

# LEGISLATIVE COUNCIL

Wednesday 1 June 2011

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

**The President** read the Prayers.

## ADMINISTRATION OF THE GOVERNMENT OF THE STATE

**The PRESIDENT:** I report the receipt of the following message from the Hon. Thomas Frederick Bathurst, Administrator of the State of New South Wales:

Office of the Governor  
Sydney 2000

T Bathurst  
ADMINISTRATOR

The Honourable Thomas Frederick Bathurst, Chief Justice of New South Wales, Administrator of the State of New South Wales, has the honour to inform the Legislative Council that, as a consequence of the Governor of New South Wales, Professor Marie Bashir, having assumed the administration of the government of the Commonwealth, he has this day assumed the administration of the government of the State.

1 June 2011

## BUSINESS OF THE HOUSE

### Formal Business Notices of Motions

**Private Members' Business item No. 42 outside the Order of Precedence objected to as being taken as formal business.**

### ST VINCENT DE PAUL SOCIETY WELLINGTON CONFERENCE

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

1. That this House notes that:
  - (a) the St Vincent de Paul Society's Wellington Conference celebrated its one hundredth anniversary on 29 January 2011,
  - (b) the conference has been doing outstanding work in the community since 1911, having started with 19 members and, since then, many more have picked up the torch to continue its vital work in the Bathurst Diocese, and
  - (c) in 2010 alone, the conference members:
    - (i) assisted with 1,100 visits to hospitals, nursing homes and aged care rooms,
    - (ii) supported 350 families with food, clothing and furniture and provided 100 Christmas hampers to families in need.
2. That this House extends its congratulations to the current Manager and former Manager Frank Lacey on the conference's ongoing commitment and support to families and individuals in Wellington and across New South Wales.

### ST VINCENT DE PAUL SOCIETY LITHGOW

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

1. That this House notes that:
  - (a) on Australia Day 2011, Lithgow St Vincent de Paul Society workers Mr Pat Okon and Ms Margaret Kennedy were honoured with Order of Australia medals,

- (b) the St Vincent de Paul Society St Patrick's Conference in Lithgow now has three active members who have been awarded Order of Australia honours, including Mrs Kennedy's husband, Alan, who received an OAM in 2004, and
  - (c) these members are not only active members of the St Vincent de Paul Society but also Family Support, Neighbourhood Centre, Meals on Wheels, Women's and Community Housing, Community Consultative Committees and local school, church and show committees.
2. That this House extends its congratulations to Pat and Margaret on their Order of Australia awards and their continued and ongoing contribution to the Lithgow community.

### FAIRFAX OUTSOURCING

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

1. That this House acknowledges:
  - (a) the importance of a high-quality, critical and independent print media to the successful political, cultural, economic and social functioning of a modern democracy, and
  - (b) the central role that artists, subeditors and designers play in maintaining and enhancing quality newspapers and their capacity to fulfil their role in society.
2. That this House notes with grave concern plans by Fairfax management to outsource the work of 82 subeditors, designers and artists who currently ensure the quality of the *Melbourne Age* and the *Sydney Morning Herald*.
3. That this House supports the concerns raised by Fairfax employees and their union that the quality and communications effectiveness of these papers will inevitably suffer as:
  - (a) in-house specialist production expertise accumulated over many years is lost,
  - (b) quality is placed into direct competition with cost,
  - (c) the uniqueness and character of these papers are lost, and
  - (d) inevitable errors of fact and grammar will result from a cost-driven service and will undermine public confidence in the papers.
4. That this House:
  - (a) calls on Fairfax management to abandon plans to outsource production services, and
  - (b) requests the President to convey the terms and passage of this resolution by the House to Fairfax Media CEO, Greg Hywood, and Chairman, Roger Corbett.

### BUSINESS OF THE HOUSE

#### Formal Business Notices of Motions

**Private Members' Business item No. 101 outside the Order of Precedence objected to as being taken as formal business.**

**Private Members' Business item No. 105 outside the Order of Precedence objected to as being taken as formal business.**

#### TABLED PAPERS NOT ORDERED TO BE PRINTED

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

#### TABLING OF PAPERS

**The Hon. Michael Gallacher** tabled the following paper:

Annual Reports (Departments) Act 1985—Report of Department of Education and Training for year ended 31 December 2010.

**Ordered to be printed on motion by the Hon. Michael Gallacher.**

## PETITIONS

### Webbs Creek Ferry

Petition requesting the House to consider a dual ferry crossing, accountability and quality control of ferry maintenance, better signage, including a sign at Maroota School, better notification to local businesses impacted by ferry closure, the erection of give-way signs on River Road, ongoing training for ferry masters and completion of Bicentenary Road from Chaseling Road to Wheelbarrow Ridge Road, received from the **Hon. Natasha Maclaren-Jones**.

## BUSINESS OF THE HOUSE

### Withdrawal of Business

**Private Members' Business item No. 68 outside the Order of Precedence withdrawn by the Hon. Cate Faehrmann.**

**Private Members' Business item No. 82 outside the Order of Precedence withdrawn by Dr John Kaye.**

## BUSINESS OF THE HOUSE

### Postponement of Business

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

## CRIMES AMENDMENT (MURDER OF POLICE OFFICERS) BILL 2011

### Second Reading

**Debate resumed from 26 May 2011.**

**The Hon. MICK VEITCH** [11.16 a.m.]: The Opposition opposes the Crimes Amendment (Murder of Police Officers) Bill 2011. We oppose the bill on many counts. However, there are two main reasons. First, mandatory sentencing is ineffective and removes the ability of the court to deliver an appropriate penalty based on the individual nuances and circumstances of each individual case. Second, the bill privileges the lives of police officers above others such as paramedics, ambulance officers, emergency service workers, nurses, social workers, prison wardens and many other professions who also face significant risk at work.

No-one sitting in this Chamber denies that the death of a police officer on duty is anything less than a tragedy. It is a tragedy for the family, friends and colleagues of the officer, but it is also a tragedy for the community. However, the proposals contained in this bill will not bring about justice; rather, they will hinder the judicial process. The Law Society of New South Wales notes that, "mandatory sentencing removes the experience, wisdom and balance of the judiciary from the sentencing process". Significant research suggests that juries are more likely to decide on a lesser charge when faced with a mandatory sentence. Mandatory sentencing also removes or considerably reduces the incentive for the offender to plead guilty, subjecting the family of the murdered officer to a full-blown trial.

Mandatory sentencing experiences from America show that mandatory sentencing encourages behind-the-door negotiating and plea bargaining as opposed to open court proceedings. There is no proof that mandatory sentencing will dissuade or reduce police murders. Current sentencing laws are not lenient. In an open letter to the Attorney General opposing the proposed legislation the New South Wales Bar Association clearly outlined the sentencing provisions contained in the current law. It stated:

The current legal position regarding sentencing for the murder of a police officer may be summarised as follows:

- a) Pursuant to s 61 (1) of the Crimes (Sentencing Procedure) Act 1999, a sentencing court must impose a sentence of imprisonment for life on a person who is convicted of murder "if the court is satisfied that the level of culpability in the commission of the offence is so extreme that the community interest in retribution, punishment, community protection and deterrence can only be met through the imposition of that sentence".

- b) Section 19A (1) of the Crimes Act 1900 provides that "a person who commits a crime of murder is liable to imprisonment for life", although a sentencing court may impose a sentence of imprisonment for a specified term ... Pursuant to s 19A (2), a person sentenced to imprisonment for life for the crime of murder "is to serve that sentence for the term of the person's natural life"—a life sentence cannot be divided into a non-parole period and a residual period (the rest of the offender's life) during which he or she would be eligible for release on parole. Thus, a life sentence means what it says—a sentence of natural life—subject to the possibility of the exercise of the prerogative of mercy by the Executive. A significant number of persons have received that sentence in NSW in the last 10 years.
- c) If a sentence of imprisonment for life is not imposed but rather a determinate period of imprisonment, the sentencing court must, pursuant to s 21 (2) (a) [of the] Crimes (Sentencing Procedure) Act 1999, take into account as an aggravating factor in determining the appropriate sentence that "the victim was a police officer".
- d) Where a determinate period of imprisonment is imposed, the sentencing court must, pursuant to s 44 (1) of the Crimes (Sentencing Procedure) Act 1999, impose a non-parole period for the sentence (that is, the minimum period for which the offender must be kept in detention in relation to the offence).
- e) Pursuant to the "standard non-parole period" provisions in the Crimes (Sentencing Procedure) Act 1999, the sentencing court must set a non-parole period of 25 years unless the requirements imposed in s 548 of that Act for imposing a different non-parole period are satisfied.

The other message contained in the bill is the privilege of one life over another. This bill ignores the significant risk faced by other front-line public servants—paramedics, ambulance drivers, emergency service workers, nurses, social workers, prison wardens and many other professionals who are exposed to dangerous situations on a regular basis, not to mention civilian murder cases. I refer to an article in the *Sydney Morning Herald* of 26 May 2011 entitled "Making sentences fit the crime". It contains an interview with Bob McEnallay, the father of murdered police officer Glenn McEnallay, which states:

Bob McEnallay says the life of his surviving son, Troy, not a police officer, should not be valued less than that of Glenn. He believes there should be a minimum sentence for murder, regardless of who the victim is. "I wouldn't like to think my son's case would attract more attention from the courts than some other citizens," he said. "I know the [government's] intentions are good, but I would rather see a system where the maximum possible sentences for murder are issued for any citizen who is murdered."

For these reasons the Opposition will not support the bill.

**The Hon. NIALL BLAIR** [11.22 a.m.]: I support the Crimes Amendment (Murder of Police Officers) Bill 2011. The bill amends the Crimes Act 1900 to provide that mandatory life sentences are to be imposed by courts on persons convicted of murdering police officers. This reform has been necessary for many years, yet the former Labor Government refused to do it. It talked the talk but year after year it failed to deliver. The New South Wales Liberals and Nationals have been committed to this policy since 2002. In Opposition we introduced bills to bring about amendments to the Crimes Act to help protect our police from those who would seek to do them the greatest harm. A lack of will by the then Labor Government saw those bills defeated.

I am proud to be part of an O'Farrell Government that will stand up for our hardworking officers. The parameters in this bill are clear and unambiguous. A compulsory life sentence is to be imposed on the perpetrator where a police officer is murdered while executing his or her duties or as a consequence of, or in retaliation for, actions undertaken by any police officer. This legislation is essential and overdue. It is saddening to remember that since 1971, 16 police officers have lost their lives as a result of the actions of offenders who have attacked them while executing their duty to protect the community. Members of our police force need and deserve this new law to deter anyone who would consider the murder of a police officer. It is important that as a community we provide protections under the law for police officers to protect us.

Police officers enforce the laws passed by our Parliament. An attack on our police officers is also an attack on our legal and parliamentary system. It is important to the fundamental peace and stability of our society that we protect the law and the officers who enforce it. There can be no mercy for a person who knowingly kills a police officer who is carrying out his or her duties or retaliates against an officer. Similarly, where a person is engaged in criminal activity that risks serious harm to police officers and, as a result, murders a police officer, that person deserves the full force of the law and the highest penalty that the law provides—imprisonment for the term of the person's natural life without release on parole.

The amendments are not draconian or unreasonable; they acknowledge that it is possible that an officer may be killed without the perpetrator knowing that the victim is a police officer. There may be circumstances where the perpetrator is under the age of 18 or is suffering a significant cognitive impairment. These extenuating circumstances have been incorporated in the amendments to ensure that only adult and deliberate murderers of police officers are automatically sentenced to life imprisonment. I believe that this is a well-balanced set of amendments which will provide greater protection for both police officers and the community. In conclusion,

I pass on my condolences to the family of the police officer in Queensland whose life support machine will be turned off today. The case highlights the need to strengthen these laws. I pass on my condolences to the Queensland Police Force and to the family of that officer. I commend the bill to the House.

**Mr DAVID SHOEBRIDGE** [11.26 a.m.]: On behalf of The Greens I oppose the Crimes Amendment (Murder of Police Officers) Bill 2011. It is true that the Government has had this as a policy platform for a number of years. However, just because something is a policy platform and has been committed to for a number of years does not make it good law. Indeed, if this bill is passed—and it appears that the House will pass it—it will be a significant step backwards for justice in New South Wales. It will not produce what the Government asserts it will produce—and the Government makes that assertion without evidence.

It will not produce greater safety for police officers. It will produce more arbitrary sentencing, more unjust outcomes and almost certainly it will produce more trials and more suffering for family members of any police officer who tragically loses his or her life in the course of duty. Those family members will almost certainly be required to sit through a protracted trial because there will be no incentive for any defendant charged under this law, if it becomes law, to do anything other than plead not guilty and seek to avoid a conviction.

I will deal with these matters individually. I am grateful for representations from the New South Wales Bar Association and the Law Society of New South Wales in putting together principled and cogent reasons why the bill should not become law in New South Wales. The first reason is that mandatory sentencing breaches basic principles of justice. Justice that is not refined to deal with the individual litigant defendant before a court is not justice; it is an arbitrary outcome imposed by a parliament. The Parliament is here to make laws and classes of laws but the implementation of that law and how that law applies in the circumstances of an individual citizen should be—and indeed our system of laws has said for hundreds of years that it must be—subject to the discretion of the judge when sentencing.

This bill will remove all judicial discretion where the defendant is found guilty of having murdered a police officer and some very threshold points are met under the bill. There will be no judicial discretion to do anything other than lock up a defendant for life. The Australian Law Reform Commission, when speaking on mandatory sentencing in its report of 2006, stated:

The principle of individualised justice requires the court to impose a sentence that is just and appropriate in all the circumstances of the particular case. Courts have consistently recognised the importance of this sentencing principle. For example, in *Kable v Director of Public Prosecutions*, Mahoney ACJ stated that "if justice is not individual, it is nothing"... Individualised justice can be attained only if a judicial officer possesses a broad sentencing discretion that enables him or her to consider and balance multiple facts and circumstances when sentencing an offender. This broad discretion is required because sentencing is ultimately "a synthesis of competing features which attempts to translate the complexity of the human condition and human behaviour to the mathematics of units of punishment usually expressed in time or money".

The principle of equality of justice has also been considered by the High Court in a number of matters, including by Justice Heydon, who is not what one would call a bleeding heart liberal. In 2010 in the cases of *Hili v The Queen* and *Jones v The Queen* Justice Heydon said:

The circumstances of particular crimes and the "character, antecedents and conditions" of particular offences are so various, the combinations in which they can occur are so numerous, and the relationship between these factors and the purposes which criminal sentences are to serve can be so impalpable, that the application to them of discretionary judgment permitting a range of legitimate outcomes is inevitable.

I might unpackage that legal argument and try to explain it in somewhat more common parlance. Put simply, it says that Parliament when passing a law can have no foresight as to the specific circumstances in which that law will come before the courts. There is such an array of diversity in the human condition and the things people do on the spur of the moment—what they do as a young person, what they do as a middle-aged person, what they do as an elderly person, and how they find themselves in situations where they make split-second decisions that can have enormously telling consequences on the lives of others or their own lives. The human condition is so diverse, and human experience is so varied. The way this law will be applied in future is so unknown that the Parliament must provide judges with the discretion, when applying this law, to match sentences to the individual facts. Later I will speak about some of the unjust outcomes that the bill may well produce.

The Government says that the bill moves New South Wales laws forward: it puts the bill forward as some kind of modern reform. The last time New South Wales experimented with this folly of mandatory sentencing was in the 1800s. In 1883 New South Wales introduced mandatory minimum sentences for a series of offences. Within a matter of months after that such a vast number of cases were raised as being unreasonable

and inappropriate that there was a public outcry. Indeed, back then, 130 years ago, the then Parliament understood that mandatory sentencing was unworkable. The then Parliament revoked the laws in 1884, after the laws had been in effect for only a matter of a year and three weeks, because of the recognised unfair consequences of the mandatory sentence laws passed by the Parliament at that time. Yet here we are reinventing a broken wheel and putting in place a law that was rejected by the Parliament 130 years ago because of the unfair consequences of that law.

Mandatory sentencing will lead to unjust outcomes. Examples may well be given of cases where the imposition of a life sentence is entirely appropriate. The premeditated assassination of a police officer would surely be a circumstance where, but for some extraordinary extenuating circumstances, a life sentence would likely be appropriate. But there are other circumstances where this law will impose a life sentence that are deeply troubling. For example, a 19-year-old drug-addicted offender—who is just two years out of high school—may be engaged in a criminal act of dealing drugs on the streets of Kings Cross. Because the offender is involved in a criminal enterprise he or she may well be armed with a knife. The offender may then be confronted by a police officer. In the course of such confrontation a scuffle may ensue, and on the spur of the moment in a terribly mistaken criminal act the young offender may stab the police officer. No premeditation is involved in such an offence. The offender carried the weapon not with the intention to harm a police officer; he or she had no intention of harming a police officer. But, of course, in the example I have cited, a deeply culpable decision is made by a 19-year-old—that is, to kill a police officer. It is the kind of decision that this Parliament and any court would condemn.

But those circumstances are greatly different from those associated with the premeditated assassination of a police officer or a premeditated attempt to kill a police officer. If we are to have a system of justice—not just a system of criminal laws—there should be a way of distinguishing the spur-of-the-moment, unpremeditated act, albeit appalling act, by a young offender from the types of premeditated acts about which I spoke earlier. This law, if it is passed, will allow no distinguishing between those kinds of acts. Once the facts are proved, once an individual who was aware of the person being a police officer has killed the police officer, regardless of any mitigating factors—regardless of remorse, a guilty plea, the age of the offender, or the lack of premeditation—a life sentence will be imposed. That is not in any sense criminal justice; it is this Parliament seeking to override hundreds of years of legal practice providing judicial discretion.

The current applicable sentencing law is not unduly lenient. It is not as though there is not the capacity to impose a life sentence on a person who has murdered a police officer. Indeed, section 61 (1) of the Crimes (Sentencing Procedure) Act 1999 provides that a court must impose a sentence of imprisonment for life on a person who is convicted of murder "if the court is satisfied that the level of culpability in the commission of the offence is so extreme that the community interest in retribution, punishment, community protection and deterrence can only be met through the imposition of that sentence". So the kinds of circumstances that were referred to by the Minister in introducing the bill and by the proponents of the bill, the kinds of circumstances that would provide the level of community revulsion and call for deterrence and punishment, will already allow for a court to impose a life sentence. Under the Act life means life. A life sentence means just that: a sentence for the term of one's natural life. A life sentence can already be imposed where the court is convinced that it is appropriate because of the level of culpability involved in the offence. Section 19A (1) of the Crimes Act 1900 provides that "a person who commits the crime of murder is liable to imprisonment for life", although a sentence of imprisonment of a lesser amount can be imposed.

Under the current law one of the features in determining whether aggravating circumstances are appropriate for a life sentence is whether the victim was a police officer. So there is already the capacity to consider the fact of the victim being a police officer in imposing a life sentence. This one-size-fits-all, unjust law as provided in the bill is not required because the present law is already sufficiently stringent. Indeed, where a person has been found guilty of murdering a police officer and has been given not a life sentence but a determinate sentence the standard non-parole period is 25 years. That is a third of most people's ordinary life. Given that the person has committed the offence as an adult, the standard non-parole period is effectively half of the balance of even a young person's life span. Parole does not kick in even if a determinate sentence is imposed. The current applicable sentencing law is not lenient. Indeed, it is a harsh set of laws, and there is no reason to make it the harsh and unjust set of laws as proposed by the Government.

Judges in the Supreme Court, who see individuals come before them and have experience in imposing life sentences, are aware of the great severity of imposing a life sentence. These are people whose job it is—we as members of the Parliament give them the job—to impose harsh criminal sanctions on defendants. It is

worthwhile reflecting upon exactly what a judge has to confront and what it means to impose a life sentence. In handing down the court's decision in the matter of *Regina v Harris* in 2000 the Chief Judge at Common Law, His Honour Chief Justice Wood, said about a life sentence:

Such a sentence can be crushing, particularly for a young offender, whose life expectancy, on current tables, may well exceed the fifty-odd years that would apply in the case of the present respondent ... They were noted in *Garforth NSWCCA* 23 May 1994, where the Court said:

But first we should emphasise that we do not intend to diminish the terrible significance of a sentence of life imprisonment.

Nor did Newman J. His Honour quoted the following passage from the judgement of Hunt CJ at Cl in *R v Petroff*:

The indeterminate nature of a life sentence has long been the subject of criticism by penologists and others concerned with the prison system and the punishment of offenders generally. Such a sentence deprives a prisoner of any fixed goal to aim for, it robs him of any incentive and it is personally destructive of his morale. The life sentence imposes intolerable burdens upon most prisoners because of their incarceration for an indeterminate period, and the result of that imposition has been an increased difficulty in their management by the prison authorities.

The rehabilitation of those imprisoned under our system of justice is also important. Rehabilitation should be part of our justice system. Rehabilitation is intended to help prisoners recognise that society condemns their actions and to help them search for some meaning or the capacity to improve. But once a life sentence is imposed that incentive is removed. Regardless of whether or not they find God or undertake education to advance themselves to become useful, functioning members of society, and regardless of their level of remorse or psychiatric improvement, they will never be released. They have no motivation to rehabilitate. We are robbing prisoners of the option to once again be useful, functioning members of society. Why are we doing that? Because this Parliament views a one-size-fits-all punishment as the be-all and end-all of our criminal justice system, and it clearly is not. This legislation removes the option of rehabilitation from this class of prisoner.

The Government suggests that this legislation will have a deterrent effect and that people will not kill a police officer because by so doing they will face life imprisonment. There is simply no evidence to support that contention. Indeed, it is a remarkable proposition that somehow a defendant would be deterred by a life sentence but not by 25 years in prison. When people do these stupid culpable acts they do not think they will be caught or subject to imprisonment. It is utterly without evidence or foundation to suggest a criminal would say, "Well, I would do this act if I was only going to get 25 years in prison but I will not do it if I am going to get life imprisonment." That most definitely would not be an operative motive in the mind of the 19-year-old, for example, whom I spoke about earlier. There is no evidence to support the suggestion. Indeed, imposing life imprisonment may reduce any deterrent effect.

Let us take the example of a siege in which a well-armed individual is bunkered down inside a house and the police surrounding the house are threatening to take down that individual. If that individual had killed a police officer earlier on in the siege then what possible reason would there be for that person—other than his or good conscience—to stop killing further police officers? There would be no hindrance under the criminal law for that individual to be motivated to kill yet more police officers, because having killed the first officer—a tragic and appalling circumstance in itself—that person would not be restrained under the criminal law from killing further police officers because he or she would be already facing life imprisonment. The courts can impose no greater sentence if an individual kills one, two, three, four or, tragically, more police officers. It is likely not to have a deterrent effect and in many circumstances may have the opposite effect. It will allow a culpable criminal effectively off the leash to kill yet more police officers because there is no deterrent once a person has taken the first awful act of killing one police officer.

Equally, there will be no reason for offenders to plead guilty. For any person charged under this Act there is no benefit in pleading guilty. One does not get any discount for pleading guilty. Judges will have no discretion to do anything other than to lock a person found guilty away for life. Why would a defendant do anything other than seek to beat the charge regardless of the weight of the prosecution's evidence? This legislation will almost certainly lead to more contested trials and defendants doing whatever they can to avoid a finding of guilt. There is no 25 per cent discount for an early guilty plea. It will mean that the relatives, friends and associates of murdered police officers will inevitably be put through more lengthy criminal trials and justice will be delayed. Their grieving process will be continued and they will not be allowed the closure that sometimes guilty verdicts give families and friends.

More trials will result in more expense for the Crown and for taxpayers. It may also involve a number of people being found not guilty by contesting the charges against them. Our criminal justice is populated by

humans who make human decisions and who will themselves be looking for just outcomes. For example, when prosecutors see a young offender who has been found guilty of an offence facing a life sentence they will have a human incentive to consider putting forward a lesser charge—a charge of manslaughter rather than murder. That is a human fact. It may also lead to fewer prosecutions for murder than otherwise would be the case without this harsh, unjust and inflexible order that the Government is seeking to impose.

