can only imagine the impact on their occupational health and safety and the fear they had when they went to work.

In issuing its decision the court found, amongst other things, that throughout 2002 the Finance Sector Union had written to the bank raising concerns about staff working front of house due to the threat of being exposed to a hostage situation. During that period the Finance Sector Union also raised specific concerns regarding the level and effectiveness of branch security at the Peakhurst branch. In looking at the objective seriousness of the offence when forming a penalty, it was noted the defendant had pleaded guilty to the charges of: failing to ensure the safety of employees by failing to act in a timely manner; failing to maintain or provide adequate plant to ensure the safety of the employees; failing to adequately design and install anti-jump barriers on the inquiries counter; and failing to put in adequately designed and installed security doors capable of preventing access from the public area of the branch.

The Court found there were two earlier robbery events, to which I have already referred. It found there were parallels to the earlier ANZ prosecution in the time taken to address security deficiencies and that there existed a clearly foreseeable risk to safety that was likely and indeed did result in a serious injury and a risk of death. The bank had an obligation under the current laws to do all of that to ensure safety. The court found it was appropriate to include an element of specific deterrence against this employer in determining its penalty taking into account the bank was a large organisation with an ever-present threat of robbery. In fact, in determining the penalty it found it was appropriate to recognise it was the defendant's second offence as part of a systemic failure by the bank that prevailed in the enterprise over a period covering these two offences. Again, a substantial fine was imposed of $175,000.

The ANZ Peakhurst case brought by the Finance Sector Union, among other matters, clearly demonstrated that the union had continued to raise the security risks with the employer. The union said that bank staff were being exposed to risk and had raised specific concerns about inadequate security. In parallel with the Brookvale case, there had been a real failure to respond in a timely fashion by the employer. It took four separate robbery events in the Peakhurst case before the union brought the prosecution action. Workplace safety was ultimately improved when, as a result of these prosecutions, the Peakhurst branch ceased to operate and a new improved purpose-built branch, with all of the relevant safety measures, was opened just a few kilometres away.

The Hon. Dr Peter Phelps: So they closed down the branch?

Mr DAVID SHOEBRIDGE: Indeed, they closed down an antiquated branch and opened a modern, secure and safe branch where armed robbers cannot smash down the door with a sledge hammer and where employees are not taken hostage by armed robbers. Those improved security measures happened because of a union prosecution. The next robbery happened at the Avalon branch of Westpac on 21 September 2004. The prosecution was again taken in the Industrial Relations Commission of New South Wales, the court. The

decision was issued on 20 March 2006. In that case the defendant, facing a prosecution brought by a union secretary for a breach of the occupational health and safety laws, pleaded guilty to a charge that it had breached section 8 of the Occupational Health and Safety Act.

The Hon. Scot MacDonald: Bounty hunting.

Mr DAVID SHOEBRIDGE: I note the interjection about bounty hunting. In the Peakhurst case employees had faced four armed robbery events and had repeatedly asked for the bank to take action. They had repeatedly said the bank had failed to provide security for the staff. They had told the bank that the union's members were likely to face hostage situations and the bank ignored that and failed to act in a timely manner. On four separate occasions those employees were faced with armed robbers putting a gun in their face, threatening their lives. After a day at work where they should have been protected by their employer they went home having faced the real risk of death. To suggest that those actions taken by the union were motivated by some monetary concerns brings shame upon the Coalition. It shows that taking away the union's right to prosecute when acting in the interests of their members and of the general public in this legislation is entirely a political attack on organised labour. It is a political attack on unions.

On 21 September 2004 at the Avalon branch of Westpac an armed hold up occurred. Armed offenders were able to climb over the anti-jump barrier because it did not extend to the ceiling. The anti-jump barrier bounced up. Staff on the other side of an anti-jump barrier thought they would be protected. However, armed robbers climbed over the jump barrier and landed on their bench and waved a shotgun in their face and demanded that the bank's money be given up. They threatened staff with death and a very real risk to their health and safety with a gun waved in their face if they did not give up the money. Members should just for a moment put themselves in the shoes of those employees in that situation and ask whether they would want their union to bring a prosecution to make their workplace safer. Of course they would. The robbers gained access to the tellers' areas and demanded money with menace and guns.

Remember, this happened in 2004, but since 1998 the union had written to Westpac raising security concerns about the need for proper security measures, including anti-jump barriers that extend to the ceiling. The union and Westpac had entered into a joint security agreement and a work group was formed to address those issues. That included these bank security issues. The court found that 23 letters were exchanged between the Finance Sector Union and Westpac from 1998 to 2002 about branch security issues, including that counter-jumping was a common element of many branch hold-ups and that proper bench-to-ceiling anti-jump barriers needed to be installed at every branch. Westpac indicated that it had never promised to install anti-jump barriers in every branch; rather, it would assess the security needs and installation on a case-by-case basis. So it would put them in some banks but not in others.

The Avalon branch was fitted with inadequate anti-jump barriers. In 2002, following an attack on Westpac's Cronulla branch, the Finance Sector Union again raised concerns about the security protection offered by the anti-jump barriers at the Avalon branch, specifically identifying them as failing to deal with the issue: offenders with firearms could climb a ladder and access tellers. An individual staff member from the branch had raised the collective concerns of staff and contacted Westpac security about it. A risk assessment was undertaken and it concluded that, despite the evidence of hold-ups at other branches, despite the inadequate anti-jump barriers, there was little or no risk of an offender being able to gain access. However, the court found the assessment was incorrect and inadequate, as evidenced by this robbery, and in fact staff were assaulted and menaced, and placed at real risk of serious injury.