Finally, there is no justification for singling out police officers as victims. We respect and rely upon so many people in our society to do good public works: people who put themselves in harm's way for us. I refer to emergency services workers, correctional officers, judicial officers, council rangers, health workers, teachers and community workers. Why is one life valued more than another? Why is the Parliament saying that the life of a police officer should be more highly valued than the life of a nurse, or a correctional officer or an emergency services worker? There is no justification for it. It is wrong in principle. It is wrong on any form of morality to suggest that one person's life is valued higher than the life of another. That is exactly what the Government is saying and that is exactly what this bill proposes to do.

The Greens oppose the concept of mandatory sentencing but where the mandatory sentence to be imposed is life the gross injustice of it is extraordinary. Under current New South Wales law once a life sentence is imposed there is no capacity for parole to be given. The Greens will be moving an amendment in committee to allow for discretion in the judicial officer to impose a non-parole period. That standard non-parole period will be for 25 years, as under the current law, and will give a level of leniency and individual justice. A parole period does not take away from a life sentence. An offender granted parole would still be subject to a life sentence and the strictures and control of the criminal justice system for the whole of his or her natural life, but the offender would be given that modest discretion where, in appropriate circumstances, he or she could be released on conditional parole, seek to be rehabilitated out of jail and be given some small degree of mercy in our criminal justice system.

**The Hon. SCOT MacDONALD** [11.48 a.m.]: I support the Crimes Amendment (Murder of Police Officers) Bill 2011. The New South Wales Liberal-Nationals Government has a long-standing commitment to introduce mandatory life sentences for those who murder police officers. This bill implements that commitment. Since 1971 some 17 police officers have lost their lives as a result of the actions of offenders who have attacked them whilst the police have been executing their duty to protect the community.

Murder currently carries a maximum penalty of life imprisonment but under section 21 of the Crimes (Sentencing Procedure) Act courts retain the discretion to impose a shorter sentence. This applies to cases where a police officer is murdered. The bill now before Parliament is in line with bills previously introduced by the Coalition. I am pleased that after years of procrastination by the former Labor Government we at last bring these important reforms into law and give police the legislative safeguard they deserve. The bill provides that a court must impose a sentence of imprisonment for a person's natural life where a police officer acting in the execution of his or her duty, or as a consequence of or in retaliation for actions undertaken by the officer or any other police officer in the execution of his or her duty, is murdered. It will apply to persons aged 18 years and over at the time the murder was committed.

As I said earlier, murder currently carries a maximum penalty of life imprisonment. However, under section 21 of the Crimes (Sentencing Procedure) Act courts retain the discretion to impose a shorter sentence irrespective of whether or not the victim is a police officer. The new law will apply prospectively and where the offender knew or should have known that the victim was a police officer acting in the execution of his or her duty. The new provisions will not apply to persons who have a significant cognitive impairment. The term "significant cognitive impairment" is not defined in the bill. It is intended that the categories of cognitive impairment identified in section 61H of the Crimes Act will fall into the category of cognitive impairment for the purposes of new section 19B of the Act. These forms of cognitive impairment are intellectual disability, a developmental disorder including an autistic spectrum disorder, a neurological disorder, dementia, severe mental illness or brain injury.

In section 61H of the current Act the consideration of those impairments is limited by the requirement that the conditions are such that they result in the person requiring supervision or social habilitation in connection with daily life activities. Under proposed section 19B, in making the decision on whether or not a cognitive impairment is relevant to the court's consideration of a case involving the murder of a police officer, the condition must be significant. The decision on whether impairment is significant will be a matter for the sentencing judge to determine. The amendment will not apply in circumstances where the offender did not intend to kill the police officer and was not engaged in criminal activity that risked serious harm to police



officers executing their duty. I look forward to the implementation of the amendments contained in the bill as an effective way of supporting our police officers. I offer my sympathy to the family, Sonya and her two children, of Senior Constable Damian Leeding, who was mortally wounded a couple of days ago and, according to news reports, whose life support system has been switched off today. I commend the bill to the House.

**Reverend the Hon. FRED NILE** [11.52 a.m.]: On behalf of the Christian Democratic Party I support the Crimes Amendment (Murder of Police Officers) Bill 2011, which amends the Crimes Act 1900 to provide a mandatory life sentence to be imposed on persons convicted of murdering police officers. I commend the Government for fulfilling this election commitment. For many years it has put on record their commitment to introduce this legislation on winning government. I congratulate the Hon. Michael Gallacher, Minister for Police and Emergency Services, on fulfilling this commitment, despite strong criticism from the Bar Association and the Law Society. Such criticism is to be expected when introducing this type of legislation. It is the usual reaction to such legislation over the many years I have served in this place. Mr David Shoebridge asked why we should introduce legislation specifically relating to police officers—

**Dr John Kaye:** That is not what he said. You are misleading the House.

**Reverend the Hon. FRED NILE:** I have not finished the sentence. The member asked why we should introduce legislation specifically relating to police officers who are killed in the line of duty. He asked why we did not have similar concerns for nurses and emergency services personnel. The obvious difference is that a police officer is the only person whose duties involve him in actions where his life could be taken.

**The Hon. Cate Faehrmann:** His or her.

**Reverend the Hon. FRED NILE:** He or she straps on a gun and goes on duty, and there is a good chance that these officers may not return home to their family. It happens, sadly, in too many cases. I requested the Parliamentary Library to collate a record of the number of police officers who have died in the line of duty. The briefing paper states that 16 officers have lost their lives as a result of actions of offenders since 1971. The Honour Roll commemorates those members of the New South Wales Police Force who have paid the ultimate sacrifice in the execution of their duty. The official New South Wales Police Honour Roll records the name, rank, date and a précis of each death that has been accepted as duty-related by the various commissioners and inspectors general of police. The list of names on the Honour Roll totals 250, and not just the 16 referred to who have lost their lives since 1971.

One of the officers on the Honour Roll, Constable Norman Allen, who was shot whilst effecting an arrest on 3 January 1931, was a relation of my wife on her mother's side. The family has a number of articles relating to the brutal event that took his life. As previous speakers have said, as we debate this bill today we note the death of Detective Senior Constable Damian Leeding, a member of the Queensland Police Service. Last Sunday Senior Constable Leeding was shot in the face with the full blast of a shotgun at the Pacific Pines Tavern. He has been on a life support system since the attack. I understand that today the life support system has been turned off. The injury caused such a massive destruction of his head that there was no possibility of recovery; in the meantime his family has decided that his organs will be donated.

I have a vested interest in this legislation because two of my sons served for 20 years each in the New South Wales Police Force. On a number of occasions they faced life-threatening situations. In one case my son Stephen was sent to a robbery that was taking place. In such situations one officer approaches from the front of the premises being robbed and one approaches from the rear. Stephen said that when he came in from the rear the robber pointed a shotgun at him and pulled the trigger. The weapon clicked but did not fire. If it had, his name would have been on the Honour Roll. During the years of service of both my sons it was the practice for off-duty police officers to keep their pistols at home. When they went on duty they would don their uniforms, strap on their pistols and go to work. No other person in our society is in the same category. I have no sense of embarrassment supporting legislation that deals with the murder of a police officer in the line of duty.

The Honour Roll lists the names of outstanding police officers who gave their lives serving the State of New South Wales. On 5 May 1989 Constable Allan McQueen was shot whilst effecting an arrest. He was awarded the Star of Courage. On 9 July 1995 two officers, Senior Constable Peter Addison and Senior Constable Robert Spears, were shot by an offender on the same day. They were awarded the Commissioner's Valour Award posthumously—a little comfort, but obviously not much comfort to the family who would rather their husband or father had come home that night.

One case that received a great deal of publicity was the death of Constable David Carty on 18 April 1997. Constable Carty was stabbed during an attack on him by a gang—a payback in a most savage way for carrying out his duties. Members can read the details of what was done to Constable Carty's body during that attack. Constable Peter Forsyth was stabbed whilst effecting an arrest. Another case that received a great deal of publicity was the death of Constable Glen McEnallay on 3 April 2002, who was shot in his police car whilst he was pursuing a vehicle which he believed contained criminals on their way to carry out a robbery. He was also awarded the Commissioner's Valour Award. Most recently, on 9 September 2010, Detective Constable William Arthur George Crews was shot during the execution of a search warrant in Bankstown. He was also awarded the Commissioner's Valour Award.

Police officers can be likened to soldiers in a war: they are engaged in a front-line battle on behalf of the people of this State, and I believe that they deserve special consideration. Currently murder carries a maximum penalty of life imprisonment. However, under section 21 of the Crimes (Sentencing Procedure) Act courts retain the discretion to impose a shorter sentence, and that applies to cases where a police officer is murdered. As I said earlier, since 2002 the New South Wales Liberal Party and The Nationals have introduced several bills to impose mandatory life sentences on those who murder police officers. It was an election commitment in 2010 that the necessary legislation would be introduced in the first parliamentary session, and that is the legislation that we are debating today.

The bill amends the Act to provide that a mandatory life sentence is to be imposed by the court on a person convicted of murdering a police officer while the officer is executing his or her duties or as a consequence of, or in retaliation for, actions undertaken by any police officer in the execution of his or her duties. It will apply in cases where the person knew, or ought reasonably to have known, the person killed was a police officer, and the person intended to kill the police officer or was engaged in criminal activity that risked serious harm to police officers. It will not apply to convicted persons under the age of 18 years or to persons suffering a significant cognitive impairment. However, this exemption will not apply to a person who has a temporary self-induced impairment at the time the murder is committed, such as being under the influence of drugs.

I am pleased to support the legislation. From the aspect of Christian faith, we hope that the convicted person—as has happened in many cases—will have the opportunity in prison to repent for the murder and seek God's forgiveness. Hopefully, the convicted person will become a Christian and will perhaps be of some benefit and assistance to other prisoners in the prison. As judges used to say in the old days: May God have mercy on their soul.

**The Hon. SHAOQUETT MOSELMANE** [12.04 p.m.]: I oppose the Crimes Amendment (Murder of Police Officers) Bill 2011 as it is itself a death sentence on all those who are unfortunately caught up in situations of murdering police officers. I support the comments of my colleague the Hon. Mick Veitch and I endorse the comments made by Mr David Shoebridge. The Hon. Michael Gallacher effectively said in his second reading speech that the bill amends the Crimes Act 1900 to provide for mandatory life sentences to be imposed on persons convicted of murdering police officers. A life sentence is a sentence for the term of the person's natural life without release or parole.

Currently murder carries a maximum penalty of life imprisonment. However, under section 21 of the Crimes (Sentencing Procedure) Act courts retain the discretion to impose a shorter sentence. This bill will provide that compulsory life sentences are to be imposed by courts on persons convicted of murdering police officers. The bill will remove the current discretion of the court in circumstances where a police officer is murdered. A compulsory life sentence is to be imposed if the murder was committed while the police officer was executing his or her duties or as a consequence of, or in retaliation for, actions undertaken by any police officer.

My opposition to the bill is based on the fact that the bill effectively prohibits the courts from taking into consideration a number of issues, including whether there was premeditation in the killing of the police officer or an intention to kill the police officer. In many cases circumstances can come into play which courts have a discretion to take into consideration. This bill removes that discretion, which means that judges cannot consider factors that could lead to a sentence for murder or manslaughter. The Parliament is effectively making the decision to pass a sentence on all persons who murder police officers and prohibiting judges from considering other factors in a case. The President of the Law Society of New South Wales, Stuart Westgarth, wrote a very powerful letter to the Hon. Paul Lynch, in which he stated:

The Law Society of NSW has always strongly opposed mandatory sentences and in particular mandatory life sentences. The Law Society's Criminal Law Committee (Committee) has reviewed the Bill and urges you to oppose it.

Mandatory sentences have been considered and rejected by sentencing law reviews conducted by the Australian Law Reform Commission—

which took place in 1988—

and the NSW Law Reform Commission—

which took place in 1996.

It is widely recognised that mandatory sentences do not deter offenders. The Government has provided no objective research or other evidence in support of its proposal.

I note the comments of the Hon. Michael Gallacher in relation to this bill being a deterrent for criminals to murder police officers. The reality is that around the world where death sentences are imposed—such as in the United States of America—for rape or drug dealing those offences continue to happen. There is no evidence that this sort of harsh law serves as a deterrent. Currently in exercising his or her sentencing discretion a judge is not bound by the standard non-parole period and may increase it following a trial. Life sentences already exist in the Act and a judge can increase a life sentence beyond 25 years. The Law Society states:

The Bill is counter-productive from a law enforcement and prosecution perspective. The legislation demonstrates a lack of thought as to unintended consequences, including the following:

- it provides powerful disincentives to plead guilty, with attendant acquittal risk, and resource allocation issues for courts, the Crown and Legal Aid;
- there will be no effective incentive possible for a co-accused to co-operate and give evidence, there being no possibility of a discount for such assistance, or alternatively the Crown will be forced to charge manslaughter to get accomplice evidence;
- it would be well-known to juries and may of itself influence acquittal rates;
- there may be greater difficulty in apprehending suspects because of the prospect of life in prison if caught, and more casualties than otherwise would occur during apprehension, due to desperate steps which might be taken to avoid apprehension. Short of a death penalty, life in prison is the maximum sentence anyone can receive, so once someone has killed one police officer, they have nothing to lose by killing anybody else present, including any other police officers—an offender cannot spend more than one lifetime in prison, and
- mandatory life sentences remove any incentive for a prisoner to be of good behaviour ...

In response to Reverend the Hon. Fred Nile, it does not matter that they may repent in prison; they will remain in custody for the term of their natural life. This legislation makes no provision for rehabilitation and for offenders to re-enter society. I concur with the Law Society. Its letter concludes by stating:

The legislation is unnecessary, it undermines the proper role of the judiciary, it will not deter offenders and may have serious consequences from a law enforcement and prosecution perspective.

**The Hon. CATE FAEHRMANN** [12.13 p.m.]: I speak against the Crimes Amendment (Murder of Police Officers) Bill 2011. My colleague Mr David Shoebridge has already clearly stated the reasons for The Greens' opposition to this bill. The bill is not based on evidence, is unnecessary, undermines the judiciary, will fail on its stated aim to act as a deterrent and may have further serious consequences with regard to law enforcement and prosecution. The bill has no support from relevant experts, with mandatory sentencing provisions having been considered and rejected by a number of reviews conducted by the Australian Law Reform Commission and the New South Wales Law Reform Commission. It is, perhaps most importantly, contrary to natural justice and the common law principles that have served this State and community for over a century.

If the bill has so few friends, why is the Government proceeding with it at such a pace? The Government's justification centres on the need for further deterrent, but with this argument so comprehensively demolished today by my colleagues Mr David Shoebridge, the Hon. Shaoquett Moselmane and others, where else can one look for an explanation of the Government's position? As far as I can tell, it appears that the only independent support mustered for mandatory sentencing measures comes from small sections of the community that appear to favour punishment, which is often at the expense of justice. With deep sympathy and compassion, we must recognise that the distraught victims of crime, for example, may not be the best option for an objective consideration of all the circumstances as they relate to sentencing. Nor are the police the best option given their daily and courageous service on the front line admirably protecting the people of New South Wales. They will understandably often have a very different perspective from the independent and specifically trained adjudicators that our judicial system provides. No, these small but powerful pressure groups do not explain the Government's motivation.

I fear the Coalition Government's law and order auction has begun post-haste and will continue as such for the remainder of its term in office. What arrogance from a new government to ignore the best advice of decades of legal expertise and to proceed with such an unproven, unprecedented and controversial law. The Coalition is putting political expediency before good public policy. It is putting expediency before justice and it is putting political expediency before a fair legal system.

Multi-partisan agreements designed to remove politics from law enforcement and prosecution are essential. It must be acknowledged that the previous Government was no white knight in this regard—I call to mind sniffer dogs and public demonstrations of police power at politically opportune times. Why is the Coalition now taking yet another wrecking ball to this important separation between politics and our courts? A telling sign is the Attorney General's backflip since only last year, when he denounced in the *Australian* those who called for mandatory sentencing as "rednecks" who were indulging in a law and order auction. I take issue with the former term but could not agree more with the latter. The *Sydney Morning Herald* reports that he now says police killings are an exception:

The murder of a police officer is a direct attack on our community and warrants exceptional punishment...

It sends a serious message of support to our police...

The Attorney General now thinks the evildoers deserve exceptional punishment. This is an unsophisticated argument coming from a sophisticated legal mind, a former deputy to the Director of Public Prosecutions and the now Attorney General. Why? It is pure politics. The Attorney General has been admonished by his former boss, Nicholas Cowdery, who says:

It is surprising that a lawyer with Greg Smith's experience would support a retrograde move towards mandatory sentencing knowing that it produces injustice and has no effect in preventing crime.

Hear! Hear! After all, as I mentioned earlier, the Attorney General said something similar only last year. The Minister for Police stated in his second reading speech that he wants those who murder police officers to "rot in jail". This kind of language says more about the reasons behind this flawed bill than any other justification offered by the Government. I do not doubt the Hon. Mike Gallagher's passion and commitment to the Police Force. Meanwhile, controversial wage-capping legislation brought forward by his Government is being strongly opposed by the police union.

Like all members in this place and the other place, I have received thousands of emails from police officers protesting against the Government's plan to cap public sector wage increases at 2.5 per cent. Police are also concerned about plans to overturn important occupational health and safety laws. The Government holds police support for mandatory sentencing in high regard. However, given that a police officer has not been killed on duty in this State for many years, I suggest that the Minister rethink the best way to send a message of support to our Police Force. I submit that the removal of judicial discretion might not be one of the highest priorities on the wish list of the everyday local police woman or man.

The evidence to support this bill on any of the suggested grounds simply does not exist and it has not been offered today. This is a very dangerous bill with far-reaching consequences. Members opposite should be ashamed of themselves for allowing the law and order auction to attack and weaken the strength and independence of our judicial system. Members in this place should admit to the base politicking that is playing out around this bill and acknowledge the potential for further retrograde measures if this bill becomes law.

**Dr JOHN KAYE** [12.19 p.m.]: I echo the comments of my colleagues Cate Faehrmann and David Shoebridge in respect of the Crimes Amendment (Murder of Police Officers) Bill 2011. It must be said at the outset that the murder of any police officer is a terrible thing and it should be condemned and punished. However, so too is the murder of any front-line public sector worker, or, indeed, any person at work or anywhere else. Murder is a shocking crime and we should do everything we can to stop it happening. We should not tolerate it. However, this Parliament should be working to minimise the risk of murder being committed. We of course recognise that police officers are some of the most exposed workers in our society to the risk of harm. However, the flaws in this legislation make it completely unsupportable.

Those problems had come under two broad headings. The first is that there is a complete lack of evidence to suggest in any way that this legislation will make police officers any safer in the line of duty. Further, it has to be recognised that this legislation does great harm to the central justice principles that have protected the guilty and the rest of society and have done justice for hundreds of years in the English-speaking world.

There is no mitigation of those two problems in the fact that this has been Liberal-Nationals policy since 2002. It is quite distressing, when the Coalition is pushed for an argument to support this legislation, that the strongest argument it can come up with is, "This has been our policy since 2002. We were elected, therefore it must be right." Such assertions do not compensate for a complete lack of evidence. There is a complete lack of evidence to suggest that this legislation will reduce attacks on police. This kind of mandatory sentencing, as admitted by the Coalition, has not been tried anywhere else in Australia: it has not been tried anywhere else in the world. We have no empirical evidence to suggest it will reduce attacks on police. It is impossible to find any positive evidence to suggest there is any truth in the proposition that mandatory sentencing for any serious crime reduces the incidence of the commission of that crime.

The only thing that can support such an assertion is an appeal to the unproven idea that somebody who is about to commit a crime or is in the commission of a crime will say, "Given that the sentence for this crime is not 25 years or 30 years but mandatory life imprisonment, I will not commit it." Can it be argued that somebody who deliberately sets out to kill a police officer or who, through reckless disregard for the life of a police officer in the commission of a crime causes his death, will say, "No, I will not do that because of mandatory sentencing"? Some may say that is true but there is no empirical evidence to suggest it is true. Further, there is a lot of counterfactual evidence to say that is not the case; that criminals in the commission of a crime do not look at the specifics of the sentencing regime to which they might be exposing themselves.

Despite the lack of evidence, the Coalition, with the able and enthusiastic support of the Christian Democrats, is pushing ahead with this legislation—and despite the fact that it undermines some key principles of justice. It ignores the circumstances under which a crime is committed. The following case was put to us. Imagine a young mother who is having her children removed by welfare workers and she arcs up against the children being removed, the police are called and in utter frustration and fury at the idea of losing her children she grabs a knife, lashes out and kills a police officer. Clearly it is a terrible event, an event we should be doing everything we can to stop happening. I note the Government Whip just made the sign of a gun being shot. I can only presume it means that the individual should be shot. No doubt the Government Whip will explain that later.

Clearly, that is a terrible event but surely the sentence is up to the judge. By taking away the discretion of the judge and forcing a mandatory sentence on that judge we are taking away the ability of the judge to say there are exceptional circumstances in this case. This woman lashed out in a moment of extreme anguish about losing her children and she should be sentenced accordingly. We are dealing with that woman in the same way as we would deal with someone who sets out deliberately to murder a police officer. We are saying to the judges who will be dealing with these matters that it makes no difference whether it is someone who deliberately sets out to murder a police officer or someone who does so in a moment of fury. That seems to violate a key principle of justice, where the punishment should somehow or other match the crime.

It also ignores the individual circumstances of the perpetrator of the crime, such as age. Imagine the case of an 18-year-old who was badly affected by an addiction to drugs and who in the commission of a crime to support that addiction murders a police officer. Again, that is an appalling outcome for the police officer and for the officer's family and something that should be punished by law. But surely there is a difference. Eighteen-year-old perpetrators may well face—with the normal life expectancy—61 years in jail, during which time there is a reasonable chance, if we had appropriate rehabilitation services, they would break their addiction to drugs. Certainly by the time they reach their mid-thirties or forties they are likely to pass through any dangerous addiction to drugs, as the evidence suggests. Surely those individuals have a reasonable opportunity of rehabilitation, at least by the time they reach their thirties or forties, if not after that. Under this legislation those individuals have no opportunity to rehabilitate, no opportunity whatsoever to escape from jail, and are left with no opportunity to rehabilitate. Surely this is a harsh, unreasonable and ineffective way of delivering criminal justice.

Consider the circumstances of an individual involved in the joint commission of a criminal enterprise, somebody who sets out with some understanding that one individual is carrying a gun and with a reasonable suspicion that a police officer might attend the commission of that crime and the police officer is killed, not by that individual but by another. Under this legislation that person would never be released from jail or at least until he or she is at the point of dying or is severely ill. That makes no sense. Surely there is a difference between a person who deliberately shoots a police officer and a person who is involved in a criminal enterprise in which a police officer is killed.

The final concern with this legislation is that it takes away all proportionality from sentencing and, in many circumstances, will make police officers less safe not more safe. Mr David Shoebridge pointed out the

case of a siege where one police officer has already been killed and the other police officers no longer have the protection of the apprehension of a sentence: the person who shot the first police officer knows that he or she is facing life imprisonment and because there is no proportionality in the sentencing there is no incentive for him or her—

**The Hon. Dr Peter Phelps:** What is the proportional response to killing you as a member of Parliament? Is it life? Is it 25 years? What is the proportional response? You have raised it. What is the proportional response?

**Dr JOHN KAYE:** In a state of complete shock I acknowledge the interjection by the member but I will not respond to it because I think it is a totally disgraceful statement to make.

**The Hon. Dr Peter Phelps:** You raised proportionality. Answer your own proposition.

**Dr JOHN KAYE:** The member has yet again debased this Parliament by such statements. The problem with this legislation is that it takes away proportionality from sentencing and therefore it makes police less safe rather than more safe. Mr David Shoebridge raised the case of a police officer involved in a siege in which one police officer has already been killed. Other police officers no longer have the protection that the person who shot the first police officer would face a further penalty for shooting them. The contra-positive is true. If it is true, as claimed without evidence by the proponents of this bill, that persons in the commission of a crime are thinking about the nature of the sentence they would incur if they kill a police officer, by saturating the sentencing by making everybody who kills a police officer subject to imprisonment for life we are taking away the protection that proportionality provides in sentencing.