The WorkCover Authority carried out an investigation into the robbery and did not take any action in relation to it. Thankfully, the union did take action. On the union's successful prosecution, a fine of $145,000 was imposed upon Westpac. The Westpac Avalon case clearly showed that the union continued to raise with yet another bank its concerns about security risks, including poorly designed anti-jump barriers. Even when there was a formal consultative forum between the union and the bank the bank did not address the anti-jump barriers. In conducting a risk assessment of the Avalon branch the bank erroneously found little or no risk. The improved health and safety outcome for the Avalon branch included the installation of proper anti-jump barriers from bench to ceiling and a risk assessment process involving the staff. It also took into account the serious concerns of staff with improved training and improved security measures—a victory for staff and for customers, who will not be exposed to those kinds of armed hold-ups when they visit that bank branch.

The last case in this group of five cases brought by the Finance Sector Union involved a series of robbery events between 23 April 2004 and 7 May 2004 at the Commonwealth Bank of Australia. The

prosecution was brought by the secretary of the Finance Sector Union in the Industrial Relations Commission in Court Session. The defendant, faced with the strength of the prosecution case, pleaded guilty to a charge that it had breached section 8 of the Act. On 23 April 2004 an armed hold-up occurred at the Guildford branch of the Commonwealth Bank of Australia. The armed offenders were able to smash a side entrance with a sledgehammer whilst staff were servicing an automatic teller machine [ATM] and they demanded that an employee open the ATM. Imagine that you are an employee servicing the ATM when armed robbers smash into your enclosed area with a sledgehammer and demand, with menace, that you provide access to the cash—a deeply frightening event. On 7 May 2004 an armed hold-up occurred at the Woy Woy branch of the Commonwealth bank. Again the armed offenders were able to smash open the door with a sledgehammer and gain entry to staff while they were reloading ATM canisters, and the offenders stole the ATM canisters.

In issuing its decision, the court found among other things that the Finance Sector Union had demonstrated that the risk of ATM attacks by the use of a sledgehammer was well known to the Commonwealth bank and was evidenced by a series of prior robberies that happened at the Surry Hills branch of the Commonwealth bank on 5 July 2002, the Beecroft branch of the Commonwealth bank on 29 May 2003, the Hamilton branch of the Commonwealth bank on 31 July 2003 and the Narrabeen branch of the Commonwealth bank on 8 May 2003. Despite this series of prior events, in the same circumstances—staff being confronted by armed robbers smashing through the door with a sledgehammer and demanding money with menace—the bank failed to take any action.

The bank's own security handbook identified that branches were subject to the threat of a surprise burst-in attack. By December 2003 the bank's management had issued an internal management recommendation that it review its security in relation to automatic teller machines because at that time there was insufficient security. It found that if proper risk assessments had occurred there were remediation steps that the Commonwealth Bank of Australia could have taken well prior to the incidents occurring. The robbery events that occurred at Guildford and Woy Woy were foreseeable and, if action had been taken, would not have happened. The seriousness of the offence was assessed as being in the mid to high penalty range and the Commonwealth Bank of Australia was issued with a fine of $162,500.

The case involving the Guildford and Woy Woy branches of the Commonwealth Bank of Australia makes it obvious that the nature of threat to the security of bank workers is continually evolving. As such, banks need to be pro-active in dealing with security risks. The union had identified the security risk to employees of the bank. The risk of sledgehammer attacks was well known to the employer because the employer had been faced with it time and again. The bank's own security manuals identified it, but the bank failed to take action. As a result of union action, and in addition to improved security measures at the relevant branch, including a directive that staff were not to service automatic teller machines, the bank endorsed an occupational health and safety performance sustainable improvement work program commenced to integrate time limited projects, and delivered on improving security at all of those ATM loading points.

After the Finance Sector Union commenced this series of strategic campaigns, calling on banks for improved workplace design and improved anti-jump barriers, between 2000 and 2003 the average number of bank robberies in New South Wales was just under 80 per annum, which represents roughly 8 per cent of all New South Wales banks being the subject of a hold-up in those years. In the four years after the union launched its series of prosecutions the average number of bank robberies dropped to 28 per year, that is 2.2 per cent of all New South Wales banks, and since then it has fallen even further to just four per year, just a tiny fraction of 1 per cent of all banks.

The arguments against union prosecutions rely on the view that the decision whether or not to prosecute should be left to the relevant statutory authority and not to the union. In the case of the New South Wales banking industry, WorkCover was aware of all of these incidents and more, and yet the authority failed to take a single prosecution. In fact, to the best of the union's knowledge, in the period up to 2007 there had not even been an improvement notice issued by WorkCover. Over all the time that we have been talking about, WorkCover did not commence a single set of proceedings against any bank for any breach of occupational health and safety laws, despite the fact that a recorded 4,016 employees were molested in armed robberies between 1998 and 2005—4,016 employees assaulted when they went to work, faced with armed robbery, faced with robbers smashing into their place of work with a sledgehammer, and not one prosecution taken by WorkCover, not one improvement notice issued to ensure that not only employees are safer, but those customers who attend the bank are safer.

What did ultimately turn around safety in banks? What did ultimately lead to those working in banks and those attending banks having a safe place of work and a safe place in which to transact their business?

A strategic set of five prosecutions brought by the Finance Sector Union, a union that took its obligation to prosecute carefully and strategically, and did so in order to protect its members and to protect the general public. We should all thank the Finance Sector Union and other unions that have taken this kind of strategic prosecution to make New South Wales a safer place, not just for those who work in New South Wales but for everyone in this State.

The bill proposed by the Coalition to strip the union's right to prosecute as soon as it is made, six months before the harmonisation agenda, is a political attack on a substantial institution that has produced real results for safety here in New South Wales. The bill removing the reverse onus is an attack on the safest occupational health and safety standards in the country, and it is a shameful attack. These bills, which strip away the jurisdiction of the Industrial Court, are nothing other than a blatant political attack on the single best tribunal in which to determine occupational health and safety matters and work health and safety matters in New South Wales. These are matters of enormous concern to The Greens: these are matters of enormous concern to ordinary working people. A series of amendments will be moved in Committee for which we hope to get the broad support of this Chamber.

The Hon. PETER PRIMROSE [5.39 p.m.]: I will make a few comments in relation to the Occupational Health and Safety Amendment Bill 2011 and the Work Health and Safety Bill 2011. The Occupational Health and Safety Amendment Bill 2011 waters down the duties under the current New South Wales Occupational Health and Safety Act by inserting the qualification "as far as is reasonably practicable" in sections 8, 9, 10 and 11, and making other consistent amendments. This has the effect of removing the reverse onus of proof, which existed by virtue of the fact that the duties were unqualified. The duties in the model Work Health and Safety Bill, sanctioned by the Safe Work Australia Bill, are also qualified by "as far as is reasonably practicable", so this change was reluctantly expected to come into effect from 1 January 2012. [*Quorum called for.*]

[*The bells having been rung and a quorum having formed, business resumed.*]

What has been most unexpected is the fact that this watering down of the duties has been introduced some eight months early. This exceeds what the Coalition said prior to the election, that they would implement the Safe Work Australia Bill and go no further. The bill also waters down section 26 of the current New South Wales Occupational Health and Safety Act, which deems a director or manager liable after a corporation is found guilty of an offence. This is replaced by a new clause which only requires an officer to exercise due diligence to ensure a corporation complies with its duty. The new clause reflects the model Work Health and Safety Bill, but again comes into effect some eight months early.

A number of members have referred to the issue of union prosecutions. The bill removes the right of unions to take prosecutions from the moment the bill is introduced. As I mentioned, this exceeds what the Coalition said it would do prior to the election. A number of unions are currently investigating breaches of the current New South Wales Occupational Health and Safety Act with a view to taking those prosecutions prior to 31 December 2011. This includes the Public Service Association in relation to alleged breaches by government departments. By removing the right of unions to take prosecutions the Government has directly removed itself from the role of defendant in these planned prosecutions, which is a clear conflict of interest.

The Hon. Trevor Khan: I am interested, Peter.

The Hon. PETER PRIMROSE: I thank the honourable member for his interest. The Safe Work Australia Bill attempts to make up for the removal of union prosecutions by providing that if no prosecution is brought the union can write to WorkCover NSW to request a prosecution be brought and if WorkCover still refuses to prosecute the matter can be referred to the Director of Public Prosecutions for an opinion. The Safe Work Australia Bill does not represent the best of what the occupational health and safety harmonisation process could have delivered. There are some improvements for New South Wales, such as the ability of the health and safety representatives to issue improvement notices and cease work orders. However, these improvements are more than outweighed by the losses such as the watered down duties, loss of union prosecutions and no reverse onus of proof.

By introducing the Occupational Health and Safety Amendment Bill the Government is introducing the negative elements of occupational health and safety harmonisation for workers well before even the small improvements come into effect. This shows how blatantly this Government will do the employers' bidding. The Work Health and Safety Bill 2011 removes the role of the Industrial Court of New South Wales in hearing

prosecutions for alleged breaches. Instead, category 2 and 3 offences will be heard by local and district courts, with category 1 offences going before the Supreme Court. The Industrial Court of New South Wales has years of experience in dealing with occupational health and safety matters. To discard this wealth of specialist knowledge will be to the detriment of the proper handling of these matters.

In 2007 a review headed by the Hon. Justice Paul Stein, AM, QC, a former judge of the Supreme Court of New South Wales, specifically addressed the question of whether prosecutions should remain with the Industrial Court. On this matter the report said:

> The expertise of 20 years in the Industrial Court dealing with occupational health and safety proceedings outweighs the general expertise in mainstream criminal law of the District and Supreme Courts. Occupational Health and Safety law is very specialised and the generalist courts do not have that experience and expertise. I recommend that the jurisdiction for serious occupational health and safety proceedings remain with the Industrial Court of New South Wales.

Harmonisation of occupational health and safety laws has widespread support including from the union movement. However, unions and family groups have long campaigned for the New South Wales Government to not allow the removal of two key elements of the New South Wales workplace safety system that enhance workplace safety in this State: union prosecutions and reverse onus of proof. In relation to union prosecutions, harmonisation was never meant to reduce protections for workers. Even under the Howard Government the Workplace Relations Ministers Council promised to "ensure that protections are not reduced". When the national occupational health and safety review commenced the terms of reference clearly stated that "in developing harmonised occupational health and safety legislation there should be no reduction or compromise in standards".

In New South Wales unions have had the right to take court action over breaches of occupational health and safety laws since the 1940s. It has been used sparingly but effectively to raise safety standards across whole industries Australia-wide. There have been around 20 union prosecutions in New South Wales over the past 10 years. The notable example of the effectiveness of union prosecutions, as the House has already heard, is in the banking industry. With ongoing incidents of members suffering physical and psychological injuries from violent armed holdups, and WorkCover NSW refusing to take a prosecution, the Finance Sector Union began its first prosecution of the big banks in 2002 and then three more between 2003 and 2005.

The banks were found guilty in key cases of failing to provide a safe workplace. The banks then undertook a huge investment in their workers and customers which is estimated to have cost $100 million in capital works. The result was a reduction in armed robberies from 102 in 2002 to just four in 2010. As a result of union prosecutions a clear and almost immediate improvement in safety in the banking industry occurred. If the harmonised laws had been in place in 2002 that improvement in safety probably would not have occurred. I will deal with the Government Whip's proposal that bank tellers should be armed. I ask the Minister to address that issue during his reply and advise whether that is a policy that is being pursued within government.