Nothing is to be lost by killing another police officer or behaving with reckless disregard towards further police officers. The Bar Council points out that this legislation makes it less safe for police apprehending individuals found guilty of the act of murdering a police officer because they can be given no further greater penalty. Nothing is to be lost by killing more or behaving recklessly towards police officers apprehending someone already found guilty or who knows he or she is guilty of killing a police officer. It is ineffective legislation without evidence that it will work. The legislation will remove the discretion of judges to provide justice in individual cases. I note that Reverend the Hon. Fred Nile referred to 250 police officers who have died since 1971, and I do not dispute those figures.

**Reverend the Hon. Fred Nile:** No, not since 1971—from the beginning of when records were kept, going back to the 1800s.

**Dr JOHN KAYE:** Sorry, I misheard the member. I thought he was challenging the figure of 16.

**The Hon. Michael Gallacher:** It was in 149 years.

**Reverend the Hon. Fred Nile:** The figure that has been cited today is from 1971.

**Dr JOHN KAYE:** I misheard the member. Is that 250 who have died or 250 who have been murdered?

**Reverend the Hon. Fred Nile:** It is 250 who have died in the course of their duty and they are on the honour roll.

**Dr JOHN KAYE:** There is something badly wrong with the figure of 250 who have died—it is terrible that all of them have died, but it must be understood that many police officers die as a result of vehicle accidents, heart attack, falling and all sorts of things.

**Reverend the Hon. Fred Nile:** It was in the course of their duty and they are on the honour roll.

**Dr JOHN KAYE:** There is no question that these people died in the course of their duty, but police officers have motor car accidents in the course of their duty, they have fatal falls in the course of their duty. If we go back 149 years we will see that they fell off their horses. Such occurrences are bad and we should consider ways to minimise them, as we should in any workplace, but that does not address the legislation. Since 1971, 16 police officers have been murdered and it is those 16 and their predecessors that are relevant. Reverend the Hon. Fred Nile also said that the Law Society and the Bar Association had written to all members of Parliament opposing the legislation. He did so in a way that implied there was something wrong with that.

**Reverend the Hon. Fred Nile:** I said they were predictably opposing it, as is their right. I agree with their right to make a submission.

**Dr JOHN KAYE:** They are predictably opposing it. He supports their right to say it, but he thinks the fact that they said it is predictable. He should ask: Why is it predictable? It is predictable that these two institutions stand up, as they ought to do, for a fully functional criminal justice system that delivers justice to all parties. Where they, as practitioners in the law, see that justice being undermined by legislation such as this, they of course stand up and state, "There is something wrong here and we should oppose it." It was not simple opposition. The opposition of the Law Society is based also on the opposition of both the New South Wales Law Reform Commission and the Australian Law Reform Commission, which the Law Society points out recognised that mandatory sentences do not deter offenders. As I have said, the Government has provided no objective research or other evidence in support of the proposal.

The Law Society quotes the New South Wales Law Reform Commissioner saying that being in effect a sentence passed by Parliament mandatory minimum sentences remove judicial discretion and amount to an unwarranted intrusion on judicial independence. It may be predictable that the Law Society stands up for judicial independence and that the Bar Association stands up for evidence-based legislation; that is exactly the kind of predictability we would expect of our legal practitioners and we ignore it at our peril and at the peril of the system of justice in New South Wales. Reverend the Hon. Fred Nile said that police officers are the only people who go to work with a weapon. That is not true. I wonder what security guards, the Armed Forces and prison officers would have to say about that statement.

*[Interruption]*

The barking Government Whip says, "Well, why not amend it to prison officers, security guards and armed forces?" What about nurses? Let me talk about nurses in emergency departments who late at night, as the Hon. Natasha Maclaren-Jones would know only too well, face shocking odds, dealing with people who are drug-affected, people living with mental illness and people who are violent. They are exposed to violence in the same way as police officers, security guards, prison officers, some ambulance drivers, fire brigade officers and, I am sad to say, some teachers are exposed to violence.

One cannot start to single out one class in society and say that their position is more difficult than others. This legislation may make members of the Liberal Party and The Nationals feel good, it may make some voters feel good and it may even make some police officers feel good that something is being done, but in reality this legislation is opposed by logic and is not supported by the evidence. It is opposed by legal practitioners in our society. It is bad legislation. It is law that will not make police any safer and may in some circumstances make them less safe. This legislation will undermine the independence of the judiciary and will distract from the imperative to address the causes of violence against all front-line workers. It does not make front-line workers safer; it undermines our judicial system. It is bad legislation and it should be opposed.

**The Hon. MICHAEL GALLACHER** (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [12.37 p.m.], in reply: I thank all honourable members for their contributions to this important debate, particularly Government members who have shown great support for the Crimes Amendment (Murder of Police Officers) Bill 2011. Since 1971 the names King, Riley, McDiarmid, Gibb, Eaton, Burmistriv, Haydon, Katsivelas, Quinn, Sinclair, McQueen, Addison, Spears, Carty, Forsyth, Affleck and McEnallay are the names of 17 officers who died doing their job protecting our community. Their names are on the wall of remembrance, a short walk across the Domain. Today's debate is a culmination of a nine-year journey by members of the Coalition to pass legislation to further protect our police officers.

The New South Wales Liberals and Nationals have advocated for this legislative change since 2002, when former leader John Brogden introduced a private member's bill. As honourable members would be aware, I joined the force in 1980. While I was still in training our instructors came to us one day at the gymnasium at the old police academy and sadly informed my classmates and me that Sergeant Keith Haydon had been shot dead by an offender and had succumbed to his injuries up at Mount Sugarloaf in the Hunter Valley. It was my first experience with losing a colleague on duty. I did not know Sergeant Haydon and I was still in training, but the lasting impression when an officer is killed in the line of duty is evident not only to those who know me but also to all police officers.

Unfortunately, my introduction to a police officer being killed in 1980 was not my last. I did not know personally any of the 17 officers I have named, but I can assure members that many officers, former and serving

officers, did know them and the circumstances surrounding their tragic deaths. Those 17 officers who lost their lives deserve to be remembered by this House and the community. Members may recall that in my second reading speech I referred to 12 officers. It was a figure that had been given to me by a previous Minister for Police, which I used last week in good faith. Since my contribution last week I went back to the New South Wales Police Force Honour Roll, and today I would like to correct the figure to 17. Since 1970, 17 officers have died while undertaking their duty.

I want to respond to some of the comments made during this debate. Mr David Shoebridge spoke about a hypothetical situation in which a 19-year-old is unwittingly involved in drugs. I cite for his benefit the murder of Constable Forsyth on 27 February 1998. Constable Forsyth was 29—in my view, he was also a young person—and he had been in the Police Force for three years. Constable Forsyth was walking to his home in Ultimo with Constable Semple and Constable Neville, and they were approached by a young male selling ecstasy tablets. After speaking with this person and a second offender, Constable Semple informed them that they were police officers and they attempted to make an arrest. One of the offenders then produced a knife and stabbed Constable Forsyth and Constable Semple before running off. These offenders were pursued for a short distance by Constable Neville before he quickly returned to assist his injured colleagues. As we all know, at 12.14 the following morning, on 28 February 1998, Constable Forsyth died from his injuries. That is not a hypothetical situation; it is a fact.

I will give another example, because it is important when we have this debate that we put some names around the hypotheticals that continue to be put up—what if this and what if that; what if the person was left-handed and had a limp, and so on. Let us not deal with hypotheticals; let us deal with some relatively recent cases that might jog members' memories. At 11.30 a.m. on 4 April 1984 Constable Katsivelas, who had just completed his probation—he was 20 years of age, another young person—was on duty at Concord Repatriation Hospital, where he was guarding a prisoner who was suffering from heroin withdrawal. The prisoner asked to be allowed to go to the toilet. So the young constable unlocked one handcuff, and with a nurse's aide took the prisoner to the toilet.

**The PRESIDENT:** Order! There is far too much audible conversation in the Chamber.

**The Hon. MICHAEL GALLACHER:** Mr David Shoebridge might be interested in this. As the prisoner left the toilet cubicle he suddenly leapt at the constable, knocking him to the ground. The prisoner then struggled with the young constable, who was 20 years of age, seized his service revolver, and shot him twice in the chest before escaping. That is not a hypothetical; it is a real case.

**The Hon. Penny Sharpe:** And the judge could have given him a life sentence if the judge had wanted to.

**The Hon. Dr Peter Phelps:** And if he was a left-wing judge, he would get off easy.

**The Hon. MICHAEL GALLACHER:** We will come back to this little argument that members opposite keep putting—

**Mr David Shoebridge:** Point of order: The Government Whip just made a disparaging comment about members of the judiciary, suggesting that there are left-wing judges who would let the offender off easily. It is out of order for members of this House to cast aspersions upon the judiciary and the independence of the judiciary in that manner. I ask the Government Whip to withdraw his unworthy comment.

**The Hon. Dr Peter Phelps:** To the point of order: I am not casting aspersions on a particular justice.

**Dr John Kaye:** To the point of order: The judicial officers of the State hold a warrant from the Crown, and therefore by casting aspersions on the judicial officers as a class of people the Government Whip is casting aspersions on the Government. Particularly for a monarchist, that is totally outside the standing orders.

**The Hon. Dr Peter Phelps:** I stand by my previous comment that you're a joke, even for The Greens.

**The PRESIDENT:** Order! The Government Whip will come to order. I refer members to a number of former Presidents' rulings relating to reflections on judicial officers. In particular, rulings by President Willis and President Chadwick are relevant. However, it is clear that those rulings relate to reflections on an individual member of the judiciary rather than the judiciary as a group. I remind members that interjections are disorderly at all times.



**The Hon. MICHAEL GALLACHER:** The Hon. Cate Faehrmann made reference to the fact that a police officer had not been killed for many years. I draw her attention to the matter involving Constable David Carty on 18 April 1997. Constable Carty was 26 years of age and he had been a police officer for three years. At about 8.00 p.m. on 17 April 1997 Constable Carty and other police had reason to speak to a number of people in the street at Fairfield while carrying out foot patrols. Later the constable and other police, whilst off duty, attended a local hotel, the Cambridge Tavern. At about 2.10 a.m., as he was leaving the hotel, Constable Carty was set upon by a number of offenders—including some of the persons he had spoken to earlier in the day—and he was viciously stabbed to death.

Senior Constable Michelle Auld, who had gone to Constable Carty's assistance, was also seriously assaulted in this cowardly attack. If the Hon. Cate Faehrmann suggests that 1997 is a long time ago, I can assure her that in the minds of police officers and the family of Constable Carty it is as if it were yesterday. A little bit of research on the part of the Hon. Cate Faehrmann would not go astray. In relation to Constable Carty's murder, it has also been suggested during this debate that, "They'll all get thrown in. They'll all go in for murder. They're all gone for a row." Members have failed to take into consideration that circumstances come into play that distinguish between murder, manslaughter and a negligent act—and, of course, innocence. In the case of Constable Carty, a number of people were involved in a vicious attack. I do not intend to go into the details of the attack, but I assure members that the details were horrific.

**The Hon. Dr Peter Phelps:** Sickening.

**The Hon. MICHAEL GALLACHER:** They were absolutely sickening, as the Hon. Dr Peter Phelps says. Two brothers were involved in this murder. One was found guilty of maliciously inflicting grievous bodily harm to Constable Carty. The other brother was found guilty of murder. So, yes, the court does have an ability to look at the circumstances of the offence and determine whether the offence is appropriately murder, manslaughter or a negligent act. During this debate it has been continually suggested that "They're all going in."

A similar argument has been raised with regard to the McEnallay matter. In this debate we have heard about joint criminal enterprise. We have heard comments by the previous Government in relation to its views about that, which I will come to shortly. I make the point that members opposite should have a look at the McEnallay matter. I think the example was given of a person with a gun doing something, there are other people in the car, and they all get charged and they will all be convicted of murder and serve time for that offence. Members should have a look at the McEnallay murder—which, according to The Greens, is one of those murders that occurred a long time ago. In fact, it occurred in 2002, which does not strike me as a particularly long time ago.

**The Hon. Cate Faehrmann:** We didn't say that.

**The Hon. MICHAEL GALLACHER:** You did.

**The Hon. Cate Faehrmann:** No, we didn't.

**The Hon. MICHAEL GALLACHER:** You did. Have a look at your words. Don't try to backpedal now. Have a look at your words.

**The Hon. Cate Faehrmann:** We said nothing about that murder being a long time ago.

**The Hon. MICHAEL GALLACHER:** I suggest the Hon. Cate Faehrmann have a look at her words about the fact that we have not had these incidents happen for years, or for a long time. With regard to the McEnallay murder in Maroubra, a distinction has been drawn between offenders in a motor vehicle where one offender is involved in the murder and issues arise in relation to criminal enterprise. A distinction has been drawn in relation to the charges imposed on the individuals in relation to their role in the murder of that police officer. Not all the offenders charged were eventually convicted of murder; some were convicted of manslaughter and others were convicted of firearms offences. Some members opposite have given the impression that somehow innocent people who are in the wrong place at the wrong time have committed stupid, foolish acts, as expressed in one comment. In my view, sticking a knife into somebody's chest does not constitute a foolish act. It is stupid, it is murderous and it is criminal. A person who drives a knife into a person's chest has the intent to kill that person. To somehow suggest that these are the result of people's little brain snaps—

**Mr David Shoebridge:** That is why it is called murder.

**The Hon. MICHAEL GALLACHER:** That is exactly right. Finally, the lawyer is returning to the fact that we have to prove murder.

**Mr David Shoebridge:** We are all talking about murder, Michael.

**The Hon. MICHAEL GALLACHER:** I do wonder at times what the member is talking about in relation to these matters, but it is now consistent that we are talking about murder. Justice has also been referred to in this debate. In my view the success of justice is where it is consistent and following the passage of this bill when a police officer is murdered justice will be very consistent: there will be a mandatory sentence for those who murder a police officer. The expression "killing a police officer" was also used in this debate. There is a distinction, and I again draw it: the difference between manslaughter—negligent cause of death—and those who murder a police officer.

I loved the reference by Mr David Shoebridge to a siege—it was one of my personal favourites. The example was given of a person who, having earlier shot a police officer during the siege, says, "Well, I am going away for life with a mandatory sentence so I might as well just keep shooting." Those same people who are opposing the mandatory sentence keep telling us that the courts have the ability to give somebody life anyway. They are having a shilling each way. They are saying that the courts have the ability to give someone life, if that is what they deserve for murder, yet somehow the offenders are saying, "Oh well, I might have a chance under the old system." It is quite a silly argument to suggest that people will say, "Well, I have killed one police officer so I might as well go for a row." Is that the pre-emptive strike we will be seeing in the future? I hope we are never faced with the situation when a couple of police officers are killed and The Greens say, "The only reason the second person was killed was because you passed this terrible legislation. It must have been in the mind of that person that they had killed one so they might as well keep going for a row." That is a stupid argument.

Another argument put forward by The Greens that I enjoyed was that the victims—that is, the families of murdered police officers—will be subjected to more trials. I have not seen too many of these cases going through the court where the person nods the scone—to use the colloquial—and pleads guilty at the District Court or Supreme Courts and says, "Yes, I agree with the facts. I did murder that police officer. Let us rock 'n' roll." Matters such as these go through many hearings, and they will continue to do so, but there will be one bright light burning in the minds of the families of the murdered police officers: they will know that if the court upholds the charge of murder there will be consistency in sentencing. This legislation is all about ensuring consistency in sentencing.

The Hon. Cate Faehrmann made mention of a small number of community members and that somehow this legislation was all about politics. One community member who has been outspoken—members have probably heard of his name—is Andrew Scipione. He is respected around the courts of this State for the role he plays protecting the community and police. He was one of the first to speak out. He said:

There can be nothing more despicable than to kill a police officer in the execution of his or her duty ... It is an act that goes right to the very heart of justice in this nation.

I draw the attention of the honourable member to the comments of one of those little vocal minorities. Perhaps when next speaking to people about these sorts of matters she will take the time to speak to the Commissioner of Police. I also liked the comment of Mr David Shoebridge about robbing prisoners of the chance of reform. That touched a place somewhere in my body. Nothing was said about robbing the community or robbing the families of those police officers who have been murdered—no, robbing somebody of the chance of reform. Some of the recent cases quite simply speak for themselves and it is sad that The Greens have not taken the time to speak to people on the other side of the ledger about these matters. It was unfortunate that Mr David Shoebridge, who raised the case of a hypothetical 19-year-old, was not in a position to listen to what I was saying when I gave a factual recreation about a young person. Be that as it may, I am sure when he reflects on this matter in the future he will take the time to look at my comments.

This legislation is about the 16,000 police who put their lives on the line every time they go into a situation in which they have no control, and in which they seek to gain control, to arrest offenders and to protect our community. The shooting of an officer in Queensland on Sunday night demonstrates how quickly a tragic event can occur. I speak on behalf of all members in this Chamber in passing our sympathies on to the family of Senior Constable Damian Leeding and all police officers in Queensland. We understand that his life support machine is to be turned off today. I suspect that there will be further announcements in relation to this matter.

Police have a sworn duty to assist community members who are in need or to confront offenders, whether that officer is on or off duty. Today I am asking members to take an important step and to acknowledge that the occupation of a police man or woman brings with it a different set of dangers to other occupations, even those of other emergency service personnel. Checks have been done with the Ambulance Service of New South Wales and Fire and Rescue New South Wales with respect to officers being killed in the line of duty. I am

informed that in the past 10 years there have been no paramedic workplace fatalities as a consequence of paramedics responding to call-outs. I am similarly advised that Fire and Rescue New South Wales has no record of any incidents involving firefighters being killed by a member of the public as a consequence of their job in the past 25 years. As I have said, 17 police officers have been killed whilst undertaking their duties since 1971. Every day more than six police officers are assaulted. When members opposite consider why police should be given special consideration, I take the House back to 1997 when former Attorney General Jeff Shaw, an individual well respected by all members in this place, spoke on the Crimes Amendment (Assault of Police Officers) Bill. He said:

This bill is predicated upon a belief that police officers are rightfully owed a measure of protection by the community. That is so for at least two reasons.

First, police officers place themselves in positions of risk on behalf of the community. Second, an attack on a law enforcement officer strikes at the core of our system of democratic government.

Those who seek to harm the persons responsible for the enforcement of laws passed by Parliament should be subject to special punishment.

That principle is already recognised in the Crimes Act. Section 58 of that Act imposes a higher maximum gaol penalty for the offence of common assault of a police officer than is imposed for the same offence against a civilian. Indeed, the relative maximum penalties are five years and two years respectively.

Surprisingly ... the principle is not carried through by the Crimes Act to apply to more serious assaults that in fact inflict injury.

Coming to the assistance of the community at any time, whether they are on or off duty, is not something that police officers can make a choice about. This House needs to acknowledge that being a police officer brings with it a different set of dangers to those of other occupations. Today is an opportunity for all members, particularly those opposite, to vote in support of police officers. I take Opposition members back to the days after the murder of young Glenn McEnallay and I take them to the Labor values proclaimed by a past leader, former Premier Carr, who said:

I want those who murder police officers to go to gaol forever. I want those who murder police officers to go to the dingiest, darkest cell that exists in a prison system ...

It was not the Coalition that used the term "rot in gaol"; it was a former Premier, Bob Carr. He said:

We want these people to rot in gaol.

Today members opposite have the opportunity to stand up for the words of their former Premier. They also have the opportunity to stand up for the words of a former Parliamentary Secretary for Police, who said:

The Government wants people who murder police officers to rot in prison; we have never resiled from that position.

As I told the House on 24 May 2011, I do not expect that the new legislation will need to be used often. I hope it is never used. But we need it, firstly, to deter those who would consider even for a fraction of a second murdering our police and, secondly, to ensure that those who do murder police face the consequences of their actions. I again thank all members who have contributed to the debate. I understand some members face a difficult decision, given the contributions of Opposition members. Whilst I know that they support police, I ask them to accept the proposed legislation to ensure that the integrity and position of police officers are upheld when such officers are the victims of crime. I commend the bill to the House.

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

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

## **QUESTIONS WITHOUT NOTICE**

### **PUBLIC SERVICE JOBS**

**The Hon. TONY KELLY:** My question without notice is directed to the Minister for Finance and Services. Why will the Minister not give the House a guarantee that the Government will not cut public service jobs in order to achieve savings under his Government's wages policy? What does he have to hide?

**The Hon. GREG PEARCE:** We will debate the Government's wages policy legislation hopefully later this afternoon. Members will have adequate opportunity then to fully ventilate this issue.

### INTEGRATED TRANSPORT AUTHORITY

**The Hon. JOHN AJAKA:** My question without notice is addressed to the Minister for Roads and Ports. Can the Minister for Roads and Ports update the House on the establishment of the Integrated Transport Authority?

**The Hon. DUNCAN GAY:** I am pleased to answer this question. Finally, I have been asked a question about an area for which I have responsibility. I have had to rely on my Parliamentary Secretary to ask this question. I have had nothing from members of the Opposition. They are completely devoid of ideas in this area. A bloke called Park downstairs should have a few ideas on this.

**The Hon. Greg Pearce:** Did you say he was parked downstairs?

**The Hon. DUNCAN GAY:** He is parked down there and he was parked in transport before that. If members opposite want to ask me questions about that, I will be happy to answer them as well. As promised at the March election, the New South Wales Liberal-Nationals Government is committed to providing a truly Integrated Transport Authority that will coordinate transport planning and services and ensure that projects are built on time and on budget. The establishment of the authority will, for the first time, ensure that planning and policy are fully integrated across all forms of transport, including roads, rail, buses, ferries and ports. Rather than working in the silos, planning and policy experts from all transport agencies will work together. This means that operational agencies such as the Roads and Traffic Authority, RailCorp, the State Transit Authority, Sydney Ferries and Maritime NSW will be free to focus solely on delivering reliable, safe and clean front-line transport services to customers.

This integrated system will be totally opposite to the ad hoc and piecemeal approach taken by successive Labor Governments over the past 16 years. Labor's culture of incompetence and cronyism resulted in the completion date of the Pacific Highway upgrade being delayed for more than a decade and half a billion dollars being spent on the Rozelle Metro without a centimetre of rail being laid. I do not hear a word from them. They are absolutely silent.

**The Hon. John Ajaka:** They are embarrassed.

**The Hon. DUNCAN GAY:** They are embarrassed and they have every right to be embarrassed. It is an indictment of their time in office that they wasted \$500 million on a railway without laying any line. Labor's incompetence resulted in the now infamous broken promise of the North West Rail Link and \$300 million in Federal funding not being utilised to advance the M4 East extension. Albo the Good was astonished by State Labor's failure to use the money he provided to them to initiate planning and preliminary works on the project. They did no planning; the project was not shovel ready. Labor's incompetence resulted in the axing of the high-speed rail link to Newcastle and the Central Coast, which was first promised by Labor in 1988.

Labor's transport failures and broken promises are akin to a country mile—they keep going and going and going. With seven roads Ministers in the last five years—Scully, Costa, Tripodi, Roozendaal, Daley, Campbell, Borger—it is no surprise that Labor failed dismally to deliver any meaningful reforms. Whereas Labor failed to deliver, this New South Wales Government has set itself an ambitious target of just three months to define the structure of the new integrated authority. We hope to have the authority up and running by the end of July. The new authority will include a Customer Experience Division. [*Time expired.*]

**The Hon. JOHN AJAKA:** I ask a supplementary question. Will the Minister elucidate his answer?

**The Hon. DUNCAN GAY:** There is more good news still to come.

**The Hon. John Ajaka:** It was too good to leave it there.

**The Hon. DUNCAN GAY:** We could not have left it where it was. The new authority will include a Customer Experience Division. Our customers' experience will be different from that of customers over the last few years. The division will develop a new approach to engaging with the people of New South Wales on transport issues. Its principal role will be to create a customer-first culture in transport. For the first time in 16 years commuters, motorists and transport operators of New South Wales will come first, not the political ambitions and machinations of Labor Party apparatchiks parachuting their friends into key positions. The customer will become the centre of everything we do in transport, from planning and building new infrastructure

to delivering day-to-day services. The Integrated Transport Authority also will include a Freight and Regional Development Division, which will make sure freight services and facilities meet the needs of the State economy, with particular focus on regional New South Wales.

### NORTH WEST RAIL LINK

**The Hon. CATE FAEHRMANN:** My question without notice is directed to the Minister representing the Minister for Transport. Given severe rail capacity constraints on the lower north shore of Sydney, through which trains from the new North West Rail Link will travel to reach the central business district, as well as a recent departmental briefing note showing that only two additional trains per hour can currently be accommodated on the Sydney Harbour Bridge and various options for increasing rail capacity on the lower north shore and the Sydney Harbour Bridge, when will the Government determine the best solution for these capacity constraints? Further, when will construction begin?

**The Hon. Tony Kelly:** That is an excellent question.

**The Hon. DUNCAN GAY:** It is, and I congratulate the Hon. Cate Faehrmann on asking it. I take this opportunity to congratulate The Greens because, despite the fact that they do not have a leader, they have a better question time committee than the Opposition does. This excellent question deserves an answer. Network investigations undertaken in the past have looked at various options for providing greater capacity to the lower north shore and across the harbour.

**The Hon. Greg Donnelly:** Just table the answer.

**The Hon. DUNCAN GAY:** I am trying to answer the question, but it is difficult having regard to the wall of sound coming from members of the Labor Party. The options include the previous Government's proposal for a central business district rail link, which included quadruplication between Chatswood and St Leonards and a tunnel underneath the harbour.

Other options that were looked at were technological improvements to signalling along the corridor, enabling more services; and options for using existing tracks on the Harbour Bridge itself. Ideas about putting another tier on the Harbour Bridge have been proposed in the past and have gone nowhere. This Government will not be forced into picking projects by people who may be pushing particular barrows. We will not nominate one of these options that were identified in the past, or any other option that might emerge in the future, without undertaking a proper strategic planning exercise. I note that we have heated agreement on that.

We know full well that the network has capacity issues. But the point is that the problem concerns the whole rail network, not just the North Shore line and the North West Rail Link. The western line is our busiest line and it is essential that we manage the capacity on that line also. So the issue is how we can get the most out of the existing rail network and what new infrastructure and technologies we need in the longer term to make it work most effectively for the customer. Before we make those decisions we will carry out the strategic planning. We will look at the long-term rail network and how it will be integrated with the broader transport network. We will also look closely at Sydney's land use and transport needs and the options available to meet those needs. Then, and only then, will we decide what needs to be done.

Central business district capacity increases, a second harbour crossing, other infrastructure and network improvements are all options that the Government will work through in developing its long-term strategic plan. The important thing is getting the planning for the whole network right for the future; it is not about picking a single project that may be a solution in a small area.

### WORKCHOICES

**The Hon. SOPHIE COTSIS:** My question is directed to the Minister for Finance and Services. I refer the Minister to his comments in this place on 28 September 2006 when he described Labor members as "hysterical" in their opposition to WorkChoices. Does the Minister accept that the concerns of this side of the House were justified? Does the Minister still support WorkChoices-style workplace laws?

**The Hon. GREG PEARCE:** I refer the honourable member to much more recent comments in which I have acknowledged that WorkChoices is dead and that a fair work regime has replaced it.

### TILLEGRA DAM

**Dr JOHN KAYE:** My question without notice is directed to the Minister for Finance and Services. Will the Minister clarify if the Government is honouring a commitment made by former Premier Kristina Keneally in a media release of 25 November 2010 announcing the cancellation of the Tillegra Dam project that "buy-back clauses" with the previous owners of land purchased for the construction of the dam "will be honoured should landowners wish to repurchase their land"? Is the Minister aware that Hunter Water is now offering a right of first refusal to the five landowners and has not committed to selling the land back, as promised by the former Government?

**The Hon. GREG PEARCE:** I indicated to the House earlier that one of the first things I did as Minister was to visit the Hunter Water Board because I had not previously had shadow responsibilities in the water space so I wanted to get up to speed as quickly as I could in relation to some of the issues concerning water.

**The Hon. Greg Donnelly:** Water space is it? You're lost in space.

**The Hon. GREG PEARCE:** This is an important question; the member should settle down.

**The PRESIDENT:** Order! I call the Hon. Greg Donnelly to order for the first time.

**Dr John Kaye:** You are wasting time. You have three minutes and seventeen seconds to answer the question.

**The Hon. GREG PEARCE:** Thank you. It is very good that Dr John Kaye goes to press releases from the former Premier for his views on what the former Premier's policies were, unlike members of the Opposition, who rely on newspaper quotes from which they in turn quote selectively. If that is the level of the Opposition's research, then it is no surprise that it keeps coming up against brick walls, because the Opposition simply does not know.

I return to the former Premier's press release. As I said, I went to the Hunter Water Board because I was very interested in the issue of Tillegra Dam, and I have not got to the bottom of the matter yet. I was advised that Hunter Water had been purchasing land in the Williams River valley since the early 1980s; it now has a significant holding of about 151 lots totalling around 6,000 hectares—a lot of land. There is obviously a range of issues with properties that were purchased as far back as the 1980s. One of the issues germane to the honourable member's question is that some of the contracts for sale—and I have not looked at the contracts myself—included a first right of refusal for the former owners to buy back the land if Hunter Water chose to sell it.

**Mr David Shoebridge:** Was it a promise or a requirement?

**The Hon. GREG PEARCE:** It was not a promise or a requirement that Hunter Water would sell the land. I believe that is where the controversy arises: whether it is a policy of Hunter Water to now sell all of this land or just some of the land. Individual contracts will have to be looked at in a fairly detailed way, and, as I said, there are a number of those contracts. In due course I will get the detail of the contracts and I will be happy to bring that information to The Greens and have a talk about it. In the meantime, considerable work is being undertaken to develop and project-scope a new Lower Hunter Water plan. Therefore, we have a fair amount of time for input into this process to ensure that all stakeholders, including former landowners, have their views heard. We will look at this over a period of time.

### POLICE RESOURCES

**The Hon. MARIE FICARRA:** My question is directed to the Minister for Police and Emergency Services. What is the Minister doing to address community concerns about policing resources?

**The Hon. MICHAEL GALLACHER:** I congratulate the Hon. Marie Ficarra on a very good question. Despite the claims of some members on the other side of the House that changing the time of question time in the Legislative Council would mean that our question time would not attract the attention of the media, I think it is fair to say that more media attention will be given to this place because of questions like the one just asked by the Hon. Marie Ficarra. The Opposition should use the question asked by the honourable member as a model for the questions it would like its members to ask.

Policing resources is a very important issue. It probably comes as no surprise to members on this side of the House and to some on the crossbenches—members of the Opposition are not really interested in, and do not really care about, police—that we are committed to undertaking a widescale audit of police numbers and resources. It is a commitment that we made in the lead-up to the last election, and after 16 years of fudged numbers, increased bureaucracy and more than 65 station closures in the past five years, this audit will give us and the community a clear picture of where our police are, where they need to be and how best to use them to protect and serve our communities.

Labor rubbished the idea of an audit. Labor rubbished anything that was not its idea and anything that was too difficult. We came into government and we are faced with this dirty clothes basket full of soiled nappies that the former Labor Government refused to clean—one issue after another that the former Labor Government refused to address. Now in Opposition, Labor wants to hang us out to dry because we are prepared to take the challenges head-on and have a look at them, one challenge at a time. If there is one thing we know about members of the Opposition, it is that they hate to find out about their failures; they hate to find out publicly what they failed to address. They are the masters of spin and cover-up and they are incredibly lazy. All these things will be revealed in the course of the audit. Members opposite slouch into question time, which starts at 2.30 p.m. Some of them stagger in at 2.45 p.m. and some do not bother to come at all.

**The Hon. Eric Roozendaal:** Point of order: The issue is relevance. The Minister's answer is not within a bull's roar of the question. He is straying well away from the question asked of him. I know it makes him and his mates feel better to try to kick members of the Opposition, but he should answer the question asked of him and save the theatrics for the party room.

**The Hon. MICHAEL GALLACHER:** The problem—

**The PRESIDENT:** Order! Does the Minister wish to address the point of order?

**The Hon. MICHAEL GALLACHER:** No, Mr President. You are just giving me that look.

**The PRESIDENT:** Order! The Minister will know it when he is getting it—trust me. There is no point of order.

**The Hon. MICHAEL GALLACHER:** The problem when members opposite turn up late is that they do not know what questions have been asked. They do not know that the questions being asked are recycled and that we have answered them. They can recycle their policies, press releases and questions, but they will not escape from their 16 years of ineptitude. Members opposite meandered through the Police portfolio. We had a different Minister for Police every week and some lasted for only a couple of days.

**The Hon. Duncan Gay:** One lasted four days.

**The Hon. MICHAEL GALLACHER:** Was it four days? Ministers would hit the chesterfield and then they would be gone. This Government will continue to support our police officers. I am more than happy to speak—*[Time expired.]*

**The Hon. MARIE FICARRA:** I ask a supplementary question. Will the Minister elucidate his answer on police resources?

**The Hon. MICHAEL GALLACHER:** I will refocus on this very important issue. The Government is peeling back the layers of bureaucracy, deceit and spin. That is why it has appointed Mr Peter Parsons to conduct an audit. I am sure the Leader of the Opposition knows Peter Parsons. He is a former Assistant Commissioner of Police with more than 36 years of experience in the New South Wales Police Force. His first posting was at Hurstville and from there he went to West Kempsey and Gunnedah, and as a result he understands country policing. He has walked the beat as a general duties officer and he served as a detective, as the local area commander at Bankstown and as commander of the north region before ending his career as the commander of the Special Services Group. He was awarded the Australian Police Medal in 2004, and we would be hard pressed to find someone better qualified to conduct such an audit.

Commissioner Scipione has offered his full support for the audit and has established an internal working party to assist Mr Parsons. The audit will cover three areas: police numbers and current allocations,

authorised strength and alternative measures including full-time equivalents and operational staff. It will also examine police station opening hours, police station closures implemented by the former Government and the effectiveness of the current local area command structure, especially in regional areas.

*[Interruption]*

I acknowledge the encouragement being offered by members opposite. They should continue in that vein. I have asked Mr Parsons to review police resourcing, such as the allocation of support staff, police and other staff in specialist commands and the provision of capital equipment, including police vehicles. Of course, the audit will not be prevented from considering other issues that arise during consultations with stakeholders. In fact, before question time today I had lunch with members of the Police Association and spoke about these issues. If members opposite want to hear more, I would be only too happy to tell them about that wonderful lunch. *[Time expired.]*

### **PUBLIC SECTOR WAGES POLICY**

**The Hon. LUKE FOLEY:** I direct my question to the Minister for Finance and Services. In light of his 2006 comments that community opposition to WorkChoices was simply a Labor Party scare campaign and the Premier's comments this week about an hysterical scare campaign initiated by the Labor Party about public sector wages, how can the people of New South Wales have any faith that this Government will implement policies that treat hardworking public servants decently?

**The Hon. GREG PEARCE:** This Government values our public service. Given my background, I know that the greatest resource that any organisation has is its people. This Government will do everything it can to improve the public service. We have announced that we will establish a Public Service Commission to reintroduce rigour in the public service, to improve standards and training and to re-establish a public service career as something to which people will aspire. I will pause for a second and remind the House of what happened under the previous Government. Members opposite vilified public servants and created a culture of blame. Whenever Ministers in a Labor Government got into trouble they blamed the public servants and hung them out to dry. They also created a culture in which it was acceptable to engage their mates, their relatives—

**The Hon. Duncan Gay:** What about Ryan Park?

**The Hon. GREG PEARCE:** Yes, he had great qualifications. I assure all members that this Government values the public service. Under our administration the public service will be valued and empowered to perform the services that the people of New South Wales require. We will work tirelessly to ensure that the public service is properly empowered, that public servants are valued and that they deliver services to New South Wales.

### **ARCHIVES ACT FIFTIETH ANNIVERSARY**

**The Hon. SCOT MacDONALD:** My question is directed to the Minister for Finance and Services. Will the Minister update the House about celebrations being organised to mark the fiftieth anniversary of the Archives Act?

**The Hon. GREG PEARCE:** What an excellent question. It again demonstrates the interest of members on this side of the House in the operations of the Government, even in relatively obscure but important services. I am sure that the House will be interested to know that 31 March marked the fiftieth anniversary of the passage of the Archives Act and the establishment of what would become the State Records Authority of New South Wales.

**The PRESIDENT:** Order! I call the Hon. Luke Foley to order for the first time.

**The Hon. GREG PEARCE:** The passage of the 1960 landmark legislation was a turning point in the history of archives administration in Australia. For the first time in New South Wales a government agency, the Archives Authority, was charged with responsibility for the care, custody and control of the state archives. To mark this important anniversary, the State Records Authority published a history of archives written by Dr Peter Tyler. The book commemorates the implementation of the Archives Act in 1961 and details the history of the organisation. The chair of the State Records Board, Dr Lucy Taksa, says that Dr Tyler has "synthesised an



immense and far-reaching history into a rich biography of an organisation, from its extremely prolonged gestation until its birth in 1961 and its present state of maturity". The book was officially launched at a formal function in the Strangers Dining Room last night to mark the anniversary.

**The Hon. Greg Donnelly:** Were you there?

**The Hon. GREG PEARCE:** I was privileged to be present for part of the launch of the book. I am not sure whether anyone from the Opposition turned up, but it was an important launch. I received a copy of the book, which I am happy to share with honourable members.

**The PRESIDENT:** Order! I call the Hon. Greg Donnelly to order for the second time.

**The Hon. GREG PEARCE:** I know the use of props is not parliamentary but, for the purpose of showing honourable members, this is the book. I encourage any members who would like to read it to approach me in the Chamber or approach my staff and we will lend it to them. We will create a card to make sure we know who has it from time to time. I was lucky enough to meet a number of archivists from the State Records Authority and speak to them about the very interesting historical records of which they are custodians. Honourable members would agree that the fiftieth anniversary is also a time to reflect on the richness of the State's official archives. This is the oldest, and one of the largest, collections of such records in Australia. It spans the period from the foundation of the colony in 1788 to the present day. The collection occupies 67 kilometres of shelf space, amounting to around 10 million items and continues to grow at a rate of more than 200,000 items per year. I am sure honourable members will be interested in my continuing to tell them about the State's archives.

#### ROYAL NORTH SHORE HOSPITAL

**The Hon. PAUL GREEN:** My question without notice is to the Minister for Police and Emergency Services, representing the Minister for Health. Given that Royal North Shore Hospital is currently funded for 397 acute medical and surgical beds but most of the time is required to accommodate up to 440 patients, what are the Government's provisions regarding funding for acute medical and surgical beds in Royal North Shore Hospital? Will the Government reassess its \$1 billion redevelopment plan to include submissions from Royal North Shore Hospital health care and medical professionals to increase the acute medical and surgical beds to at least 434, excluding new intensive care unit beds?

**The Hon. MICHAEL GALLACHER:** I thank the honourable member for his question. I will get a response from the Minister for Health as soon as possible.

#### TAXATION POLICY

**The Hon. GREG DONNELLY:** My question without notice is to the Minister for Finance and Services. Does the Minister support the "staggered taxation policy" proposed by his Liberal colleague David Elliott that would see people living outside metropolitan Sydney paying a lower rate of tax?

**The Hon. GREG PEARCE:** I do not know what the policy is.

#### TARCUTTA BYPASS

**The Hon. NIALL BLAIR:** My question without notice is directed to the Minister for Roads and Ports. Will the Minister update the House on the progress of construction of the Tarcutta bypass?

**The Hon. Trevor Khan:** That's right, Niall, you are so clever, you got the jump on time. Well done.

**The Hon. DUNCAN GAY:** He could show a lot of members what to do—mostly those opposite. I advise the House that the \$290 million Tarcutta bypass is well on track for completion by the end of 2011. The seven-kilometre, four-lane dual carriageway bypass is being built to the west of Tarcutta, joining the existing Hume Highway divided carriageways to the north and south of the village. Key features of the project include a northern interchange near Mate Street, a southern interchange near Humula Road and twin bridges over Tarcutta and Keajura creeks. This project will remove heavy vehicles from the residential and shopping areas of Tarcutta and improve pedestrian safety along the current Hume Highway route through Tarcutta. It will also reduce traffic noise for residents in the region and save travel time for vehicles travelling between Sydney and Melbourne. This is an essential infrastructure project for the people of south-western New South Wales.

The former Labor Government took this region for granted for 16 years. If members of the former Government were fair dinkum with the people of New South Wales they would be here to talk about it today but they took the people for granted and the people got rid of them. That is why many are not here today. The former Government had plenty of time to complete the construction of this bypass but instead left it for us to finish. How surprising. Daryl Maguire, member for Wagga Wagga, has been campaigning for years to see this bypass built. The people of Wagga Wagga trust him to deliver much-needed infrastructure for the region. They gave him a staggering 77.8 per cent of the vote to continue his work, and that is with the Labor Party working hand in glove with its favourite Independent who was also standing in that seat. The member for Wagga Wagga still managed to get 77.8 per cent.

**The Hon. Luke Foley:** What did The Nationals poll in that seat?

**The Hon. DUNCAN GAY:** We did not poll anything in that seat because we did not stand there. We will give you a lesson on how you can have a Coalition agreement that is honourable. One thing this bloke does not know is about honour. Ask anyone in the Labor Party—

**The Hon. Eric Roozendaal:** Point of order: I find it offensive that the Minister accuses another member of this House of being dishonourable. I ask the Minister to withdraw that comment. He is crossing the line with his rudeness and I suggest he be pulled into line.

**The PRESIDENT:** Order! Has the member taken offence?

**The Hon. Luke Foley:** I have.

**The Hon. DUNCAN GAY:** Given that the members have taken offence, I withdraw those comments, as one should. When we get to the Foley files that have been provided by the Hon. Eric Roozendaal and others—they are like the X files only spookier—it will all come out.

**The Hon. Eric Roozendaal:** Point of order: I will take point of order after point of order every time the Minister tells a lie. I have supplied no files to anybody in this House—

**The PRESIDENT:** Order! The member will resume his seat. I remind the member that under the standing orders he may make a personal explanation if he feels the need to do so. That is not a point of order. The Minister's time has expired.

## ONLINE GAMBLING

**Reverend the Hon. FRED NILE:** I ask the Leader of the House, the Hon. Michael Gallacher, representing the Premier, a question without notice. What action is the New South Wales Government taking to prohibit the provision of interacting gambling services by internet sites such as PokerStars and Full Tilt Poker as well as online casino sites, involving over \$1 billion a year from 700,000 Australian customers? Will the Government also support the Federal Government's action against the promotion of online betting in the media—press, radio and television—especially negative betting on who will not win, to prevent the corruption of Australian first-class sport?

**The Hon. MICHAEL GALLACHER:** I thank the honourable member for a very detailed question. We have made some announcements recently in relation to live betting during football games. I am sure there will be more announcements into the future. I look forward to getting an answer from the Premier for the honourable member and I will convey it to him as quickly as I can.

## TOURISM

**The Hon. LYNDIA VOLTZ:** My question is to the Minister for Finance and Services, and Minister for the Illawarra. On 26 May the Minister said the Government wants to increase its share of the international youth travel market and to encourage more international holidaymakers and students to come to New South Wales and outlined a new online tourism campaign to attract the youth market. Given that the only animals depicted in the short advertising films were those at a rodeo and no animals native to Australia were depicted, will he please explain how these advertisements are attracting the youth market to our unique environment?

**The Hon. GREG PEARCE:** That question is actually a question for the Minister for Tourism, Major Events, Hospitality and Racing.

## POLICE NUMBERS

**The Hon. DAVID CLARKE:** My question is directed to the Minister for Police and Emergency Services. Can the Minister outline to the House commitments previously made in relation to police numbers?

**The Hon. MICHAEL GALLACHER:** Despite the fact that the Government continues to put a very strong case for future reforms needed and we are bringing experts from policing in to play a role, it is important to look at where we have come from with respect to the previous Government's approach to know the direction that we are travelling. Prior to the last election both sides of politics made a commitment in relation to police numbers. In a major vote of confidence in our police the Liberals and Nationals committed to employ 550 additional police. When the commitment is delivered on by June 2014 this will take the authorised strength of the New South Wales Police Force to a record 16,356 officers.

As members are aware from my earlier contribution to this House, we had—and have—committed to undertaking a comprehensive audit of police resources, including police numbers. We recognised that while this audit was underway we needed to start the process of recruiting, training and employing additional police officers and that is why we committed to an additional 550 police over the next three years. Once we have the results of the audit being undertaken by former Assistant Commissioner Peter Parsons and we have a clear idea of what additional police resources are needed, further consideration will be given on how we can go about delivering them.

I am pleased to indicate that although we have been in government for only a few weeks the first 150 of the 550 new officer commitment will come on line following the class that will attest from the Goulburn Police Academy in December this year. Our strong commitment is in stark contrast to Labor's promise of just 360 police by the end of 2015—18 months after our commitment will be delivered. Yet again, as the member for Heffron did with announcements in relation to the youth command and police citizens youth clubs, she produced another spectacularly unimpressive performance when it came to announcing new police numbers. The Police Association was equally unimpressed with Labor's attempts. In a press release dated 14 March 2011 the Police Association stated:

An extra 360 police officers is too little too late for many communities around NSW who are doing it tough when it comes to police resources.

This Government's commitment to police numbers includes boosting the Highway Patrol by 100 officers to increase police visibility and enforcement on our roads. Members opposite said they would only deliver 50 highway patrol officers. In addition we will purchase a further 131 vehicles and 50 of those will be Highway Patrol cars. We are serious about changing driver behaviour through high visibility on our streets. One need only read the contribution of the Minister for Roads and Ports to realise that his direction and my direction are one and the same. That can only be good for long-term safety on our roads and educating motorists about their responsibilities.

Just before the election members opposite sought to artificially boost the numbers of police to make it look as if they were tough on crime. Once again they committed their old trick with a new 711-strong class just on the eve of the election. We have committed to put a stop to the boom or bust approach to police numbers. It is not fair on the Police Academy, it is not fair on police resources and most certainly it is not fair to drag police numbers to the point where there are only large classes on the eve of a State election to provide a Premier, as has happened in the past, with pretty pictures on graduation day. [*Time expired.*]

## HERITAGE PRESERVATION

**Mr DAVID SHOEBRIDGE:** My question is directed to the Minister for Finance and Services, representing the Minister for the Environment, and Minister for Heritage. Can the Minister please outline what measures the Government will be instituting to avoid cultural tragedies similar to the one that occurred recently in Newcastle where an excavation to build a fast-food restaurant destroyed and disturbed evidence of the first human settlement in the area and will the Minister petition for the remaining artefacts in Newcastle to be kept together and preserved in the local area?

**The Hon. GREG PEARCE:** I thank the member for his question. Clearly, if what he suggests has occurred it is a serious issue. I undertake to get a briefing from the Minister and respond as soon as I can.

## WHITE-COLLAR CRIME

**The Hon. SHAOQUETT MOSELMANE:** My question is directed to the Minister for Police and Emergency Services. I refer the Minister to comments from his Liberal colleague David Elliott, who said with reference to white-collar criminals, "A hefty 'pay or stay' policy would not only save taxpayers, but also act as a necessary deterrent factor, which is essential within our criminal law". As Minister for Police does he support the proposal to allow criminals to pay their way out of prison?

**The Hon. MICHAEL GALLACHER:** Whoever is doing the Labor question time strategy needs to work out that I am Minister for Police and Emergency Services not the Minister for Justice, who is the Minister responsible for jails. They need to direct that question to the Minister for Justice. If any of them ever win a lower House seat again they might get a chance to ask him the question. Bad luck, it is out of order.

**The Hon. Shaoquett Moselmane:** Point of order: My understanding is that the Minister is Minister for Police and Emergency Services so my question is to him.