The Work Health and Safety Bill includes the provisions to which I have referred as an alternative to union prosecutions. The provisions are not sufficient: even if the Director of Public Prosecutions recommends prosecution, there is no onus on WorkCover to act. The reverse onus of proof is a phrase that does not accurately describe the current provisions. Currently a prosecutor must first prove beyond reasonable doubt that a breach of the Act has occurred. Only then are employers expected to prove that they did everything reasonably practicable to prevent the incident. The reverse onus of proof is not unique to industrial law. There are other areas of law in which a reverse onus of proof applies. Removing the reverse onus of proof hugely reduces the likelihood of successful prosecutions of employers who have breached the Work Health and Safety Bill, thereby weakening enforcement and improvement in safety outcomes for workers.

Having given that brief preamble, I will now consider the bills in detail. It is important to note that the Government's first amendments to workplace safety legislation involve watering down protections, discarding a layer of vigilance and decimating an expert body, the Industrial Court, which was created to deal with workplace safety issues. For more than a quarter of a century New South Wales has been acknowledged for having very strong occupational health and safety legislation. That is a consequence of 25 years of hard work by governments of all persuasions that cooperated with unions, the police, academics and the community. The New South Wales system works. We know that because the very high standards that have operated in New South Wales have resulted in rates of workplace death and injury decreasing dramatically. Currently New South Wales has the lowest number of recorded workplace injuries in more than 20 years. According to the WorkCover New South Wales statistical bulletin, total injuries have decreased, serious workplace injuries and musculoskeletal claims have decreased, and the number of cases resulting in permanent disability have also decreased.

Until this legislation is passed the New South Wales occupational health and safety system will be founded on the recognition that responsibility for provision of a safe workplace rests with the employee, which is where it should rest. New South Wales employers bear strict liability to ensure that their workplace is safe because it is the employer who makes decisions, has control over all the processes and procedures of the workplace, and will have all the evidentiary material, should it be needed, in the case of injury or death. New South Wales Law recognises the imbalance of power between workers and their employer in our industrial relations legislation. Until the bills before the House are passed New South Wales occupational health and safety legislation acknowledges that imbalance. If the legislation before the House is passed it will clearly significantly undermine safety standards for workers in New South Wales. It will remove the absolute liability for employers to provide a safe workplace.

The Hon. Scot MacDonald: Oh, that is an outright deception.

The Hon. PETER PRIMROSE: I am sorry?

The Hon. Scot MacDonald: Are you acknowledging?

The Hon. PETER PRIMROSE: I am sorry, who are you? I have not seen you before.

The Hon. Dr Peter Phelps: The Hon. Scot MacDonald.

The Hon. PETER PRIMROSE: Oh, he is a member of the House. I am sorry, I thought we had a stranger in the House. It will be increasingly difficult and more expensive for WorkCover to mount successful prosecutions, or even impose fines against dangerous employers. These bills undermine legislation that was introduced in 2005and created the ability to prosecute for reckless conduct causing death. That legislation was directed at a few corporate cowboys who regard the life of a worker as less important than their own profit line. The legislation before the House will reduce the safety culture to what is reasonable in terms of costs and expenses. It represents a resetting of the balance against injured workers and is reinforced by a range of escape clauses that are offered to employers who are able to claim, among other things, that the financial cost of putting safe working systems in place is too high, or that the likelihood of injury is relatively low.

Workplace injury and death need to be prevented, not justified. It is irrelevant that someone thought about the likely risk after a worker is injured or killed. The defence of reasonable practicability already exists for employers who need to justify their own role in relation to death or injury of a worker. When a worker is injured or killed at work the onus of proof is clear: it must be the responsibility of the employer, not the victim, to demonstrate that they have clean hands. We must never accept the morality of the situation, such as this legislation will instil, whereby the safety of a worker can be reduced to a dollar cost. Any proposal that takes away the right of unions to prosecute dangerous employers on behalf of their members means that workers will be worse off.

The grim reality is that employers who believe in workplace safety and who care about that already take it seriously and will continue to do so, but those who do not care will not voluntarily change their ways. We should not be part of a race to the bottom when it comes to the health and safety of workers in New South Wales. We should encourage other States to improve their standards by bringing them into line with the very high standards that have been achieved in New South Wales. We should remain unequivocally opposed to any diminution in standards that currently apply in New South Wales. I am not aware of any public demand from the community to lower the standards of workplace safety for New South Wales workers—only demands by the organised business lobby. The new State Government has a strange set of priorities. It supports the business lobby against the unions' arguments and contends that unions should not have the right to prosecute employers who are responsible for the injury or death of a worker, and at the same time supports draconian legislation that applies to the construction industry.

Existing occupational health and safety legislation allows employers to defend themselves in court, yet the Australian Building and Construction Commission [ABCC] gives workers no right to silence, no right against self-incrimination, automatic jail sentences, and heavy fines for workers who do not comply. The bills before the House are also a blatant breach of an election undertaking by the Government. The Minister for Finance and Services, the Hon. Greg Pearce, who is present in the House, told the *Australian* on 11 March this year:

> Our system will remain with WorkCover and the Industrial Relations Commission playing their roles ...
>
> We don't have any plans to go further than that. I have heard the arguments from a lot of lawyers. I am an old lawyer myself.

A great deal of expertise resides in the New South Wales Industrial Court and the Industrial Relations Commission as they have had years of experience in dealing with occupational health and safety matters. Discarding such a wealth of specialist knowledge in the handling of workplace cases will be to the detriment of the proper handling of workplace-related matters. In 2007 a review headed by the Hon. Justice Paul Stein, who is a former justice of the Supreme Court of New South Wales, specifically addressed the issue of whether prosecution should remain with the Industrial Court. He stated:

> The expertise of 20 years in the Industrial Court dealing with occupational health and safety proceedings outweighs the general expertise in mainstream criminal law of the District and Supreme Courts. Occupational Health and Safety law is very specialised and the generalist courts do not have that experience and expertise. I recommend that the jurisdiction for serious occupational health and safety proceedings remain with the Industrial Court of New South Wales.