**The PRESIDENT:** Order! The Minister has concluded his answer.

## STATE RECORDS

**The Hon. CATHERINE CUSACK:** My question is directed to the Minister for Finance and Services. Could the Minister please update the House as to the accessibility of the Archives Office?

**The Hon. GREG PEARCE:** I thank the honourable member for another important question, which relates again to the Archives Office. The Archives Office has a collection that is a national treasure, preserving documents that record the many ways in which government has interacted with the people of New South Wales over the last 220 years—from the records of the First Fleet convicts to the original plans for the Sydney Opera House. Subjects include crime and punishment, immigration, exploration and settlement, education, welfare, transport and infrastructure. The value and importance of the convict records dating from 1788 to 1842 were recognised in 2007 when these priceless and unique records were accepted for inscription on the UNESCO Memory of the World Register. From its inception State Records—and its predecessor the Archives Office—has sought to make the collection accessible to everyone. Traditionally, access to the State's archives has been provided through State Records' two reading rooms, one at Globe Street in The Rocks and the other at its large storage and other facilities in western Sydney, where the original, uncopied collection is housed.

Today the internet is being used to bring the collection to the people by making it more accessible in ways never dreamed possible when State Records first opened its doors 50 years ago. A visit to the website reveals how much the organisation is contributing to the digital age. Here researchers will discover a vast array of online resources all available free of charge. There are the founding documents, recording the convicts on the First Fleet, through to items from the time of the establishment of the Archives Authority in 1961. Another important State Records initiative has been to digitise microfilm copies of the assisted immigrant lists from over 1,000 ships that arrived between 1838 and 1896. Visitors to the website are now able to browse the digitised copies of the passenger lists of the immigrant ships that arrived during those years. The website of State Records receives almost two million visitors each year and is regularly ranked in the top 40 New South Wales government websites.

Digital records such as emails, digital documents and databases now hold both the corporate memory of individual agencies and the future archival resources of the State. So it is fitting in this fiftieth anniversary year that State Records commences a project to develop and implement the first digital archives facility. The facility will be capable of accepting, preserving and making available "born digital" government records as State archives. Digital State archives will preserve digital records in more trustworthy and accessible formats, improving the efficiency and quality of services. Ultimately it will provide seamless online access to "born digital" documents as well as digitised archives of more traditional records. This project will transform State Records into a truly digital archive for the twenty-first century and ensure that it can continue its mission for the next 50 years and beyond.

## CHILDCARE CENTRE LICENSING

**The Hon. JAN BARHAM:** My question without notice is directed to the Minister for Finance and Services, representing the Minister for Family and Community Services. Will the Minister confirm whether childcare services are still required to enter into service agreements with the Department of Family and

Community Services, even though the Minister for Education is now responsible for parts 12 and 12A of the Children and Young People (Care and Protection) Act? Does the Minister for Family and Community Services agree with the Hon. Greg Pearce's assessment of licensing fees for childcare centres on 4 December 2008 wherein he stated childcare licensing fees are "a prime example of the Government's grab for tax and cash through its half-baked mini-budget ... which will hurt employers and families"?

**The Hon. GREG PEARCE:** I thank the Hon. Jan Barham for her question. I am very impressed with the research that is going on. Importantly, this research is going into *Hansard*. It is research that has a base to it. Unlike the Opposition, which takes all of its research from the newspapers—

**The Hon. Michael Gallacher:** Last week's newspapers.

**The Hon. GREG PEARCE:** That is right, last week's newspapers. Then they take it out of context when they get it out of the newspapers. So they are not even satisfied with what is in the newspapers. However, it is a detailed question. Obviously, I will need to get a detailed answer from the Minister and come back to the honourable member.

### DRUNK AND DISORDERLY OFFENCE

**The Hon. HELEN WESTWOOD:** My question without notice is directed to the Minister for Police and Emergency Services in his capacity as representing other Ministers. In light of the fact that the abolition of the offence of drunk and disorderly was a key recommendation—

**The Hon. Michael Gallacher:** Point of order: I ask the Hon. Helen Westwood to indicate which Minister I am representing in relation to this question.

**The Hon. Eric Roozendaal:** In your capacity as Leader of the Government.

**The Hon. HELEN WESTWOOD:** That is right, in the Minister's capacity as Leader of the Government.

**The PRESIDENT:** Order! The Hon. Helen Westwood is not required to state that.

**The Hon. HELEN WESTWOOD:** Thank you, Mr President. I will restate my question. In light of the fact that the abolition of the offence of drunk and disorderly was a key recommendation of the Royal Commission into Aboriginal Deaths in Custody, what safeguards will the Minister put in place to protect indigenous people when he reintroduces the offence?

**The Hon. MICHAEL GALLACHER:** I am happy to refer that question to the Attorney General. However, if the Hon. Helen Westwood had been in the Chamber during the debate on move-on directions she would have heard my comments about the protocols in relation to move-on directions and how they are used in addressing issues with regard to intoxicated people, whether they be Aboriginal people or homeless people. Those protocols are well and truly in place. I am sure the Hon. Helen Westwood would take it from me that whilst Labor was in government the New South Wales Police Force put together some very effective protocols in terms of dealing with similar problems, and in my view those protocols appear to be working quite well.

### ROADS AND TRAFFIC AUTHORITY ENGINEERING INITIATIVES FOR WOMEN

**The Hon. NATASHA MACLAREN-JONES:** My question is addressed to the Minister for Roads and Ports. Will the Minister inform the House of Roads and Traffic Authority initiatives to encourage young women to study engineering?

**The Hon. DUNCAN GAY:** I thank the Hon. Natasha Maclaren-Jones for her important question. The New South Wales Government is currently working with the Roads and Traffic Authority [RTA] to encourage women to choose engineering as a profession. The authority works with several universities that offer civil engineering, to promote the authority as a career option in this essential field through tertiary scholarships and cadetships specifically for female applicants. They are also working to develop a network of authority scholars, cadets and graduates to promote the authority as a preferred employer for female engineers through events such as the So You Think You Can Engineer? Summit at the University of Wollongong and the Hands on Engineering Day at the University of Technology Sydney to promote engineering to female high school students.

At the most recent session of the Hands on Engineering Day on 20 May 2011 female engineers, cadets and road designers from the Roads and Traffic Authority presented several interactive sessions to groups of year 11 and 12 students, giving them a feel for a day in the life of an RTA engineer. It is important to try to break down barriers associated with engineering, and thereby increase the number of women who choose engineering as a career. This is a great program that aims to demonstrate that women can develop a rewarding career in engineering. The next session of the Hands on Engineering Day will be held on 12 August at the University of Technology Sydney, and I encourage all female high school students to attend if they have an interest in engineering as a career.

The authority also runs a suite of employment programs to encourage skilled men and women to the organisation—including trainees, apprentices, scholars and cadets, paraprofessionals and graduates. The authority is currently one of the largest employers of trainees in the New South Wales public sector, with over 250 trainees studying across a range of topic areas. It also runs five paraprofessional programs, with over 60 people actively participating in these programs. These paraprofessional programs are essential to areas of skill that are critical to the effective operations of the authority but which are not widely available in the broader labour market, and cover road design, property, traffic operations, computer systems and traffic engineering.

This is part of a broader-scale renewal process that will see the creation of the Integrated Transport Authority, ensuring that planning and policy across all modes of transport, including roads, is fully integrated. The Roads and Traffic Authority will become a frontline, customer-service focused organisation that will prioritise the people of New South Wales. I understand that the daughter of the honourable Leader of the Government is enrolled in engineering. I hope she considers engineering with the Roads and Traffic Authority as a future career. My colleague Pru Goward was part of the launch of this program. One of the features of it is that purple work boots are worn by the female engineers in the department. I have been offered a set of purple work boots. I am not sure if they come in size 12. I am not sure what the reception would be in the main street of Crookwell if I turned up in them one Saturday, but I am prepared to give it a go.

### **BELLS LINE OF ROAD**

**The Hon. ROBERT BORSAK:** My question without notice is directed to the Minister for Roads and Ports, representing the Minister for Transport. Is it a fact that the Central West is the only region adjacent to Sydney without road access of an appropriate standard? Is it also a fact that an adequate route between the Sydney Basin and the Central West region could facilitate growth and relieve safety and congestion issues on the Great Western Highway? Does the Government support upgrading the Bells Line of Road to a four-lane, dual carriageway suitable for B-double access, to provide an alternative route to the Great Western Highway across the Blue Mountains? If so, where does such a project fit in with the Government's current infrastructure plans for New South Wales?

**The Hon. Michael Gallacher:** A good question.

**The Hon. DUNCAN GAY:** It is a good question. It is interesting to note that the Leader of the Opposition, who was formerly a Government Minister, said what a great idea the project was and how supportive he was of it.

**The Hon. Tony Kelly:** Stoner at the last election backed it.

**The Hon. DUNCAN GAY:** He did. Well, where is it? Labor was in government for 16 years, and we have not seen the thing—not a skerrick of it.

**The Hon. Eric Roozendaal:** Are you going to build it?

**The Hon. Michael Gallacher:** Not a skerrick of Eric.

**The Hon. DUNCAN GAY:** Not a skerrick of Eric. This is the bloke who was the Minister for Roads. This is the bloke who could have put the submissions into Infrastructure Australia. Now we are informed that some of those submissions did go in—they were written on the back of an envelope.

**The Hon. Michael Gallacher:** A beer coaster from the chairman's lounge.

**The Hon. DUNCAN GAY:** And there were some on a beer coaster from the chairman's lounge. There were various things on which they were written. This is an absolutely crucial piece of infrastructure and the first

key to getting the Bells Line is to secure the route. That is one of the priorities. It is certainly one of the issues I will be working towards in this term in government. These things are important. I suspect it is not going to be easy. It is like having the M4 shovel ready but not being able to do anything until you have the plans. Now we have people who need a route to develop this State and the key to it is to ensure that you have a route for that motorway. Currently that route has not been secured. The first thing a responsible government needs to do is to work on that. That is one of the key things I am going to try to do through this government.

**The Hon. Michael Gallacher:** Eric should stay and watch it develop.

*[Interruption]*

**The Hon. DUNCAN GAY:** The Hon. Tony Kelly is putting a timetable on us. For 16 years he sat around the Cabinet table and did bugger-all. He did nothing to achieve these things. We believe that it has to be done. I have to convince my colleagues and the Minister—

**The Hon. Greg Pearce:** That is me.

**The Hon. Michael Gallacher:** He is such an easy man to convince.

**The Hon. DUNCAN GAY:** Yes, and it is a job I am determined to do. One has to start somewhere and the important thing is to hold a view. I hold the view that the Bells Line is a really good thing. It is an issue that quite properly should be addressed by Infrastructure New South Wales. It is a major State road and it would be a key one to be looked at by Infrastructure New South Wales. That was one of the issues discussed when I was talking to members of the shires association at its meeting this morning. They said, "When your Government gets Infrastructure New South Wales up we want it to look at the Bells Line expressway." That is the appropriate place for it to go, and that is where it will go.

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

**Questions without notice concluded.**

## **WORK HEALTH AND SAFETY BILL 2011**

### **OCCUPATIONAL HEALTH AND SAFETY AMENDMENT BILL 2011**

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

### **CREDIT (COMMONWEALTH POWERS) AMENDMENT (MAXIMUM ANNUAL PERCENTAGE RATE) BILL 2011**

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

**Motion by the Hon. Michael Gallacher 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 future day.**

### **CRIMES AMENDMENT (MURDER OF POLICE OFFICERS) BILL 2011**

#### **Second Reading**

**Debate resumed from an earlier hour.**

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

**The House divided.**

**Ayes, 19**

Mr Ajaka	Mr Gallacher	Reverend Nile
Mr Blair	Mr Gay	Mrs Pavey
Mr Borsak	Mr Green	Mr Pearce
Mr Brown	Mr Khan	
Mr Clarke	Mr MacDonald	<i>Tellers,</i>
Ms Cusack	Mrs Maclaren-Jones	Mr Colless
Ms Ficarra	Mr Mason-Cox	Dr Phelps

**Noes, 16**

Ms Barham	Mr Moselmane	Mr Shoebridge
Mr Buckingham	Mr Primrose	Mr Veitch
Mr Donnelly	Mr Roozendaal	
Ms Faehrmann	Mr Searle	<i>Tellers,</i>
Mr Foley	Mr Secord	Ms Voltz
Dr Kaye	Ms Sharpe	Ms Westwood

**Pairs**

Ms Cotsis	Miss Gardiner
Ms Fazio	Mr Lynn
Mr Kelly	Mrs Mitchell

**Question resolved in the affirmative.**

**Motion agreed to.**

**Bill read a second time.**

**In Committee**

**Clauses 1 and 2 agreed to.**

**Mr DAVID SHOEBRIDGE** [3.44 p.m.]: I move The Greens amendment on sheet C2011-036:

Page 3, clause 3, proposed section 19B. Insert after line 2:

- (5) Despite subsection (2) and section 54 (a) of the Crimes (Sentencing Procedure) Act 1999, when sentencing a person for life under this section, the court may impose a non-parole period for the sentence (that is, the minimum period for which the offender must be kept in detention in relation to the offence).
- (6) Division 1A of Part 4 of the Crimes (Sentencing Procedure) Act 1999 applies to and in respect of a non-parole period set under subsection (5) despite section 54D (1) (a) of that Act.

This amendment adds two subsections to proposed section 19B—that is, subsections (5) and (6). These proposed subsections seek to give the court the ability to craft a sentence, albeit a life sentence, that allows for a moderate degree of discretion at least in the setting of a non-parole period. In practice, these subsections would operate in this way. If this bill is passed through Parliament, the court is compelled to impose a life sentence. This amendment would not change the fact that the court is compelled to impose a life sentence where a defendant is found to have murdered a police officer. In accordance with the Crimes (Sentencing Procedure) Act in relation to parole, where a life sentence is imposed the statute does not allow a court the discretion to issue a non-parole period. The courts consistently have interpreted the Act to mean that they have no discretion to put in place a non-parole period where a life sentence has been imposed by reason of the statute.

In relation to this bill, the court will have no discretion but to impose a life sentence. Then the court faces a second absence of discretion where it will have no ability to impose a non-parole period. This is where the court may exercise these proposed subsections. If a defendant is found guilty of murdering a police officer, the court is compelled to impose a life sentence. If evidence is placed before the court at sentence that the defendant may eventually be suitable for limited release under parole or, at least, should be given the opportunity to apply to the parole board for release on parole, the court, taking into account the nature of the



offence and the circumstances of the defendant at the time, would be able to impose a non-parole period. Of course, it would be subject to the existing provisions for non-parole periods where a defendant is found guilty of murdering a prison officer or any of those classes of protected professions in the Crimes (Sentencing Procedure) Act. The standard non-parole period is 25 years.

This amendment gives the court some degree of discretion. The defendant while on parole would still be subject to the life sentence and the continuing oversight of the parole board. If the defendant in any way breached parole the defendant would go back to prison for the balance of the life sentence. The life sentence would remain hanging over the defendant's head even while the defendant was on parole. This amendment allows for a modest degree of discretion where defendants, first, have served their time, which would be a minimum of 25 years; second, have proven to the satisfaction of the prison authorities and the parole board that they are suitable for release; third, have been released in accordance with a series of stringent conditions set by the parole board; and, fourth, have complied with those conditions. The usual conditions include daily reporting to police, limited places at which they can reside and remaining within the confines of the State. They would be subject to a stringent set of conditions and at all times they would still be subject to the sentence of life imprisonment.

I will cite a short extract from a Court of Appeal decision in 2000 in *Regina v Harris*, which sets out how the courts have difficulty dealing with the current law where there is no discretion to give a non-parole sentence for those serving life. After noting serious concerns with respect to a sentence of natural life, the then Chief Judge at Common Law, Justice Wood, called for a review of the prohibition. He said:

The concern that exists in this regard, particularly for those persons who may face potential life sentences in their twenties or early thirties, with the problems of institutionalisation, and the risk of the establishment of a significant population of geriatric prisoners, are such that this area of sentencing, in my view, warrants reconsideration.

He went on to say:

It may be that after a lengthy period of imprisonment, counselling and simple maturing, that an offender sentenced to life ceases to be dangerous. Lengthy experience with the life sentence redetermination procedure has graphically demonstrated that to be the case—

These appeal judges have had the repeated life experience of dealing with prisoners who are subject to a life sentence coming before the court to ask for redetermination under laws that will not apply to people who are the subject of a life sentence under this mandatory provision. Justice Wood has done the hard yards, he has seen the cases repeatedly brought before him and he made these observations. He went on to say:

... and has seen a controlled and safe return to society of offenders once considered hopelessly violent and dangerous. The later release of the prisoner can be decided by the Parole Board, which is in a position to act in the light of its accumulated experience and current information concerning the prisoner's mental state and progress towards rehabilitation. Moreover, it is to have regard to the principle that the public interest is of primary importance.

Day in and day out, judges are confronted by the difficulties of life sentences and they recognise that there is a perfectly valid reason, in the public interest, to allow those prisoners who are subject to a life sentence to seek parole. This would be a very modest amendment to the bill, which would maintain the basic principle and the commitment that the Coalition took to the election of a life sentence. A life sentence would remain; the amendment would simply allow a discretion in the court to set a standard non-parole period of 25 years so that those prisoners serving a life sentence have the option after a quarter of a century to demonstrate to a parole board—if the court has allowed it in their sentence—that they are no longer a danger to society, that they can be safely released, subject to stringent conditions, and that should they breach any of those conditions they would go right back into jail and serve the balance of their life sentence. This amendment would be a modicum of justice in this otherwise mandatory bill and I urge the House to support it.

**The Hon. MICHAEL GALLACHER** (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [3.52 p.m.]: I will reply to the statement about the amendment being a modicum of justice. I was interested in the final comments of Mr David Shoebridge, where he implied very strongly that if we were to consider the option of having a parole provision it would hang over the heads of somebody who has murdered a police officer forever whilst they are out on parole. My interpretation of what Mr David Shoebridge said is that it would hang over their heads forever if they were to be given parole and were back on the street, and that if they do something wrong that they would be back inside. Is that correct?

**Mr David Shoebridge:** If they breach their parole they go back inside.

**The Hon. MICHAEL GALLACHER:** I go back to an earlier comment made in the debate that if a person kills a police officer and they know they will be subject to mandatory sentencing, they will say, "I might as well keep going. I might as well kill more people." The type of person who would be going into custody for murdering a police officer—even if it was a "rash decision", as I heard it described, to put their knife into a police officer's chest—would be a very ill-disciplined person indeed.

**Dr John Kaye:** It is illogical.

**The Hon. MICHAEL GALLACHER:** No, it is not illogical, because it refers to your earlier comments that whilst the person is on parole, if they go back to criminality they will not waste their time committing the crime of shoplifting, because they know that they could go to jail for life on a shoplifting charge and that they might as well get back to being involved in serious crime because they know that they could pay the ultimate penalty anyway. The Greens argument is that people may as well make it worthwhile if they are going to get back into criminality whilst they are on parole. What a joke! Imagine if you were the victim of an armed robbery or one of your family members was murdered or viciously assaulted by somebody who was on parole for murdering a police officer. How warm would you feel knowing that a modicum of justice had been applied to the offender? It is an absolute undermining of the whole intent of this bill—hardly modest, as Mr David Shoebridge described it. It comes as no surprise that the Opposition will be opposing this amendment. This bill is intended to send a clear and simple message—

**Dr John Kaye:** Point of order: It is not up to the Minister to say what the Opposition will be doing.

**TEMPORARY CHAIR (The Hon. Natasha Maclaren-Jones):** Order! That is not a point of order.

**The Hon. MICHAEL GALLACHER:** The opposition to this amendment will oppose this amendment, and we are the opposition to this amendment. This bill is intended to send a clear and simple message to potential offenders that if they murder a police officer they will do jail for the term of their natural life. We cannot have a situation where this amendment, if it were to be accepted by the House, would undermine the whole tenet of the legislation. We oppose the amendment.

**Mr DAVID SHOEBRIDGE** [3.56 p.m.]: I have heard some errant nonsense in my time in this place but the complete illogicality of the argument of the Minister for Police and Emergency Services was quite remarkable. As far as I understand the Minister, the argument is that because at the time a person committed the offence he or she might be in a certain frame of mind, that 25 years later, when he or she is out on parole—if allowed—there would be no incentive for that person to be law-abiding. That is completely irrational nonsense. Either the Minister fails to understand how parole operates—which is an indictment on him in his position as Minister for Police and Emergency Services—or he was being deliberately disingenuous.

The way parole operates is this: A convicted person is only out on parole if the court allows a non-parole period. It is at the discretion of the court at the time of sentencing to allow a non-parole period. There would be the standard minimum non-parole period of 25 years, so all that would happen would be that if at the time of sentencing a defendant was found eligible for a non-parole period of 25 years, the court could impose a non-parole period of 25 years. But that does not mean that after 25 years the defendant is automatically released; it only gives an eligibility to apply for parole after a quarter of a century. It is only if the parole board considers that the prisoner is in a position to be released—after psychological evaluation and hearing from the prisoner—that the person then gets released, and released only on condition.

If people on parole jaywalk they can find themselves having breached their parole and having to go back to court. There is a far higher threshold impelling someone on parole to be law-abiding than there is on almost any other citizen, because even the slightest infringement—it does not have to be robbing a convenience store—will normally be a breach of parole and will send them back to jail to serve the balance of their life term. If the Minister had a rational reason to oppose this amendment I would be happy to listen to it. If the Minister had some evidence upon which to oppose this amendment I would listen to it. But it is simply the law and order drum being banged—this one-size-fits-all sentence, this reptilian part of the conservative mind that says this is the way we are going to deal with it: those who break the law will be thrown away to rot in jail and we do not care about what the effect is on the public purse, we do not care about public interest and we do not care about crafting justice to fit the crime.

**Dr JOHN KAYE** [4.00 p.m.]: I echo my colleague's sentiments. I will address one issue raised by the Minister. The Minister said that this amendment undermines the very essence of his legislation. He does not

appear to have given enough open-minded thought to what it does. Has he given sufficient thought to how this amendment would operate in practice since The Greens voted against this legislation at the second reading stage? As Mr David Shoebridge said, in the first instance it is up to the courts to set a non-parole period, and the standard non-parole period in this case is 25 years. It would be less only in special circumstances, such as those mentioned in the second reading debate of young people who erred and who had subsequently proved they were reformed. Such people might realise the wrong they had done by finding religion or understanding the errant nature of their behaviour. The Minister shakes his head. Presumably he believes that no offender can ever be reformed.

**The Hon. Michael Gallacher:** Don't try to verbal me by calling attention to my body language. Deal with the issue and move on.

**Dr JOHN KAYE:** There is no need to get angry, Minister.

**The Hon. Michael Gallacher:** Stop trying to verbal people.

**Dr JOHN KAYE:** Calm down.

**The Hon. Michael Gallacher:** That annoys me. You are trying to verbal me.

**Dr JOHN KAYE:** Madam Temporary Chair, I ask that you tell the Minister to calm down. I may well annoy him, but I have a right of free speech in this Chamber and I intend to exercise it.

**The Hon. Michael Gallacher:** Don't verbal people.

**Dr JOHN KAYE:** I will do whatever I like. The Minister does not control what people say in this Chamber.

**The Hon. Michael Gallacher:** The Greens have spoken.

**Dr JOHN KAYE:** Yes. The Minister has failed to recognise that people released on parole are held to a high standard of behaviour and that breaching that standard in any way will result in their return to prison. Offenders might spend 25 years serving a non-parole period, satisfy the Parole Board that they are not a risk to society and that they understand the nature and impact of their crime, make amends and be released. Any minor or major transgression will result in their return to prison. The Minister's argument turns on the idea that, after having spent 25 years in prison and knowing that one foot wrong could result in return to prison, offenders will decide that if they are going to commit a crime, they might as well commit a serious one. It does not work that way. A person who still had that intent would not be released by the Parole Board. It is unrealistic to say that such a person would be released on parole.

This amendment is designed to restore some degree of justice and judicial discretion to cater for those cases in which people can genuinely reform or in which the circumstances of the case do not warrant a life sentence. Anyone convicted of killing a police officer will still be subject to a life sentence. This amendment simply provides some incentive for offenders to understand what they have done wrong, to reform and to behave in such a way that they can persuade the Parole Board that they should be released. Of course, they would be required to maintain exemplary behaviour.