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

ADJOURNMENT

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [6.01 p.m.]: I move:

> That this House do now adjourn.

RELIGIOUS FREEDOM

The Hon. SHAOQUETT MOSELMANE [6.01 p.m.]: In the next few months I intend to raise a number of issues of significant concern to religious minorities and, in particular, to the growing Islamic community of New South Wales. These include development applications for places of public worship and prayer houses, and associated ongoing community tensions whenever a local government authority receives such an application. Tensions run even higher than normal when a development application is from a minority ethnic or religious community. The whole process appears to drive a wedge between local residents and the religious community behind the application. A heightened sense of disharmony, suspicion and discord is created between various members of the New South Wales community as it works its way through national and sometimes international media outlets.

No doubt a place of public worship in a residential area has associated problems and can affect the quiet enjoyment of local residents. To resolve this problem the Government must take the initiative by amending the relevant planning laws and regulations to create religious development zones. Such a designated zone would allow the development of places of public worship without the associated trauma and community tensions. In addition, a specific, consultative, independent assessment body could be established to assist councils to assess and decide on such applications. There is a clear and urgent need to attend to this issue and it must be done as soon as possible to minimise, if not eliminate, simmering community tensions whenever such applications are lodged.

I call on the relevant Minister to progress the work of the former Minister for Lands, the Hon. Tony Kelly, in addressing the shortage of burial grounds for many minority ethnic and religious groups. This problem is most prominent in the Muslim, Buddhist, Vietnamese, Chinese, Coptic, Assyrian and other communities, to name a few. Today though, I refer to the 1984 Anti-Discrimination Board report, which recommended that the Anti-Discrimination Act be amended to include religion as a ground against discrimination thereby making it unlawful to discriminate on the ground of religious belief or absence of religious belief. The board recommended that:

> The Anti-Discrimination Act be amended to include religion as a ground against discrimination and the interpretation of "religious belief" to be included in the Act should explicitly state that "religious belief" includes:
>
> (a) religious practice as well as belief,
>
> (b) theistic and non theistic, Christian and non Christian beliefs,
>
> (c) a particular religion or religious, or all religions, and
>
> (d) a comparable deeply held belief that can broadly be conceived of as religious.

In doing this, a practical means of redress may at last be available to those who at present have really had no effective avenue of redress against unjust religious discrimination. Therefore, a separate ground of religious

discrimination would allow protection for those instances of discrimination that have no racial or ethnic basis. This relates to the 1994 half-hearted, backdoor attempt to make discrimination on the ground of religion unlawful under the name "ethno religious". The 1999 report on the Review of the Anti-Discrimination Act 1977 described the concept of ethno religious as a novel idea and saw the reasons for the amendment as largely obscure.

This report maintains that the insertion of this term in the definition in 1994 was almost certainly unnecessary and, more importantly, its scope was confusing. The justification for including religion as a ground against discrimination can be strongly argued that Australia, like many Commonwealth nation States, shares a legal culture of religious liberty and freedom of religious expression. I do not in any way argue that we should introduce religion in our everyday lives, but I do argue that if citizens of this State want or do not want to make their religion part of their everyday lives, their right to do so must be protected by State laws. As Justice Kirby noted in 1993:

> Most of the concerns of these minority groups are governed by State laws. Thus they are not given much protection by the Federal constitutional provision … The fact remains that specific protection for religious freedom by way of prohibition of discrimination on religious grounds has not found favour in State laws despite the powerful arguments for it.

It has been 35 years since the introduction of the Anti-Discrimination Act 1977 yet this great State of ours has not implemented such a long-overdue amendment. It is perhaps ironic also, given the importance we attach to freedom of religion in our Constitution and in our support for a multicultural and multi-faith society, and given the necessary step to protect religious minorities from persecution. To date discrimination on the grounds of religious belief is still not covered by the Anti-Discrimination Act. This anomaly is further accentuated by the prohibitions that exist in other State and Territory jurisdictions but, unfortunately, not in New South Wales the so-called Premier State. [*Time expired*.]

RENEWABLE ENERGY

The Hon. ROBERT BORSAK [6.06 p.m.]: The subject I am speaking about might sound like a fairytale to be read to children at night but, unfortunately, it is a true story. It is not a Grimm's fairytale; it is a Greens fairytale. I refer to renewable energy and the fact that we would be silly to accept The Greens mantra that we need to end coal-powered electricity generation. Coal is cheap and gives us an economic comparative advantage. Because The Greens do not like coal should not be an excuse to not use it. I point out that I am old enough to remember when The Greens started talking about renewable energy. They used to call it clean, green energy. However, The Greens are masters of semantics and manage to update their terminology to suit themselves. I am old enough to remember also when we were in the middle of The Greens global cooling phase and we were all going to freeze to death. The Greens realised that they were on the wrong tram and simply changed the phrase. Suddenly we had global warming and we were all going to drown because the ice caps were going to melt and flood the world.

When The Greens first appeared in Tasmania—they are probably the only product that poor State ever exported—they loved clean, green hydropower from the dams that a forward-looking Government had managed to build to harness the abundant free water of which Tasmania has so much. For a while The Greens loved clean, green power because it gave Tasmania all sorts of advantages over other places in the world, especially over Victoria, which generated dirty electricity from that dirty brown coal. However, the Tasmanian Government then decided to dam a river that the Premier of the day famously described as a leech-ridden ditch in order to be self-sufficient in hydro-electric power and have more advantages not only over Victoria but also other countries. What happened? The Wilderness Society that spawned The Greens decided that it wanted to go whitewater rafting on that ditch—actually known as the Franklin River—when it flooded.