**Question—That Greens amendment [C2011—036] be agreed to—put.**

**The Committee divided.**

**Ayes, 17**

Mr Buckingham  
Ms Cotsis  
Mr Donnelly  
Ms Faehrmann  
Mr Foley  
Dr Kaye

Mr Moselmane  
Mr Primrose  
Mr Roozendaal  
Mr Searle  
Mr Secord  
Ms Sharpe

Mr Shoebridge  
Mr Veitch  
Ms Westwood  
*Tellers,*  
Ms Barham  
Ms Voltz

**Noes, 19**

Mr Ajaka  
Mr Blair  
Mr Borsak  
Mr Brown  
Mr Clarke  
Ms Cusack  
Ms Ficarra

Mr Gallacher  
Mr Gay  
Mr Green  
Mr Harwin  
Mr Khan  
Mr MacDonald  
Mr Mason-Cox

Reverend Nile  
Mrs Pavey  
Mr Pearce

*Tellers,*  
Mr Colless  
Dr Phelps

**Pairs**

Ms Fazio  
Mr Kelly

Miss Gardiner  
Mrs Mitchell

**Question resolved in the negative.**

**Greens amendment [C2011-036] negatived.**

**Clause 3 agreed to.**

**Title agreed to.**

**Bill reported from Committee without amendment.**

**Adoption of Report**

**Motion by the Hon. Michael Gallacher agreed to:**

That the report be adopted.

**Report adopted.**

**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.**

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

**The Hon. MICHAEL GALLACHER:** Pursuant to Standing Order 70 I seek leave of the House to give a notice of motion relating to precedence of business on Thursday 2 June 2011.

**Leave not granted.**

**INDUSTRIAL RELATIONS AMENDMENT (PUBLIC SECTOR CONDITIONS OF EMPLOYMENT)  
BILL 2011****Second Reading**

**Debate resumed from 24 May 2011.**

**The Hon. SOPHIE COTSIS** [4.15 p.m.]: I lead for the Opposition in debate on the Industrial Relations Amendment (Public Sector Conditions of Employment) Bill 2011. The Opposition absolutely opposes this bill, which makes amendments that are so far-reaching that they will allow the Government to immediately

cut the wages of any public sector worker and immediately cut the employment conditions of any public sector worker with no guarantee that they will receive a wage increase in return. All of this can happen without workers having access to an independent umpire because the Industrial Relations Commission will be bound to enforce the Government's policy. This bill is worse than WorkChoices.

The Industrial Relations Commission of New South Wales is the practical and legal successor to the original Court of Arbitration, founded in 1902, and the Industrial Commission, established in 1926. As such, it is the longest continuously operating industrial court or tribunal in Australia. Indeed, it is the longest serving industrial court or tribunal in the world. The only body anywhere in the world with a comparable history of long service is the United States National Labour Relations Board, which was established in the mid-1930s.

The predecessor organisations to the Industrial Relations Commission were established because all parties involved in industrial affairs in New South Wales—the workers, their representatives, employers and the Government—came to realise one essential point: Industrial relations need an independent umpire to stand between employers and employees to make proper, reasoned and fair decisions on pay and working conditions. All stakeholders came to that realisation more than 100 years ago.

We have had over 100 years of carefully considered independent legal thinking; 100 years of an independent umpire in the conciliation and arbitration of workplace disputes; and over 100 years of judges, commissioners and officers dedicating themselves to serving and advancing the people and businesses of the State of New South Wales. All that is now in danger. No government should take the decision lightly to interfere in such a dedicated organisation, without justification, without consultation and without a mandate. The Industrial Relations Act 1996, which this bill will amend, is widely considered to be one of the most significant pieces of legislation introduced into this Parliament by that superb representative, judge, barrister and reformer, a former New South Wales Attorney General and Minister for Industrial Relations, the late the Hon. Jeff Shaw, QC.

I note that it is just over a year since Jeff Shaw passed away. As I have not yet had an opportunity to do so in my time as a member of this House, I acknowledge the enormous contribution Jeff Shaw made to the lives of the people of New South Wales. His departure was felt by all. The late the Hon. Jeff Shaw was proud to be known as the Minister for Industrial Relations. The Industrial Relations Act of 1996, which this bill seeks to amend, has been described as a masterpiece of simplicity compared to the debacle that was the Industrial Relations Act of 1991, which was introduced by the Greiner Government. The objects of the Industrial Relations Act 1996 read as follows:

- (a) to provide a framework for the conduct of industrial relations that is fair and just,
- (b) to promote efficiency and productivity in the economy of the State—

I will restate that because I want everybody to understand the objects of this legislation—

- (a) to provide a framework for the conduct of industrial relations that is fair and just,
- (b) to promote efficiency and productivity in the economy of the State,

The objects continue:

- (c) to promote participation in industrial relations by employees and employers at an enterprise or workplace level—

I reiterate that object—

- (c) to promote participation in industrial relations by employees and employers at an enterprise or workplace level—

Actually, I will read it for a third time—

- (c) to promote participation in industrial relations by employees and employers at an enterprise or workplace level—

**The Hon. Greg Pearce:** This is like a broken record.

**The Hon. SOPHIE COTSIS:** Yes, and I will continue to repeat these matters until you understand them. The objects continue:

- (d) to encourage participation in industrial relations by representative bodies of employees and employers and to encourage the responsible management and democratic control of those bodies,

- (e) to facilitate appropriate regulation of employment through awards, enterprise agreements and other industrial instruments,
- (f) to prevent and eliminate discrimination in the workplace and in particular to ensure equal remuneration for men and women doing work of equal or comparable value,
- (g) to provide for the resolution of industrial disputes by conciliation and, if necessary, by arbitration in a prompt and fair manner and with a minimum of legal technicality,
- (h) to encourage and facilitate co-operative workplace reform and equitable, innovative and productive workplace relations.

Recently Justice Boland, President of the Industrial Relations Commission, on the Industrial Relations Act 1996, stated:

It provides an unparalleled framework for the conduct of industrial relations that is fair and just. It was drafted following extensive consultation with employers and unions.

He added further that the Act was drafted with a view to the best model to meet the interests of the industrial parties and ultimately the people of this State. The Industrial Relations Act 1996 continues to serve the people of this State well. Essentially, at its heart is that great Australian value of the fair go. Now we are dealing with an amendment bill that seeks to amend this important legislation and that will adversely affect 400,000 public sector workers. A reasonable government would consider amending this Act only if it had a mandate to do so and only after careful consideration and consultation with its public sector workforce. This bill will prevent the Industrial Relations Commission from being an independent umpire in determining wages and conditions of 400,000 public sector workers. The commission will now be bound to do the Government's bidding, regardless of whether the outcome is fair or reasonable for workers before it. Indeed, 100 years of expertise and experience in providing wage fairness and justice to ordinary working people has been trashed.

Our public servants—ordinary working men and women; ordinary people—have served this State with distinction. I speak of our police, nurses, teachers, child protection workers, workers in aged care services, school counsellors, workers helping kids with disabilities, workers in national parks, workers in transport, engineers in the Roads and Traffic Authority, and many, many workers. The list goes on. These 400,000 good, decent, hardworking people, deserve nothing less than an independent umpire to decide their wages and conditions. However, if this bill is passed, all that will change. The O'Farrell Government will be the prosecutor, the judge and the jury. Members of Parliament will now have to become expert industrial relations commissioners. This extraordinary bill basically represents an attack on the Australian value of the fair go.

**The Hon. Greg Pearce:** How many puppies will die?

**The Hon. SOPHIE COTSIS:** This is very important and very serious. This is about 400,000 workers.

**The Hon. Greg Pearce:** Turn down the hyperbole.

**The Hon. SOPHIE COTSIS:** This is very important. If you took the time out to sit and listen to what these people have to say you would not be saying this. I respect what you say; you respect what I say. But this is very serious. This is about 400,000 people's lives and families that are uncertain and unstable today.

**The Hon. Greg Pearce:** Tell the truth for a change, Sophie.

**The Hon. SOPHIE COTSIS:** This is the truth. Look at your bill. Essentially, the bill represents the winding back of industrial relations law and returning to the nineteenth century system of the master and servant relationship.

**The Hon. Dr Peter Phelps:** What nonsense. I had to negotiate for the Federal staff and we had to find productivity gains for our wage rises.

**The Hon. SOPHIE COTSIS:** Have you spoken to any of the New South Wales workers?

**The Hon. Dr Peter Phelps:** Under the Labor system.

**The Hon. SOPHIE COTSIS:** So you are bringing WorkChoices? You are the WorkChoices wagon coming from Canberra, and you are coming to New South Wales?

**The Hon. Dr Peter Phelps:** Under the Labor system.

**The Hon. SOPHIE COTSIS:** You would love to go back to the dark Victorian era, to an era where there was no fairness and no consideration for pay or working conditions. That is your philosophy: it is in your DNA.

**The Hon. Greg Pearce:** Tell the truth for a change.

**The Hon. SOPHIE COTSIS:** Read your bill.

**The Hon. Marie Ficarra:** Read your speech, Sophie. Just get it over and done with.

**The Hon. SOPHIE COTSIS:** I am going to take as long as I like. There are 400,000 workers out there who are listening to this. This is about their livelihoods and about the livelihoods of 400,000 families.

**The Hon. Marie Ficarra:** It will not make a difference. And they get a guaranteed 2½ per cent.

**The Hon. SOPHIE COTSIS:** This is not a joke; this is very serious.

**The Hon. Lynda Voltz:** Point of order: It is very difficult to hear the Hon. Sophie Cotsis' speech given the constant interjections from the other side of the Chamber.

**The ASSISTANT-PRESIDENT (Reverend the Hon. Fred Nile):** Order! I remind members that interjections are disorderly at all times. The Hon. Sophie Cotsis should not respond to the interjections. Instead, she should focus on her speech.

**The Hon. SOPHIE COTSIS:** Since the election this Government has displayed a pattern of behaviour in which it attacks workers at any opportunity. We saw this with the community service workers equal pay case: the Government's attack on the rights of women to achieve pay equity. We saw it last week with the Occupational Health and Safety Bill and the Work Health and Safety Bill. And we see it all so clearly now with this bill. It is all control for the employer, for Barry O'Farrell. There will be no consultation or an independent umpire for workers. There will be no procedural fairness in relation to public sector wage claims. This bill represents a historical and awful turning point for the hardworking families of New South Wales. It is appalling, and it must be stopped.

It is proper that I remind honourable members that the Government does not have a mandate to introduce this bill. The Coalition, when it was in opposition, had many opportunities and ample time to come clean with the voters about these plans and obtain a proper democratic mandate for this bill. The Government had many opportunities to do that. This bill consequently represents a betrayal of the goodwill and trust the people of New South Wales bestowed on the O'Farrell Government just two months ago. The thousands of police, the nurses, the disability workers, the national park workers, the forestry workers, the Roads and Traffic Authority workers, the transport workers, the school counsellors, those who work in maritime, our teachers, our special needs teachers, our special care nurses, our paediatric doctors, our firefighters, our search and rescue specialists, our caseworkers for people with disabilities, our mental health workers, and many, many other workers in the New South Wales public service did not vote for their pay packets to be cut. These hardworking men and women did not vote for their conditions to be slashed. They did not vote for an outright attack on the independent umpire.

Let us look at police, the first workers who may have to live with this awful legislation. Police are working smarter and harder than ever before. Across New South Wales crime rates are the lowest they have been in 20 years. All 17 major categories of crime are either stable or falling. We have seen a massive reduction in the road toll, which is the lowest it has been in 30 years. Police in this State are doing a terrific job, and they should be strongly commended. Going into the election the then shadow Minister for Police, in a letter to the Police Association dated 20 March 2011, made the following statement:

The New South Wales Liberals and Nationals are committed to retaining all New South Wales public sector employees under the New South Wales industrial relations system. We have previously indicated we would not refer industrial powers in respect to police to the Commonwealth Government and that police would keep their rights to collective bargaining awards and an independent umpire.

**The Hon. Greg Pearce:** Would you like some of my notes? I could give you some of ours.

**The Hon. SOPHIE COTSIS:** What about that independent umpire, Minister? Eight weeks after that letter the Government introduced a bill that will strip the Industrial Relations Commission of its independence in

making proper and fair wage decisions. That will directly affect the current claim by the police before the commission. This is not fair, and it is disrespectful. What happened to the rhetoric during the days of the election campaign when Mr O'Farrell and the then shadow Ministers were praising the efforts and work of public servants such as the police? We are told that the bill will be used to implement the wages policy whereby employee-related savings will need to be achieved before any wage increase above 2.5 per cent can be delivered.

Employee-related savings could only mean one thing: reducing annual leave loading, long service leave, sick leave, night shift allowances, other shift allowances, penalty rates, maternity leave, carers leave and parental leave. According to the Australian Bureau of Statistics the rate of inflation is at 3.3 per cent. But the Government will force police to take a cut in their entitlements, just to achieve a wage increase of above 2.5 per cent. The very people who are at the forefront of community safety and protection will suffer through real wage cuts or a reduction in their working conditions.

How exactly does this Government hope to recruit more nurses, teachers, school counsellors and police by enforcing a policy that will make the public service in New South Wales less attractive to work in, let alone recruit more nurses, teachers and police in rural and regional New South Wales? Have those members from rural and regional communities really thought about how this will affect country people? Have they thought about how will it affect their care services, their safety and their protection?

The bill will drive police officers interstate and it will no longer be attractive for nurses to work in regional or rural communities. By seeking to strip the independence of the Industrial Relations Commission and by forcing it to apply an arbitrary wages policy the Government is abandoning all opportunities to openly and properly consult with government employees. Where are the discussions? Where are the consultations with stakeholders on industrial relations issues and the better delivery of services? We cannot see any discussions or consultations. Where are the working parties? Where are the stakeholders? Where are the people that matter in these discussions? A sensible government would consult and listen to major stakeholders. A sensible government would listen to employees working in the public services. A sensible government would listen to all the employees I have mentioned. A sensible government would sit down, consult and discuss all the options. A sensible government would listen to the issues of workers.

Let me compare the approach taken by this Government in this industrial relations bill with the approach of the late Jeff Shaw in 1995. Let me share with honourable members how the late Jeff Shaw developed industrial relations reform for the Carr Government. I quote from what Jeff Shaw said in *Hansard* on 23 November 1995—

**The Hon. Scot MacDonald:** Was he sober?

**The Hon. Lynda Voltz:** I beg your pardon.

**The Hon. SOPHIE COTSIS:** That is disgraceful. You need to apologise.

**The Hon. Scot MacDonald:** I apologise. I withdraw.

**The Hon. SOPHIE COTSIS:** Jeff Shaw said this on 23 November 1995:

The Industrial Relations Bill is the product of comprehensive consultation with interested parties. This Government has approached the issue of industrial relations reform by seeking broad consensus and by formulating legislation which attempts to incorporate fair balance between competing views.

I would like to briefly outline the way the Government has developed its 1995 legislation. The first stage of the reform process involved a comprehensive consultative process to review the present legislation. I established, and chaired, a working party of peak industrial organisations to discuss reform proposals. The working party met on 11 occasions throughout April to November, and I am grateful for the members' contribution to the review process. The working party comprised employer nominees from the Confederation of Employer Organisations, Metal Trades Industry Association of Australia (New South Wales Branch), the Chamber of Manufactures of New South Wales, the Retail Traders Association of New South Wales and the Employers Federation of New South Wales. From the ... [employees], nominees were put forward by the Labor Council of New South Wales, including representatives from the Labor Council itself and the Transport Workers Union of Australia (New South Wales Branch), the New South Wales Teachers Federation and the Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division (New South Wales Branch).

The working party's discussions have been ably augmented and assisted by the Blake Dawson Waldron Professor of Industrial Law at the University of Sydney, Professor Ron McCallum, and Conciliation Commissioner Donna McKenna ... In addition to the working party process, a public review, coordinated by the Department of Industrial Relations, commenced in April of this



year. More than 40 written submissions were received from parties as disparate as BHP Proprietary Limited and individual taxidrivers. Discussions have also been held with organisations such as the New South Wales Farmers Association, the Meat and Allied Trades Federation and the Small Business Combined Association.

I wish to express the Government's appreciation for the considerable efforts made by the representatives of each of these organisations throughout the period since April of this year.

**The Hon. Duncan Gay:** So you are expressing on behalf of us.

**The Hon. SOPHIE COTSIS:** No. The Hon. Duncan Gay obviously did not hear what I said.

**The Hon. Duncan Gay:** You said "the Government's"—

**The Hon. SOPHIE COTSIS:** No, I am reading from *Hansard* what Jeff Shaw said. I continue the quote:

The first stage of the consultative process has confirmed the need to reform, simplify and streamline the existing industrial relations system—which is widely considered to be complex and legalistic. The second stage of the consultative process adopted by this Government involved the release of an exposure draft bill for the consideration of the working party and public discussion approximately one month before the final version of the bill has been tabled in Parliament.

I continue:

The release of the exposure draft bill was publicised in the print media and through other channels. I am advised that more than 800 copies of the exposure draft were provided free of charge by the department to interested organisations and individuals. More than 50 written responses were received by the department, commenting on the exposure draft and suggesting various changes.

The late Jeff Shaw continued:

We have taken on board constructive comments and suggestions flowing from the second stage of the consultative process. The result is that the industrial relations community and other practitioners have had a real impact on the fashioning of this legislation throughout the review process undertaken in the last six months.

Before I outline in some detail the proposed areas of reform which feature in the bill, I wish to advise the Chamber of the overall public response to the style, content and size of the draft legislation. A conscious effort has been made by the Government to streamline and simplify the legislation. The bill before this Chamber is approximately 50 per cent of the size of the former legislation, which will assist parties to better understand the overall legislative scheme. Further, it has been drafted in plain language, designed to assist in its accessibility. The response in many submissions has confirmed that the Government has achieved the important goal of making the principal industrial relations legislation in this State a workable and understandable document.

That is how the late Jeff Shaw went about reforming industrial relations. He spoke about consultation and the consideration of everyone's views—employers and employees. Jeff Shaw, quoting the Executive Director of the Motor Traders Association on 23 November 1995, makes a relevant point. He said:

The Executive Director of the Motor Traders Association continued:

... we acknowledge that the majority of its [industrial relations bill] contents were pronounced well before the election that brought the Carr government to power.

Importantly, the legislation indicates a willingness on the part of the Attorney General and Minister for Industrial Relations, Jeff Shaw QC, to give impartial consideration to the viewpoints of both employers and unions in matters of critical importance to both groups.

Before and following the New South Wales election, we met with Mr Shaw to express our position as the representative of the proprietors of more than 6,500 members and affiliated businesses across the State ... Mr Shaw listened to our representations and we believe the draft legislation reflects a number of our concerns.

This is testimony to the reasonable and decent process that led to the package of industrial relations legislation introduced by Jeff Shaw. The difference between the former Labor Government's approach to industrial relations reform, as I have just set out, and the approach this Government has taken is obvious to all. Does this Government have a mandate on this bill? No, it does not.

**The Hon. Matthew Mason-Cox:** Yes.

**The Hon. SOPHIE COTSIS:** No, it does not because it did not present this bill to the people. It did not take it to the people. Indeed, where this Government did speak on industrial relations before the election, such as the representations made by the then shadow Minister for Police to the Police Association of New South Wales, it set out a position that clearly is inconsistent with its current conduct. Do we have a bill before us that

has been part of a consultation process? No, we do not. Incredibly, it was during question time in the other place on 12 May that the Government announced this policy. That was it: no consultation. The voters did not know this was coming. No policy platform was presented to the voters, nothing.

In comparison to the decent and honest consultation process that the Labor Government undertook with its industrial relations reform, this Government's approach has been appalling. This Government has slammed this bill down before us and simply demanded it become law. Instead of consulting, it has decided on a full frontal attack on the Industrial Relations Commission and public sector workers. This is the extent of its interaction with the people, the workers, the employees and the key stakeholders of this State. It is shameful, it is shameful.

**The Hon. Matthew Mason-Cox:** Did Labor consult?

**The Hon. SOPHIE COTSIS:** The Government has not consulted on this.

**The Hon. Dr Peter Phelps:** Did Labor consult—yes or no?

**The Hon. SOPHIE COTSIS:** We did a lot more for working people in this State than you will ever know in your entire lifetime. You were part of a Government that introduced WorkChoices. You love WorkChoices.

**The Hon. Dr Peter Phelps:** That is a Federal program.

**The Hon. SOPHIE COTSIS:** The WorkChoices wagon has come to New South Wales in this Chamber.

**The Hon. Greg Pearce:** You are getting the wind-up note.

**The Hon. SOPHIE COTSIS:** No, I am not. They want me to keep going because the 400,000 workers are listening and they are listening to the interjections.

**The Hon. Dr Peter Phelps:** They should not be listening; they should be working.

**The Hon. SOPHIE COTSIS:** That is how disrespectful you are. What about the night shift employees?

**The Hon. Dr Peter Phelps:** I take your point. I apologise.

**The Hon. SOPHIE COTSIS:** The Hon. Dr Peter Phelps should apologise to them. He should visit the night shift workers.

**The Hon. Dr Peter Phelps:** I used to work night shift.

**The Hon. SOPHIE COTSIS:** He should talk to the night shift workers, the special care nurses at the paediatric unit at the Children's Hospital. He should talk to them.

**The Hon. Dr Peter Phelps:** You should talk to Federal staff. Labor's industrial relations policy had them negotiate 100 per cent of their claim in productivity offsets.

**The Hon. SOPHIE COTSIS:** This is New South Wales. This is New South Wales, the greatest State in this country and you continue to talk it down.

**The Hon. Lynda Voltz:** Point of order—

**The ASSISTANT-PRESIDENT (Reverend the Hon. Fred Nile):** Order! I remind members that interjections are disorderly at all times. The Hon. Sophie Cotsis has the call.

**The Hon. Marie Ficarra:** Ignore it, Sophie. Just keep going.

**The Hon. SOPHIE COTSIS:** I want the Hon. Dr Peter Phelps to keep interjecting because the more he interjects the more light is shone upon the real motivations of the WorkChoices wagon from Canberra. He

was there. The Government has turned its guns on the Industrial Relations Commission, stating boldly that the commission refuses to apply the Government's wages policy and, as such, it must be punished by being stripped of its independence. That is shameful, that is shameful, that is shameful.

**The Hon. Matthew Mason-Cox:** Again.

**The Hon. SOPHIE COTSIS:** I will keep saying it because it is shameful. This independent body hears the work value claims of ordinary working people. Government members can laugh all they like. They should talk to the ordinary workers. The President of the Industrial Relations Commission, speaking at the inaugural Jeff Shaw Memorial Lecture on 26 May 2011, said:

The Commission did not impose one outcome on the government contrary to its wages policy.

In relation to its involvement in wages claims since 2007 Justice Boland continued:

It was only the work of the Commission that secured any of the cost savings by innovative and alternative arbitral processes by which the parties consented to an arbitration based upon the wages policy.

The commission has sought openly to do its job, as it should under the law, independently, fairly and in consideration of its objects under the Act. As Justice Boland has indicated, it is the ability of the commission to be flexible and act independently that has enabled it to facilitate agreements between agencies and employees. However, to the Government the commission itself is the problem. This speaks of a broader and darker agenda, which we can only guess at. Turning to the bill, in the past week we have been informed that the bill may be unconstitutional. As reported in the *Sydney Morning Herald* on 31 May 2011, the Police Association of New South Wales has obtained legal advice from Arthur Moses, Senior Counsel, which indicates that the bill may be in contravention of chapter 3 of the Australian Constitution. In addition, any award or regulation connected to the bill may be open to challenge. The President of the Police Association of New South Wales said the legal opinion showed that the bill would be unconstitutional and called on the Government to withdraw its legislation.