So began the Save the Franklin campaign. Suddenly, clean, green hydropower was nasty and Tasmanians should not be allowed to have it. History shows what happened next. A Federal Labor Government pitching for green votes in the mainland city areas went to the High Court for a decision that Federal powers overrule State powers. Even Biggles, otherwise known as Gareth Evans, sent a spy plane to monster the poor Tasmanians to make sure they were not damming the ditch so that each year about half a dozen greenies could paddle around in the ditch and commune with their inner selves away from the real world where people work, pay taxes and generally pay for The Greens to enjoy their lifestyle, as the Hon. Dr Peter Phelps described earlier this month, of sitting around Davenport sucking on a bong.

What happened to Tasmania? It ran out of power and now has to run an extension lead across Bass Strait from Melbourne to import that dirty brown coal-generated electricity just so its industry base can continue

to operate. Were The Greens remorseful? Not at all. They simply said everyone should move to the next renewable energy: this time it is wind power. Everywhere around the State the wind towers went up. The Greens waxed lyrical about the wonderful advantages Tasmania now had over the rest of the world: it had the cleanest air to blow the cleanest turbines to make the cleanest power in the world.

But then some greenie bushwalker who was lost in the bush on the west coast thought he had found a new species of tree with only three flat branches that were silver, underneath which he had found an orange-bellied parrot that had inadvertently flown into the turbine blade and was killed. In a flurry of feathers The Greens then decided that clean, green wind power suddenly was evil and no longer should be supported. They said what we all needed was solar power: clean, green energy from the sun. Everyone should have some. It is marvellous—simply put out the panels and plug the power into your soon-to-be invented solar-powered car.

That is a potted history of about 25 years of the clean green power debate. The point is that the renewable energy that the Greens talk about is still far more expensive than the source of power that is available to us. I fail to see how, if coal is such a brutal demon in this world, taxing every Australian will make the problems caused by coal go away, not just in Australia but the world. Taxing will not solve the problem. The Greens know that, but they prefer to paddle about in leech-ridden ditches, and not face the real world.

PIKE RIVER MINE ROYAL COMMISSION

The Hon. TREVOR KHAN [6.11 p.m.]: I speak on a serious matter that impacted upon a small rural community and on the lives of working families. The event did not occur in Australia but on the west coast of New Zealand, near the small community of Greymouth. At a quarter to four on Friday 19 November 2010 an explosion occurred at the Pike River Mine. At the time there were 31 workers underground. Two managed to walk free, but the rest remain trapped some 1,500 metres below the earth. The youngest of those miners was 17 years of age and the oldest 62 years of age. It places a true human face on a tragedy such as this that the youngest person killed was little more than a boy. At 17 years of age, Joseph Dunbar was to start work the following Monday, but he had asked to begin work three days early. That fateful decision by both Joseph and also by mine management led to a young man on his first day of work losing his life.

Of course, the tragedy does not simply end with the loss of Joseph's life, because the 28 others also had family, some wives and children, all of whom are now scarred by the loss of their loved ones. The loss of all 29 men is tragic. But of course one of the reasons that this tragedy touches us so deeply is that not only do we feel for our friends in New Zealand but also because two of those killed were Australian. Whilst a royal commission has been established to determine the circumstances surrounding the fatalities, there is no doubt that the immediate cause was a build-up of methane gas in the mine which led to a catastrophic explosion.

The explosion was such as to cause horrific damage to the infrastructure of the mine, including the gas extraction equipment that meant rescue efforts could not be commenced immediately. For the families, that meant that while they clung to the grim hope that at least some of their loved ones may have survived the initial explosion, they were forced to watch and wait with mine rescue workers at the pit head. One can only imagine their heartache and anguish as they waited. Sadly, hopes were further dashed when on 24 November, some five days after the initial explosion, a further catastrophic explosion tore through the mine. It should be noted that prior to the second explosion gas samples taken from the mine chamber showed methane levels at approximately 95 per cent, with the balance of the atmosphere being principally carbon monoxide. In short, there was little available oxygen in the mine chamber.

The tragedy continues to this day. Today the *New Zealand Herald* reported that Rachelle Weaver, the partner of Australian miner Joshua Ufer, who was killed in the accident, gave birth to a baby girl, Erika, on Saturday. Ms Weaver was four months pregnant when she lost her partner in the disaster. Sadly, none of the bodies of those killed have been recovered to date. The New Zealand Prime Minister, John Key, yesterday expressed his doubts about whether the bodies of the 29 men could ever be recovered from the mine. One can only hope that Prime Minister Key is wrong and that the bodies can be recovered to bring some closure to the families.

The investigation of this mine disaster will be by means of a royal commission. Public hearings commenced on 5 April 2011, with further hearings to take place over some 15 weeks commencing in July this year. The commission is to report no later than 31 March 2012. One would hope that the hearings of the commission and its findings will also assist the families of those killed in achieving a level of closure. One

would also hope that the royal commission will assist authorities not only in New Zealand but also in Australia in further understanding the circumstances surrounding this mine disaster, and thereby assist in minimising the chance of further similar events in the future.

CLIMATE CHANGE

The Hon. LYNDA VOLTZ [6.16 p.m.]: I wish to put on record some facts regarding climate change. I have a great deal of respect for the CSIRO, which is committed to providing scientific advice, peer reviewed scientific advice. For 50 years its scientists have been contributing to the growing body of global scientific knowledge about climate change. According to the CSIRO, in the period 2000 to 2008, 82 per cent of humanity's CO_2 emissions came from burning fossil fuels—primarily coal, oil and gas—and 3 per cent came from other industrial sources. These emissions grew by 3.4 per cent a year. The remaining 15 per cent of emissions from deforestation remained steady at that figure.

We know these emissions originate from human activity because of the chemical fingerprints in the atmosphere, such as the oxygen level and the fractions of carbon isotopes—carbon 13 and carbon 14—in CO_2 which all indicate that the origin of the increased $CO_2$is largely from fossil fuels. For example, the observed decrease with time of the carbon isotope ratio—carbon 13/carbon 12—in the atmosphere is consistent with the impact of a fossil fuel source because the carbon 13/carbon 12 ratio in fossil carbon is lower than that in the atmosphere. The growth rate of 3.4 per cent of observed emissions exceeds almost all assumed scenarios generated in the late 1990s.

It is extremely unlikely that the observed global scale warming is due to natural variability. Simulations of the past 100 years of climate that include both human and natural influences on climate successfully reproduce observed patterns of global temperature change, whereas simulations that do not include human factors fail to reproduce the observed patterns. Consistency between warming over land and warming over oceans during the twentieth century provides further evidence that the temperature changes are real rather than an artefact of recording practices. This is because land and sea temperatures are recorded very differently and are influenced by quite different factors, yet they reveal the same patterns of warming.

I raise these facts because this Chamber has constant debate about whether climate change is man-made and about scientific evidence being brought to say it is not. That is not to say that people should not be allowed to quote those who disagree with the science on climate change, but there is almost total consensus among experts that the earth's climate is changing as a result of the build-up of greenhouse gases. In a previous adjournment speech the Hon. Robert Brown said claims made by Walter Starck about coral reef studies that have been undertaken at the Great Barrier Reef were alarming and that there is no evidence to support climate change effects on the Great Barrier Reef. In particular, he discounted the claims of 21 researchers from the Centre for Excellence in Coral Reef Studies at James Cook University in Townsville. I want to refer to those claims because the Australian Coral Reef Society has responded to them, saying:

> The Australian Coral Reef Society (ACRS) is the oldest coral reef society in the world and was founded as the Great Barrier Reef Committee in 1922. The Society has over 250 Australian and overseas members and represents the coral reef research community in Australia. The Society's members are primarily employed through government research and management agencies, as well as private organisations. We hold annual scientific meetings and support postgraduate research on Australia's coral reefs. A central tenet of the Society is to support the sustainable management of coral reefs and so the comments we provide here are drawn from this perspective.
>
> Knowledge of what is happening on the Great Barrier Reef and other reefs is through careful observation over thousands of dives (by members of ACRS alone) and from boats, aerial surveys and satellites. Certainly a great deal of research is done at island field stations, but there are also many studies that encompass multiple areas from the northern to southern Great Barrier Reef. Scientists have demonstrated change including: fishing on reefs can remove over 75% of large sought-after species; coral bleaching has increased on reefs of the Great Barrier Reef and inshore reefs are most vulnerable; the loss of fishes can cause great changes in reefs from coral dominated to algal dominated environments.

[*Time expired.*]

HUNTING IN STATE FORESTS

Mr DAVID SHOEBRIDGE [6.21 p.m.]: In the *Government Gazette* of 9 May 2011 the Minister for Primary Industries, Katrina Hodgkinson, proposed to open an extraordinary 142 State forests to shooters and other hunters. These forests are the same forests that are used by people bushwalking, walking their dogs, enjoying a picnic, camping and, in some areas such as Blenheim State Forest and the Oberon region, gathering new season mushrooms for breakfast or dinner. The Minister's proposal to open up 142 State forests for hunting

for a decade—double the maximum period of any declaration to date—is unprecedented. In the process the Government appears to have bypassed its legal obligations to the public by not seeking public submissions and not giving adequate details of the State forests where it intends to unleash this hunting.

Remarkably, with this mass declaration, the Minister did not give any information to the general public about how to make a submission on the proposal. This is despite the clear requirements under section 20 of the Game and Feral Animal Control Act 2002 for the Minister to have regard to a number of factors before making declarations allowing hunting. Those factors include the impact of the declaration on public safety and the rights of other users using the land. My office has received many phone calls and emails from people living near State forests who are distressed about this proposed mass declaration. One even asked if she should ensure that her children wore bulletproof vests when in forests, just to be safe. These people and others want to know where and how to make a submission to the Minister, but the Minister simply refuses to tell them.

The great majority of people who enjoy our State forests are not hunters, and the interests of these other users are being ignored by the Government in its head-long rush to appease the shooting lobby. It is hard to find out the full impacts of letting hunters into State forests if the only people the Government asks are the hunting lobby represented by the Game Council. Yet that is exactly what this Government is proceeding to do. Public consultation and open submission periods are a crucial part of good government decision making, particularly when it relates to public spaces such as our State forests and national parks. Consultation allows the interests of other land users to be assessed, which is important if one wants to identify the public safety risks.

The privileging of convenience over proper consultation and safety assessments is particularly concerning when it is being done by a new government. This mass declaration is a clear capitulation to the Shooters and Fishers Party, which has the potential to frustrate the Coalition's 100 Day Plan in the first weeks of a new Parliament by refusing to indicate support for Government legislation in this House. The previous Government had an unhealthy relationship with the Game Council and the Shooters and Fishers Party. Now it is looking like the current Government is intending to continue this. The Shooters and Fishers Party makes no apologies for horse-trading on policies, and is on record as having little or no interest outside its key interest areas of killing more animals and fish.