**The Hon. Dr Peter Phelps:** On what basis is it unconstitutional?

**The Hon. SOPHIE COTSIS:** Read the advice.

**The Hon. Dr Peter Phelps:** Can you provide it?

**The Hon. SOPHIE COTSIS:** Everyone has been sent a copy. The President of the Police Association is quoted as saying:

Overriding the workplace rights of police officers, nurses and teachers is not only grossly unfair, our legal advice says it may also be a breach of the Australian constitution.

That is where this Government is leading us—to an industrial relations environment full of uncertainty and court cases. This Government gives us this awful legislation, which in itself may possibly be unconstitutional and could open up award decisions of the Industrial Relations Commission to judicial challenge, and make a complete shambles of our industrial relations system, and continue the uncertainty of the hardworking decent men and women of the New South Wales public sector. That is a place that none of us in this Parliament should want our industrial relations system to go. We need to ensure that those workers feel certainty and security. At this stage public sector workers do not feel that; they are feeling very uncertain about their future. The second general point I make, before turning to the mechanics of the bill, is the definition of "public sector employee". Schedule 1 [2] of the bill states in part:

*Public sector employee* means a person who is employed in any capacity in:

- (a) The Government Service, the Teaching Service, the NSW Police Force, the NSW Health Service, the service of Parliament or any other service of the Crown, or
- (b) The service of any body that is constituted by an Act and that is prescribed by the regulations for the purposes of this section.

In his second reading speech the Minister said that the provisions of this bill will not apply to local government employers and employees. However, subsection (b) clearly refers to bodies constituted by an Act of Parliament. Local government areas are constituted by the Local Government Act. In short, the definition of "public sector

employee" is drafted so broadly that it could easily include local government workers, and it could include any other employees working in organisations constituted by an Act of Parliament. The Government could simply issue a regulation affecting them and local government employees would be dragged into this horrible vortex.

Why would the Government draft legislation in this way if it did not intend to use it to include a whole range of other workers not expressed openly in this bill, including those in the local government sector? The Government may not issue a regulation the day after the assent of this bill, if it does pass, but the Government could decide at any time after assent to include those workers—and the possibility that we could trust this Government not to include local government is laughable. There is no real guarantee this Government can give the community that it will not include 50,000 local government employees—local government employees that include rangers, planners, park officers, child care workers, and the list goes on.

I turn now to the core amendment of the bill: the insertion of section 146C, which is found in part 2 of schedule 1 of the bill. When the Minister introduced this bill he indicated that wages policy was the motivation behind it. However, as we know, the bill does not explicitly mention wages policy. Schedule 1 [2] also inserts new section 146C, which states:

- (1) The Commission must, when making or varying any award or order, give effect to any policy on conditions of employment of public sector employees:

That is any policy on conditions of employment. Any policy on conditions of employment is very wide-ranging. It is a blank cheque on any policy on conditions of employment relating to wages and conditions of public sector employees. Subsection (1) continues:

- (a) that is declared by the regulations to be an aspect of government policy that is required to be given effect to by the Commission, and
  - (b) that applies to the matter to which the award or order relates.
- (2) Any such regulation may declare a policy by setting out the policy in the regulation or by adopting a policy set out in a relevant document referred to in the regulation.

I emphasise the words "any policy on the conditions of employment of public sector employees"—any policy. This is not just about wages policy; this is about any policy: long service leave, annual leave loading, maternity leave, annual leave, shift allowances, tool allowances, and the list goes on. That is incredibly broad. It is a complete blank cheque. We have no idea how far this Government will go with it. We have no regulation before us that would give us an indication of what this could really be about. We can envisage the Government cutting annual leave; reducing shift allowances; reducing maternity leave, carers leave, parental leave, bereavement leave; changing the roster system; taking away transfer entitlements; and removing the top-up for workers compensation.

Last week in the other place, when asked by the Opposition whether the Government's wages policy would give it the power to remove the right to lactation breaks for mothers working in the New South Wales public service, the Minister for Women said that these trade-offs are a perfectly acceptable part of industrial relations. These proposals are about trade-offs. We have fought hard for these conditions. We are talking about women who should be participating in the workforce and who would like to return from maternity leave but who are still breastfeeding and who want access to lactation breaks. The Government has said that these proposals are about trade-offs. What signal does that send about women's participation in the workplace? This is a hard-fought-for working condition. This is about women who are breastfeeding returning to the workforce.

**The Hon. Dr Peter Phelps:** You are implying that they must trade off that condition.

**The Hon. SOPHIE COTSIS:** That is what the Minister said; she said that these proposals are about trade-offs.

**The Hon. Dr Peter Phelps:** Not those specific conditions.

**The Hon. SOPHIE COTSIS:** She was asked a question and that was her response. These are conditions that public service employees believed were agreed upon in good faith by the Government. They are now potentially back on the table.

**The Hon. Dr Peter Phelps:** Do you really think that workers are going to trade that off?

**The Hon. SOPHIE COTSIS:** They will not have a choice. There will be no independent umpire.

**The Hon. Matthew Mason-Cox:** The sky is falling in! The sky is falling in!

**The Hon. SOPHIE COTSIS:** Oh, the sky is falling in? That is what members said when we reacted to WorkChoices. I reiterate the words in the bill, "any policy on conditions of employment of public sector employees". There will be no choice.

**The Hon. Dr Peter Phelps:** Of course there will be.

**The Hon. SOPHIE COTSIS:** We will see.

*[Interruption]*

Did the member say, "restrictive work practices"?

**The Hon. Dr Peter Phelps:** No, archaic work practices.

**The Hon. SOPHIE COTSIS:** The member thinks that lactation breaks are restrictive work practices.

**The Hon. Dr Peter Phelps:** Don't verbal me.

**The Hon. SOPHIE COTSIS:** I am not verballing the honourable member; that is what he said.

**The Hon. Dr Peter Phelps:** I said "archaic".

**The Hon. SOPHIE COTSIS:** The honourable member should confront women in the public service and tell them that. They fought very hard for that condition.

**The Hon. Dr Peter Phelps:** I had to trade off 100 per cent under the Labor system.

**The Hon. SOPHIE COTSIS:** He is on the WorkChoices bandwagon again. Who did he work for? The WorkChoices bandwagon is coming to New South Wales again.

**The Hon. Lynda Voltz:** Point of order: It is very difficult for the Hon. Sophie Cotsis to continue her speech when the Government Whip constantly interjects on her. Mr Assistant President, I ask you to direct the member to stop interjecting.

**The Hon. Dr Peter Phelps:** To the point of order: It is very hard for the Government Whip to resist interjecting when he hears such hyperbole from the Opposition.

**The Hon. Sophie Cotsis:** It is a blank cheque.

**The ASSISTANT-PRESIDENT (Reverend the Hon. Fred Nile):** Order! Interjections are disorderly at all times. The member will continue her speech and refrain from responding to interjections.

**The Hon. SOPHIE COTSIS:** Thank you, Mr Assistant-President. I am very passionate about this issue, but I will try not to respond to interjections. This bill does not give women any breaks. We are experiencing a skills shortage and workplaces and women are demanding more flexible arrangements. That will now be impossible in the New South Wales public sector because the independent Industrial Relations Commission will be thrown out. Women will leave the public service because it is not flexible enough to allow them to stay. Women's participation in the workforce is at an all-time high in New South Wales and that is a great step toward achieving gender equality. However, a number of challenges still remain for working women, especially those with carer responsibilities. It is overwhelmingly women who must deal with the burden of balancing paid employment with caring responsibilities, whether that be as a mother, caring for a disabled relative or in many other roles.

The former Labor Government implemented the Making the Public Sector Work Better for Women Strategy to attract, develop and retain female employees. The former Government piloted an e-mentoring program for women building their public sector careers in rural and regional areas and in non-traditional

occupations and senior positions. It also provided targeted support for women in the workplace with initiatives such as RailCorp's Stay in Touch program for employees on maternity leave. It improved arrangements and increased flexibility to facilitate women's participation in the workplace. The former Government should be commended for providing flexible work arrangements.

What will happen to the practice of using sick leave to undertake carer's duties as a result of this legislation? Proposed section 146C provides that the commission when making or varying any award or order must give effect to any Government policy on conditions of employment of public sector employees. What impact will that have on paid maternity and parental leave? What will be the impact on the right to request to return to work from maternity, adoption or other parental leave on a part-time basis? All of those conditions will be back on the table and will be part and parcel of the trade-offs that this Government is proposing. They are all at risk. This bill also amends the Industrial Relations Act to force the Industrial Relations Commission to apply the Government's policy despite any other considerations. Proposed section 146C (7) in part 2 of schedule 1 provides:

This section has effect despite section 10 or 146 or any other provision of this or any other Act.

Until now, the Industrial Relations Commission could take into account other sensible factors in considering a claim such as the fair and reasonable condition of work or the objects of the Industrial Relations Act, as well as the state of the New South Wales economy and the budgetary position. However, this bill insists that government policy must be applied. In short, the commission becomes the lackey of government policy. It will no longer be independent, so there will be no independent umpire for the ordinary working men and women of this great State of New South Wales. We are talking about the ordinary men and women, the decent hard-working men and women of this State in teaching, nursing, aged care, disability services, child protection, mental health, paediatrics, cancer specialties, research, science, firefighting, local government, national parks, forests—and the list goes on. They will all be affected. The wages and conditions of all 400,000 public sector employees will be affected.

The commission becomes the alter ego of the Government—its great tradition of supporting Australian values abandoned, the fair go gone. The independence of the umpire and the independence of the ordinary working people who appear before the commission will be gone. The idea of having a disallowable regulation as some sort of safety valve for this system is not appropriate. The pay and working conditions of 400,000 hardworking men and women are too important, and they should be decided by an independent workplace umpire and negotiated between employers and employees.

This legislation will have the effect of dramatically altering the pay and working conditions of hundreds of thousands of people in this State and in doing so will directly affect the safety, protection, care and quality of service to millions of others in this State who rely upon public services. It is simply wrong to introduce significant legislation such as this and say nothing of it—no consultation. None of these 400,000 employees was alerted about this. This will dramatically change everything. This will reduce their wages and conditions.

**The Hon. Greg Pearce:** You know that is a lie.

**The Hon. SOPHIE COTSIS:** No it is not. It is in your bill.

**The Hon. Greg Pearce:** It's a lie.

**The Hon. SOPHIE COTSIS:** It is in your bill. Check in your bill. I will say it 24/7.

**The Hon. Greg Pearce:** It is still a lie.

**The Hon. SOPHIE COTSIS:** It is to give effect to any policy on conditions of employment of public sector employees. It is any policy.

**The Hon. Greg Pearce:** Just because you say it doesn't mean it is not a lie.

**The Hon. SOPHIE COTSIS:** It is in your bill. I will keep saying it; you do not understand it.

**The Hon. Greg Pearce:** It is not true.

**The Hon. SOPHIE COTSIS:** Why would you put it in the bill if it is not true? Why are you making 400,000 people feel uncertain about their wages and conditions? Why are you making the police feel uncertain?

**The Hon. Matthew Mason-Cox:** You are the one doing that.

**The Hon. SOPHIE COTSIS:** No, you are doing that. You are changing the goal posts in the middle of their hearing.

**The Hon. Matthew Mason-Cox:** You are making it up.

**The Hon. SOPHIE COTSIS:** So they are not in the commission?

**The Hon. Matthew Mason-Cox:** It is your policy.

**The Hon. SOPHIE COTSIS:** No, it is not. Our policy is about fairness, justice and equity, and about having an independent umpire for ordinary people, for ordinary working men and women. When you look these people in the eye they question you about what is happening. Some of these people have said to me, "We voted for this Government. Is this the way they treat us? Is this the way they are trashing us?" These are the people you are trashing—decent hard-working men and women of New South Wales.

**The Hon. Dr Peter Phelps:** Of course if they voted for you, they would have had exactly the same.

**The Hon. SOPHIE COTSIS:** That is absolutely wrong. You are getting rid of the independent umpire. It is wrong to introduce this without consultation, without a proper process. There has been no proper process. A lot of people out there are very uncertain and anxious.

**The Hon. Dr Peter Phelps:** So your policy was formulated without proper process?

**The Hon. SOPHIE COTSIS:** Your members have received representations from many of those workers who are asking them a whole lot of questions about what is going on.

**The Hon. Dr Peter Phelps:** I would be happy to tell them.

**The Hon. SOPHIE COTSIS:** You should.

*[Interruption]*

What about the nurses, teachers and the firefighters? It is wrong to introduce this legislation without any consultation. I am happy to have a discussion with the member outside this place about his Federal problems.

**The Hon. Dr Peter Phelps:** Under the Labor system in 2010—

**The Hon. SOPHIE COTSIS:** You are the one who introduced WorkChoices. Who introduced WorkChoices? You did.

**The ASSISTANT-PRESIDENT (Reverend the Hon. Fred Nile):** Order! It is difficult for Hansard to report what is being said when two members are speaking at the same time.

**The Hon. Lynda Voltz:** Point of order: The constant interjections from Government members make it impossible for the Hon. Sophie Cotsis to stick to her speech. Can you please ask Government members to stop interjecting?

**The ASSISTANT-PRESIDENT (Reverend the Hon. Fred Nile):** Order! I remind members that interjections are disorderly at all times. The Hon. Sophie Cotsis must be allowed to speak without constant interruptions.

**The Hon. SOPHIE COTSIS:** I reiterate for the benefit of Government members—and I will keep repeating this—that until now the commission could consider other sensible factors in considering a claim, such as the fair and reasonable condition of work or the objects of the Industrial Relations Act, as well as the state of

the New South Wales economy and the budgetary position. But this bill insists that government policy must apply and remove the independent umpire. In short, the commission loses its independence. The Industrial Relations Commission will lose its independence. Its independence will be gone. The commission becomes the alter ego of the Government. The great tradition of supporting Australian values abandoned; the Australian fair go gone.

The idea of having a disallowable regulation as some sort of safety valve for this system is simply not appropriate. The pay and working conditions of the 400,000 hardworking and decent people who work in this State—the people who provide services in the hospitals, the firefighters, the search and rescue personnel, the maritime workers, our harbour workers, our nurses, our teachers, our biologists, our clinicians and the radiographers—will be affected. The pay and working conditions of 400,000 hardworking men and women should be decided by an independent workplace umpire, not by us here in this Chamber.

This legislation will have the effect of dramatically altering the pay and working conditions of hundreds of thousands of people in this State and, in doing so, will directly affect the safety, protection, care and quality of service for millions of others in this State who rely upon public services. It is bad and it is wrong. It is wrong to introduce significant legislation such as this and say nothing of it in an election that occurred just over two months ago. It is wrong to introduce it without any consultation with the organisations, parties or stakeholders.

**The Hon. Matthew Mason-Cox:** Point of order: I refer to tedious repetition. I have heard this three times now. Will you ask the member to introduce new material or to sit down?

**The Hon. Lynda Voltz:** To the point of order: This is a complex bill. The member has not repeated herself; she is explaining the elements of the bill and going into great detail.

**Mr David Shoebridge:** To the point of order: These are matters of real complexity and it is necessary for the honourable member to ensure that Government members fully understand the detail of the law and the manner in which these laws will grossly impact on ordinary working people. Because of the widespread nature of the impact of laws, it is sometimes necessary to bring Government members back to the core fundamental attacks that this Act produces.

**The Hon. Matthew Mason-Cox:** To the point of order: Mr David Shoebridge has not been in the Chamber to listen to the contribution of the Hon. Sophie Cotsis. How can he even comment on tedious repetition when he has not been here?

**The Hon. Lynda Voltz:** Further to the point of order: If members opposite continually interject on the Hon. Sophie Cotsis, she often has no option but to repeat herself. If members find her contribution repetitious, I suggest that they stop interjecting.

**Mr David Shoebridge:** Further to the point of order: I bring to the attention of the Hon. Matthew Mason-Cox the wonders of television and the web broadcast that allow the member, should he so choose, to enjoy the pleasures of this debate from his room upstairs.

**The ASSISTANT-PRESIDENT (Reverend the Hon. Fred Nile):** Order! There is no point of order. However, I remind the Hon. Sophie Cotsis that she should make debating points and not simply reiterate comments made earlier in her speech.

**The Hon. SOPHIE COTSIS:** It is wrong to introduce this bill without consulting organisations, parties or stakeholders. It is wrong to introduce it without talking to appropriate employee organisations.

**The Hon. Shaoquett Moselmane:** There has been no consultation.

**The Hon. SOPHIE COTSIS:** No consultation. It is wrong to introduce legislation that may drag our industrial relations system into legal chaos. It is wrong to draft legislation so broad and wide—this is a blank cheque—that is abhorrent to any parliamentary member who believes in procedural fairness and the need to resist the arbitrary power of government. The conduct of this Government towards the Industrial Relations Commission, the independent umpire, and ordinary working men and women who rely on the independence of the industrial umpire, has been outrageous, offensive and disgraceful.



Given the historical importance of this debate I wish to read onto the record how industrial relations has evolved, to put it into context. In 1828 the Master and Servants Act of 1828 in England permitted employers to prosecute any employee who refused to work or lost or damaged the employer's possession, the maximum penalty being six months imprisonment. This Government wants to take us back to those days and that type of legislation. In 1856 stonemasons became the first New South Wales workers to win an eight-hour working day. The 1860s saw the rise of unionism. In New South Wales the first trade unions commenced to form and recruit members. On 25 May 1871 the Trades and Labour Council of New South Wales was formed.

The Trade Union Act 1881 recognised New South Wales trade unions for the first time as distinct corporate organisations. In 1892 the New South Wales Labour Bureau was established and was the first New South Wales government agency to deal with employment-related issues predominantly focused on providing job opportunities and accommodation for the unemployed. In 1895 the bureau was absorbed into the New South Wales Department of Public Instruction. The Factories and Shops Act 1896 was the first comprehensive regulation of working conditions in factories, shops and other industrial establishments. The legislation was restricted to working hours of women and children.

The Early Closing Act 1899 restricted the length of working hours for all employees. The Truck Act 1900 required the payment of wages in money and prohibited employers from influencing how employees spent wages. The Industrial Arbitration Act 1901, the first modern industrial relations statute, came into force in December 1901. I will repeat that: the Industrial Arbitration Act 1901, the first modern industrial relations statute came into force in December 1901 and a separate arbitration court was established, with binding arbitration powers. The Apprentices Act 1901 created the basis for the administration of all apprenticeships in New South Wales and reduced the hours of apprentices to a maximum of 48 hours per week. The Shearers Accommodation Act 1901 set standards for the accommodation of shearers and others engaged in pastoral occupations.

In 1907 we had the very important Federal harvester case, which established a basic wage for male workers on the basis of their bread-winner status. In the 1912 fruit pickers case the Federal commission rejected an argument that the male and female basic wage should be equal. The decisions were followed by all Australian industrial relations tribunals. The Industrial Disputes Act 1908 replaced the 1901 Industrial Arbitration Act and introduced wages boards, which could determine pay and conditions applying across all industries. The Attorney General of the day continued to administer industrial relations legislation until 1911, when the Minister for Labour and Industry took up the responsibility. In 1912 the Department of Labour and Industry was created, making it the first time that employment relations was regulated by a separate government department in New South Wales. The Industrial Arbitration Act 1912 replaced the 1908 Industrial Disputes Act. The Industrial Disputes Act 1912 saw the introduction of wages boards, which regulated pay and conditions for workers. The Eight Hours Act 1916 created a standard 48-hour working week. In 1919 the basic female wage was established—at 54 per cent of the male basic wage.

**The Hon. Dr Peter Phelps:** Because the trade unions at that time were hopelessly misogynous.

**The Hon. SOPHIE COTSIS:** The member should take his WorkChoices wagon and go back to Canberra. This is a very important debate and we must go through the historical context because what the Government is trying to do to the people of this State and its 400,000 public sector workers is worse than what the former Coalition Federal Government tried to do with it WorkChoices legislation. There is no fairness and no justice in what the Government is proposing.

*[Interruption]*

**The ASSISTANT-PRESIDENT (Reverend the Hon. Fred Nile):** Order! The Government Whip will refrain from interjecting and allow the Hon. Sophie Cotsis to make her speech.

**The Hon. SOPHIE COTSIS:** In 1926 the Forty-four Hours Week Act 1926 reduced the standard working week to 44 hours. The Workmen's Compensation Act 1926 introduced New South Wales's first modern compensation scheme for workers injured at work. The Rural Workers' Accommodation Act 1926 replaced, modernised and extended the coverage of the Shearers' Accommodation Act 1901. In 1938 shop registration was introduced. The licensing of shops and the regulation of shop trading hours was introduced under the Factories and Shops Act 1901.

In 1940 the Industrial Arbitration Act 1940 replaced the 1912 Act. This legislation further modernised the framework for New South Wales industrial relations. In 1944 the Annual Holidays Act 1944 introduced a

standard entitlement to two weeks holiday leave for each completed year of service. In 1958 this entitlement increased to three weeks leave per annum. In 1947 the 40-hour working week was introduced. Amendments to the Industrial Arbitration Act 1940 reduced the standard working week to 40 hours.

In 1955 the Long Service Leave Act 1955 introduced a standard entitlement to 13 weeks long service leave after 20 years of service. In 1958 New South Wales became one of the first Australian States to legislate for equal pay for male and female workers. In 1959 unfair contracts were regulated. Amendments to the Industrial Arbitration Act 1940 enabled the New South Wales Industrial Relations Commission to alter or void any contracts involving work performed in any industry. These provisions then covered most forms of individual contracts for the performance of work, including franchise arrangements.

In 1963 long service leave was improved and extended. Standard entitlements increased to three months leave after 15 years service. New legislation was introduced extending long service leave entitlements to the metalliferous mining industry. In 1973 the New South Wales Industrial Relations Commission handed down its equal pay decision. In 1974 annual holiday entitlements were increased. Following a test case decision by the New South Wales Industrial Relations Commission, the Industrial Arbitration Act 1940 was amended to introduce a standard entitlement of four weeks leave for each year of service.

**The Hon. Dr Peter Phelps:** That would be under a Liberal government, in 1974.

**The Hon. Greg Pearce:** It was a Liberal government.

**The Hon. SOPHIE COTSIS:** Well, this present Liberal Government is going to smash all these entitlements and conditions. As I said, in 1974 annual leave entitlements increased. Following a test case decision by the New South Wales Industrial Relations Commission, the Industrial Arbitration Act 1940 was amended to introduce a standard entitlement of four weeks leave for each year of service. In 1975 employment agents were regulated. Amendments to the Industrial Arbitration Act 1940 introduced a scheme for the licensing of private employment agents. A portable long service payments scheme for workers in the building and construction industry in New South Wales was also established and administered by the former Builders Licensing Board, now part of the Department of Fair Trading.

In 1977, under the Anti-Discrimination Act 1977, discrimination in employment on the grounds of sex, race or marital status was made unlawful. Grounds for unlawful discrimination were subsequently expanded to include age, disability, sexual harassment and family responsibilities, as well as race, homosexual, HIV and transgender vilification. In 1979 transport industry workers were covered. Amendments to the Industrial Arbitration Act 1940 enabled the New South Wales Industrial Relations Commission to regulate contract of carriage with regard to couriers, and contracts of bailment with regard to taxidriviers. The Department of Labour and Industry was abolished and a new Department of Industrial Relations and Technology was formed.

In 1980 the Department of Industrial Relations and Technology was renamed the Department of Industrial Relations. The Industrial Arbitration Act was amended to provide standard 12 months unpaid maternity leave. The provision was later expanded to include paternity and adoption leave and, in 2000, to allow leave to be taken by regular and systematic casual employees. In 1981 the Apprentices Act 1981 replaced the Apprentices Act 1901 with a modern system for the regulation of apprenticeships in New South Wales. In 1980 the Employment Protection Act 1982 created minimum redundancy entitlements for New South Wales workers under awards.

In 1983, under the Occupational Health and Safety Act 1983, a new occupational health and safety regime was introduced, placing greater occupational health and safety obligations on employers and employees. The regime focused upon injury prevention strategies, employee involvement in occupational health and safety matters, and new penalties for breaches of the legislation. In 1985 long service leave entitlements increased to two months leave after 10 years of service.