As we know, the Game Council was formed in 2002 as a capitulation to the gun and hunting lobbies. It was done in an effort to keep the shooters happy and shore up the then Labor Government's control of the New South Wales upper House. At the time the Government promised that the Game Council would be self-funding and not cost the public purse a single cent. Yet more than $13 million in public funding and public loans has been spent on propping up the Game Council in the nine years since. The former Government's pandering to the gun lobby also saw it watering down firearm regulations and the re-introduction of duck hunting in this State. Hunting in national parks was on the cards until a grass-roots campaign forced the then Government to back down.

This comes on top of recent incompetence by the Game Council, which saw hunting licences issued to hunters in 31 of our State forests where in fact hunting was prohibited. That opened up those many hundreds of hunters to the potential of criminal prosecution by the incompetence of the Game Council. Any recreational hunter who continued to hunt in those 31 State forests closed to hunting since March have committed a criminal act by hunting in a non-declared public place. But there is no accountability from the Game Council. In hastily and uncritically capitulating to the demands of the shooters lobby by this mass notification of hunting in 142 State forests, members of the Government have exposed again people to prosecution under section 93G of the Crimes Act, which relates to possessing and discharging a firearm in a public place and carries a maximum penalty of up to 10 years imprisonment.

It is troubling that the Game Council has left many recreational hunters at risk of criminal prosecution. It again proves why feral animal control should be left to professionals and not to a bunch of gun-toting amateurs out on the weekend. It is time for Minister Hodgkinson to end her silence on this issue. It is time for her to withdraw the current proposal to allow hunting in 142 State forests, and it is time for this Government and the Minister to remove the control of feral animals from the pro-shooters Game Council because it is clearly not up to the task.

GEEK PRIDE DAY

The Hon. Dr PETER PHELPS [6.25 p.m.]: Today I raise a matter of most serious importance. Today is Geek Pride Day, which is an initiative that claims the right of every person to be a nerd or a geek. It has been

celebrated on 25 May since 2006, honouring the premiere of the first Star Wars film on that date in 1977. It shares the same day as three other science fiction fan holidays—Towel Day, for fans of the *Hitchhiker's Guide to the Galaxy*; Star Wars Day, as previously mentioned; and the Glorious 25 May, for fans of Terry Pratchett's Discworld. I will run through the basic rights and responsibilities of geeks. This manifesto was created to celebrate the first Geek Pride Day and includes the following rights:

1. The right to be even geekier.
2. The right not to leave your house.
3. The right not to like football or any other sport.
4. The right to associate with other nerds.
5. The right to have few friends, or none at all.
6. The right to have as many geeky friends as you want.
7. The right to be out of style.
8. The right to be overweight and near-sighted.
9. The right to show off your geekiness.
10. The right to take over the world.

The responsibilities, however, are also onerous:

1. Be a geek, no matter what.
2. Try to be nerdier than anyone else.
3. If there is a discussion about something geeky, you must give your opinion.
4. To save and protect all geeky material.
5. Do everything you can to show off geeky stuff as a "museum of geekiness".
6. Don't be a generalized geek. Specialize in something.
7. Attend every nerdy movie on opening night and buy every geeky book before anyone else.
8. Wait in line on every opening night. If you can go in costume or at least with a related t-shirt, all the better.
9. Don't waste your time on anything not related to geekdom.
10. Try to take over the world!

So I send out hearty congratulations to every person who has done 4 Unit Maths for the Higher School Certificate or Pure Maths at university; all people who attend Cancon, especially those who play *Blood Bowl* and *Warhammer 40,000*; every person who has sat in a queue outside an Apple store for whatever Steve Jobs is flogging this month; those brave souls who play *Call of Duty* online for more than eight hours straight; and those braver souls who have missed a date with a girlfriend because they were locked in a real-time strategy game. I acknowledge the entire alumni of the University of Sydney Society for Creative Anachronism. I send hearty congratulations to anyone who has ever been a twelfth level paladin in *Dungeons and Dragons* or a member of the Nosferatu in *Vampire: The Masquerade*—indeed, anyone who has ever taken part in a role-playing game.

I acknowledge those hardy adventurers who search the globe engaged in the lifestyle of geocacheing and all members of Paddington Bearz. I send hearty congratulations and a warm Geek Pride Day to anyone who has dressed up for a Star Wars movie or for the midnight showing of the *Rocky Horror Picture Show*. I acknowledge the modern-day philosophers who often have violent and heated debates over the respective merits of *Star Trek* and *Battlestar Galactica*. I send a big acknowledgement of Geek Pride Day to anyone with a PhD. Further, I welcome Geek Pride Day for any person who has three or more comic books in their possession at any one time and any person with a science degree who can recite entire slabs of the Discworld novels and yet lament the plot discrepancies between the various books. I acknowledge men and women of geekdom everywhere. Geeks and geekettes, today, on this most glorious of days, the world salutes you and bows down before your general awesomeness.

RUTH AND VINCE FAZIO SIXTIETH WEDDING ANNIVERSARY

The Hon. AMANDA FAZIO [6.30 p.m.]: I advise the House of an important occurrence in my family on 15 May 2011: the sixtieth wedding anniversary of my parents, Ruth and Vince Fazio. In pride of place in their lounge room were congratulatory cards from Queen Elizabeth II and the Prime Minister, the Hon. Julia Gillard. They also had a card from the Governor-General, Quentin Bryce. We celebrated the occasion with a small family dinner. With the rate of marriage breakdown in today's society, it is worth noting that it is significant for people to reach 60 years of marriage. I congratulate my parents. Also, for people to receive congratulatory messages from the Queen, the Prime Minister and the Governor-General is special. I remind members that we can organise congratulatory messages for our constituents. It is worthwhile doing so because it means so much to people who have met those milestones.

[*Time for debate expired.*]

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

Motion agreed to.

The House adjourned at 6.31 p.m. until Thursday 26 May 2011 at 11.00 a.m.