In 1986, as a result of an amalgamation with the Ministry of Employment, the Department of Industrial Relations became known as the Department of Industrial Relations and Employment. In 1987, under the Workers' Compensation Act 1987, fundamental reforms to the workers compensation system were introduced to reduce costs to employers. Amendments to the Industrial Arbitration Act 1940 introduced new protections against dismissal for employees whilst they were receiving workers compensation benefits.

In 1988 the Essential Services Act 1988 protected the New South Wales community from disruption to essential services. In 1989 the Industrial and Commercial Training Act 1989 replaced the Apprentices Act 1981

and introduced an integrated administration system for apprenticeships and traineeships, and the Entertainment Industry Act 1989 replaced various arrangements under the Industrial Arbitration Act 1940 with a new scheme to partially self-regulate the licensing of New South Wales theatrical agents and employers under the auspices of the New South Wales entertainment industry. In 1990 the department was named the Department of Industrial Relations, Employment, Training and Further Education to reflect a focus on vocational education and training.

In 1991 unfair dismissal laws reformed by amendments to the Industrial Arbitration Act 1940 were introduced to allow individual access and compensation for New South Wales workers who were unfairly dismissed. In 1992 the Industrial Relations Act 1991 introduced enterprise bargaining, voluntary unionism and increased penalties for industrial action. In 1994 the New South Wales anti-discrimination legislation was amended to make awards and agreements subject to anti-discrimination legislation. In 1995 employment, training and further education functions were transferred out to the Department of Training and Education Coordination, and the name was changed back to the Department of Industrial Relations. In 1996 the Industrial Relations Act 1996 replaced the Industrial relations Act 1991. In 1997 regulations were made excluding certain classes of employees from unfair dismissal jurisdiction.

In 1998 the report of the inquiry into pay equity confirmed that work in certain female-dominated industries was undervalued. In 2000 the New South Wales Industrial Relations Commission adopted the equal remuneration principle as a wage fixing principle and the Industrial Relations Amendment Act 2000 made wide-ranging amendments to the Act, including the right of Federal award employees to make unfair dismissal claims to the New South Wales Industrial Relations Commission; parental leave rights for casual employees; and establishing in victimisation proceedings a rebuttal presumption that any detrimental action taken against any employee was victimisation. In 2001 amendments to the Industrial Relations Act 1996 limited applications under unfair contracts provisions, and the first pay equity decision increased rates of pay in the award for public sector librarians on the basis that there had been a history of undervaluation of work in a traditionally female-dominated industry.

In 2002 the Ethical Clothing Trades Act set up the Ethical Clothing Trades Council to advise on compliance with work-related obligations to outworkers in the clothing industry; the Industrial Relations Act 1996 was amended to provide for recovery of moneys unpaid or underpaid to outworkers; the report on a review of the first five years of the Industrial Relations Act 1996 was tabled in Parliament; and the Industrial Relations Act 1996 was amended to regulate the conduct of industrial agents, who are neither legal practitioners nor officers or members of industrial organisations. In 2003 the Industrial Relations Act 1996 was amended to extend the adoption leave provisions of the Act, giving 12 months unpaid leave to parents who adopt children under 18 years.

On 1 July 2005 the Ethical Clothing Trades Extended Responsibility Scheme came into effect. The mandatory code protected outworkers and required clothing retailers to source clothes from manufacturers who abided by New South Wales award conditions when using outworkers. On 7 October 2005 the Workplace Surveillance Act 2005 prohibited spying on employees using technologies, including video cameras, email and tracking devices. On 19 December 2005 the Industrial Relations Commission handed down its general order in the Family Provisions Case 2005. This case varied all New South Wales awards to enable the extended use of sick leave for caring responsibilities when a family or household member is sick—that is at risk under this proposed legislation; to allow casuals to access unpaid leave to meet their caring responsibilities—that certainly will be at risk; to increase simultaneous unpaid parental leave to eight weeks; to extend unpaid parental leave from 52 weeks to 104 weeks; and to permit an employee to return from parental leave on a part-time basis until the employee's child reaches school age.

On 28 February 2006 in the Secure Employment Test Case the New South Wales Industrial Relations Commission established a right for casuals to convert to permanent employment after a period of six months of employment. In March 2006 the Public Sector Employment Legislation Amendment Act 2006 protected more than 186,000 New South Wales public sector staff employees of the Crown from the impact of the previous Federal Government's WorkChoices legislation. On 10 March 2006 the Industrial Relations Amendment Act 2006 extended the powers of the New South Wales Industrial Relations Commission to hear disputes referred to it pursuant to common law agreements between employers and employees.

On 27 March 2006 the previous Federal Government's Workplace Relations Amendment (Work Choices) Act 2006 commenced so that rights and responsibilities for employers who were constitutional corporations employing staff in New South Wales came under Federal jurisdiction. New South Wales industrial

relations laws continue to apply to unincorporated businesses, such as sole traders, partnerships or trusts and corporations that do not engage in significant financial or trading activities—for example, not-for-profit organisations. On 14 November 2006 the High Court of Australia handed down its decision.

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

## **GOVERNOR'S SPEECH: ADDRESS-IN-REPLY**

### **Eighth Day's Debate**

**Debate resumed from 31 May 2011.**

**The PRESIDENT:** Order! I remind members that the Hon. Adam Searle is about to make his inaugural speech. I ask members to extend to him the traditional courtesies.

**The Hon. ADAM SEARLE** [6.01 p.m.] (Inaugural Speech): I acknowledge the traditional custodians of this gathering place, the Gadigal people of the Eora nation, the first lawgivers of this land. I pay my respects to elders past and present and pledge my service and friendship to the elders and communities who are with us today. I congratulate you, Mr President, on your election as the Presiding Officer of this House, one of the oldest public offices in Australia.

It is a profound honour to be elected to this Chamber, the first legislature of our nation. I worked in and around this Chamber in another capacity from 1994 until 2000 both in opposition and in government with some of the finest servants of the New South Wales people, such as Jeff Shaw. Little did I suspect at that time that I would one day serve in this House or the manner in which I would arrive here. As John Lennon once famously remarked, "Life is what happens to you while you are making other plans." It is a great honour to have the opportunity to serve the community in Parliament. I am very conscious of that and hope in the time I have here, however long that may be, I make a contribution to the public good. I will do my best to uphold the trust of those who have placed their faith in me.

All of us come to this place from many paths and many journeys. We hope that the wisdom and experience acquired on those journeys will make us better servants of the people we represent when we arrive here. My journey began here in Sydney only a few months before man first walked on the moon. My parents, Bill and Gloria, raised me on the far North Coast of New South Wales in what can only be described as alternative circumstances. We traded eggs from our chickens for milk from the people who lived opposite who had a cow. We grew all our own fruit and vegetables and Mum made all our bread. Today my partner, Alison, does something of the same but on a smaller scale at our place in the Blue Mountains. Our family travelled to unusual places, such as India and Nepal. From these experiences I learnt that Western society did not have a monopoly on culture and that injustice and inequality must be opposed in every way possible.

While the laid-back, easy-going stereotype of the alternative community in the early 1970s has some basis in fact, my parents always worked very hard on their land to provide for me and to try to achieve self-sufficiency. From that example I learnt that we should never judge people by their appearance or their apparent lifestyle. I learnt that application and determination in the face of extreme odds are necessary if you are going to achieve anything worthwhile in life. I learnt the value of conservation and the need to preserve the land that sustains our life and guard our nation's precious and limited resources such as water. I learnt about the value of community and the reality that we grow stronger by sharing the burdens and joys of life with others.

At the heart of my childhood was the experience of mortality. My father brought me back from death in October 1975 when I drowned in the dam on our farm. He not only gave me life for a second time; he gave my children their chance at life. By good fortune he had just completed a first-aid course where he learnt the resuscitating techniques that he used to bring me back to life. I am forever in his debt. My father was many things at different times in his life—a gardener, a builder and later a television writer and producer. He was responsible for shows such as *A Country Practice*.

**The Hon. Melinda Pavey:** Hear! Hear!

**The Hon. ADAM SEARLE:** Hear, hear, indeed. Through my father I learnt of the importance of the arts and culture as an enriching factor at the core of our community's life. My father is no longer with us in

person, but he remains vividly with me here tonight and always. My mother was and is a powerful force in my life. She was a homemaker and nurturer. She actively encouraged my desire to learn, to express myself and to follow my dreams, but only so long as I had a decent trade to fall back on, hence my learning of the law. My two sisters, Emily and Josephine, were in many ways my trial run at parenthood.

Being so much older than them, I was entrusted by our parents with many aspects of child rearing. It was an invaluable experience for me for the time when I was fortunate enough to have my own children. It was lucky for me but perhaps less so for my sisters because, apparently, I was stern and unyielding when I had care of them. They like to tease me because they say that I am now a real softy with my own children. My sisters have always provided me with love, support and encouragement in all my endeavours in life. Although neither of them is able to be here tonight, they also are with me in spirit.

All of us in this place have eventually encountered an understanding of the power of politics to make a difference. For me, it commenced with a visit by Bob Hawke to my family's farm at Easter 1979. Conversations with Bob Hawke confirmed the deep sense of social justice instilled in me by my parents. It seemed natural that at the age of 15 I eventually found a political home in the Australian Labor Party. The proposition that the Australian Labor Party is imperfect is obvious. No organisation composed of human beings and enduring for 120 years could be anything else.

But, for all its faults, Labor remains the great force for progressive change in Australian society. Whatever advancements have occurred for working people, the disadvantaged, the marginalised, whether we speak of economic, social or other forms of disadvantage, they have all or mainly come about through the actions of Labor in Parliament. For this reason I have never lost my faith in Labor's capacity for renewal and regeneration, its ability to refresh itself at important junctures in its history so that it can continue with its historical mission of making this State the best place in which to live, work and raise a family. That faith was only strengthened and affirmed for me through the example and inspiration of Jeff Shaw.

Tonight I honour the legacy of Jeff Shaw to our State, to the law and, above all, to the working people, the disadvantaged and the marginalised in society. Jeff was one of the great minds of his generation and one of the greatest law reformers in our State's history. Although he was a shy man, he was also warm and generous with a great sense of humour. He also saw a social purpose in the practice of law. As a professional advocate he was tireless in his work to improve the pay and conditions of working people. At this he excelled, successfully representing unions in industrial courts in landmark cases, including in the High Court and on one occasion the Privy Council in London.

When Labor went into opposition after 1988 Jeff answered the call to serve. In public office he pursued a vigorous program of progressive civil and criminal law reform without equal, not because it was popular or fashionable but because he thought it was right. He leaves behind a powerful legacy as a leading barrister, a reformist Attorney General and a judge. More than this, he demonstrated by his own example that a person of integrity and imagination can make a significant contribution to public life in this State.

He is held in high regard by those engaged in the law at every level, in the industrial relations community where he spent so much of his working life, and on all sides of the New South Wales Parliament. I pause to acknowledge the very many kind and generous things that were said in this Chamber, from all quarters, and in the other place on the occasion of Jeff's passing. Jeff Shaw's invitation for me to work for him in opposition in 1993 was an invitation as welcome as it was unexpected. He said, "Listen, you will get to have input into the next Labor Government's policies and we can have some fun on the way." As they say in the classics: it was an offer too good to refuse—and he was right, we did have a lot of fun over the next six years.

When Labor came to government in March 1995 Jeff named me as his chief of staff. I was very young—I was only 25—and many thought that I did not have the experience necessary for a role of such sensitivity. My appointment was resisted by some, but Jeff, who could be stubborn on occasions, dug his heels in and insisted. He placed his faith in me to be the chief prosecutor of his agenda within the Government and with other stakeholder interests, both inside and outside the Parliament. As a result I was given the opportunity at a very early age to see straight into the heart of government and public administration in this State.

Far from being dispirited by this experience over five years, I came away with a very enhanced appreciation of what could be achieved in public life with commitment, imagination and determination. I also saw first-hand how important it is to have people in key roles who believe in progressive political values and who have a rich policy agenda and also the technical skills needed to achieve outcomes. In that process I also came to appreciate and value the processes of this House in making public policy.

During this time I was very fortunate to have the support of skilled, committed and loyal colleagues—many of whom are here tonight—who worked on Jeff's ministerial staff: Bruce Grimshaw, Shaughn Morgan, Pete Lewis, Liz Jurman, Jessie Choy, Marian Trenerry, Kate O'Rourke and many others too numerous to mention. I would also like to honour the memory of the late Virginia Knox, who was chief of staff to the Hon. Tony Kelly, who worked also with Michael Egan and who for many years helped to run the business of this Chamber. Many generations of Labor staffers were taught their trade by Virginia. She is no longer with us but the debt that many of us owe her is enduring.

It was originally intended that I should only work with Jeff for two years in government, but it was nearly five years before I eventually left. I knew that I had to move on and that remaining a staffer, as enjoyable as it is, is not a good thing to do indefinitely. But I had only the vaguest notion of what I should do next—probably something to do with public policy and maybe in the public service or in academia if I was lucky. Jeff had the view that I should go to the Bar. Of course, I later discovered that Jeff thought everyone should go to the Bar. To persuade me to do this I later learned that he had played a bit of a trick. One Friday morning he took me to watch the special leave applications in the High Court. I did not notice at the time but when the court runs some of these lists it has what is known as "hose-out day", when all the absolute losers are dealt with in one go.

We sat there for a few hours and watched some barristers put their case and other barristers, seemingly effortlessly, have them hosed out without even raising much of a sweat. Jeff said to me, "You could do that. Why don't you just give it a go?" So I did. Little did I know what I was letting myself in for. Jeff took a keen interest in the wellbeing of not only the many people who came into contact with him but he also took a special interest in his staff. In return, those who worked for him imbibed a sense of vocation: that they were contributing to something greater than themselves. The commitment of those involved to changing things for the better is often overlooked by political commentators when they write about politics. I think that was the essence of Jeff Shaw.

On the occasion of my election to this place last week a senior member of the House who sits opposite and who knew Jeff said in welcoming me that he hoped that I could bring a little bit of Jeff back into this place. I know that I am no Jeff Shaw, but if during my time in this place I can reflect in debates at least some of his decency, his thoughtfulness and his creativity, I think he would be pleased and I will have done very well indeed.

Of the many commitments I bring to this place none is greater than my commitment to the needs and aspirations of working people and their right to organise collectively. In my time at the Bar I principally practised in the areas of industrial and employment law, appearing mainly, but not only, for workers and their unions. Even when I appeared for employers, whether it was on industrial issues or occupational health and safety prosecutions, I have been grateful for the learning, developed over decades, by the industrial tribunals and courts of this State, and for the humanity, practicality and impartiality of the judges, magistrates and commissioners before whom I have appeared. My years of legal practice have only deepened my respect for the rule of law. The essential role of courts and tribunals independent from executive government is one of the necessary cornerstones of our liberal democracy. Above all, those cases and proceedings confirmed my faith in the rights and dignity of working people.

While there are many cases in which I am happy to have been involved, there is none that I am more proud of than the pay equity case for childcare workers that I conducted for the Liquor, Hospitality and Miscellaneous Workers Union. Those workers were some of the most underpaid and undervalued in the workforce, and they lacked the industrial muscle to obtain higher wages and better conditions through industrial action. They needed an independent umpire who was able to hear evidence about the gender-based undervaluation of their conditions of employment, and to make a fair and appropriate decision to address that. The importance of the independent Industrial Relations Commission as an agent for achieving social justice for more than 100 years of this State's history should not be underestimated; it should be respected and, in my view, it should be retained.

In my time in practice I have also enjoyed the collegiate support of fellow practitioners, some of whom are here tonight, and they do me an honour by being present. I acknowledge the presence of my secretary Dominique and of fellow barristers from my Chambers, including Richard Kenzie, QC, and Max Kimber, SC, and too many others to name individually—although I will embarrass him by making a special mention of Shane Prince. Although an outstanding counsel in matters both commercial and industrial, Shane has also made a significant humanitarian contribution in providing support and representation to many who seek the protection of our country through asylum. Shane's commitment to the rule of law and his quality as an advocate in this area are without equal.

Apart from my experiences as a staffer and an advocate, I also bring, like many other members of this House, experience in local government. I am deeply indebted to the people of the Blue Mountains for their faith in and support of me as a local councillor and for two years as mayor. In the mid to late 1990s two mentors of mine, Joy Anderson—the only female mayor of the Blue Mountains—and Alma King, a branch member, highlighted to me the value of local government and the opportunity it provided for community services. Joy and Alma are now both gone but through their urging and, dare I say it, conniving, I was preselected and ultimately elected to represent Ward 2 on Blue Mountains City Council, and I am subsequently in the process of serving my third term.

Like so many who enter public life, I was spurred on by what I saw as injustice and, frankly, incompetence. At the time Blue Mountains council had dropped the ball on developing a new local planning instrument that properly recognised the unique natural beauty and heritage of the Blue Mountains—later recognised by World Heritage listing. After exhaustive consultation and a struggle with the then State Government we achieved a state-of-the-art and, I believe, unique local environment plan that has provided significant protection to the environment from inappropriate development. It was a case study in ensuring that sustainability, integrity and public benefit informed the approach of public authorities to the issue of development.

My experience on councils also brought me into contact with some exceptional individuals whom I would like to acknowledge tonight. I pay tribute to Mark Greenhill, who is present in the public gallery. Mark served with me on council from 1999 to 2004, during which time he was also a very effective advocate for western Sydney as the President of the Western Sydney Regional Organisation of Councils [WSROC]. When Labor chose a replacement for Faye Lo Po' in the seat of Penrith in 2003 my view is that it should have been Mark. That it was not says something about the Labor Party at that time.

After a break, undertaken for work reasons, Mark was re-elected to council in 2008 with a 6 per cent swing to him. Those with a good memory know that 2008 was not a good year for the Australian Labor Party at council elections, and it was particularly bad in western Sydney. Despite that, Mark Greenhill attracted a swing. Mark and I were at school and university together and we have been close colleagues in politics since 1992. His son Sam, my godson, is with him in the public gallery tonight.

I could not have achieved what I have in public life without Mark's personal and political support over many years. One practical example of that is my preselection for the Federal electorate of Macquarie in 2001. Macquarie was thought to be winnable and I wanted to contest the seat for Labor. In this quest I was supported by the former Labor members for Macquarie Maggie Deahm and Ross Free, and I acknowledge their friendship and support. I was also supported by many local rank and file party members, but opposed by other sections of the party. In what can be described in Labor terms only as a rugged preselection process I was chosen to be the Labor candidate. Crucial to that outcome was carrying every vote in only one of the six branches. In only one branch did I not drop a single vote. It was the Blaxland-Glenbrook branch, which was Mark Greenhill's branch. That could not have happened without his commitment and support.

As they say, you have to be careful what you wish for and 2001 was not Labor's year. The double whammy of September 11 and Tampa made sure of that, as did Labor's flawed small-target strategy. We did better in Macquarie than we did elsewhere, largely because we held the line in the Blue Mountains. I acknowledge the efforts of my then campaign director, Mark Ptolemy, who is also in the gallery tonight. One of the enduring lessons for Labor from that campaign is that you cannot successfully build your political strategy on your opponent's weaknesses. If an opposing leader addresses his or her weaknesses, as John Howard did in 2001, you have nowhere to go. You have to stand for something in politics: you have to believe in something. If you do not, or if you pretend to be something you are not, the electorate will smell a rat, they will find you out and they will reject you. Developing policies from core beliefs is not merely desirable as a matter of principle but in the longer term it is smart politics. I think my friend Rodney Cavalier would agree with that.

Defeat in Macquarie was a setback and it hurt. However, it also made me a better person. It afforded me the ability to continue to develop my practice of law and my forensic skills. It has given me more time to be with my family and to gain more life experience. I believe that these things have made me better able to make a contribution to public life. That time also allowed me to continue to serve as a councillor and to deal with issues at the grassroots level with limited resources. I was able to serve on the board of the Western Sydney Regional Organisation of Councils as treasurer for four years and, in time, as mayor. That experience, managing a \$135 million budget when the local ratepayers provided only \$44 million and the rest came in the form of ad hoc grants from State and Federal governments for a limited period and for limited purposes, was often a real challenge.

That was particularly so when you must look after \$640 million in assets that need \$100 million in investment over the next 10 years and you do not have it. That has given me an insight into the chronic infrastructure funding shortfall impacting local government throughout Australia, not only New South Wales. That is a key challenge for our State. We must ensure that communities have the local infrastructure they need. I hope I will be able to participate in debate in this place about how those needs should be met. George Black, one of the first Labor members elected to this Parliament in 1891—although as a member of the other place—said on the occasion of his first speech:

We have not come into this House to make or unmake ministries. We have come into this House to make and unmake social conditions.

He knew, as did later generations of Labor representatives, that Labor was not intended to be a vehicle for personal advancement but to achieve real and fundamental changes in society. He knew that to do that Labor Party members must draw on their own life experience to develop policies and programs which speak directly to the life experience of their communities and which meet their needs in a tangible way. Doing that provided the foundation for Labor's long record of success in this State electorally, but more importantly in a public policy sense, and we must relearn it.

New South Wales faces many challenges and the Labor Party must ensure that it is fit and ready to meet them. I will touch on just a few. The pressure for more and affordable housing in the Sydney Basin is threatening the land needed for food production. A city or State that is not self-sufficient in food production will eventually place itself at risk. That risk is magnified if infill development is decreased in favour of more greenfield development. However, housing is becoming almost unaffordable in the Sydney Basin and that has caused real tension.

There is no easy solution, but one possible option is to provide better transport systems, particularly when new developments are being rolled and not as an afterthought. Western Sydney is home to 1.9 million Australians and it has an economy larger than that of Singapore. In addition, 75 per cent of the people who live in the west also work in the west. Despite that, there is no proper integrated western Sydney transport system to get people around the region. That is partly a problem of geography. The residents of western Sydney often have no option but to use their car because there is no public transport. We must do better if our city is to continue to work effectively.

We also need to reinvigorate our civic institutions, including this Parliament. Putting aside the recent controversy about the leadership of parliamentary committees, we should not run risk of there being less transparency and accountability, particularly when the Government has a significant majority. Conscience votes allow members to perform at their best because they can say what they believe in and try to persuade colleagues through debate and not merely sound bites. One example of that is the debate we will soon have about the future of at least one magistrate. We should consider more frequent conscience votes where possible.

Parliamentary committee reports are sometimes overlooked and left to gather dust. A free debate and vote by members in both Houses on recommendations of parliamentary committees, commissions of inquiry, oversight bodies and perhaps even coroner's reports would be a significant step forward in empowering parliamentarians and providing them with a greater role in policy development. I have been around long enough to know that there will not be a stampede to embrace these notions. However, consideration should be given during this parliamentary term to ways in which we can strengthen the role of members.

I will conclude my remarks in the only way possible, with gratitude. I thank my local branch members, who have selected me for public office on numerous occasions, stood at street stalls in appalling weather and handed out how-to-vote cards for me on election day over many years. I pay tribute to branch secretary Romola Hollywood and my other supporters who are here today: Tim Murawski, Suzie Davies and others from the local area, including Andrew Williamson and my council colleagues, Alison McLaren and Mark Greenhill. I also thank Susanne Jamieson, who taught me occupational health and safety law at university, and Professor Ron McCallum, who taught me labour law.

I also thank Gary Punch, Paul and Lucy Howes, Judy Reid, former Premier Kristina Keneally, who with her husband Ben and my colleagues from the Sydney University Labor Club—Andrew West, James Carleton, Chris Siorokos, Emma Maiden, Jeff Collins and others—have supported and encouraged me for many years. I also thank the officials of the New South Wales Australian Labor Party: Secretary Sam Dastyari; Assistant Secretary Chris Minns; Party President Michael Lee; and the Secretary of Unions NSW Mark Lennon.



Without their support I would not be here tonight. I pay tribute to former Party President Bernie Riordan. He is a friend and supporter as well as a client. I also pay tribute to his father, Joe, who was one of the giants of Labor in the twentieth century and a very great gentleman.

Of course, my final but not my least important thanks go to my family. I thank my mother, Gloria, who is here tonight from the North Coast, and my parents-in-law, Jan and Les. Above all, I thank my partner Alison and our three children, Grace, Eleanor and James. Alison is a wonderful, warm, passionate and enthusiastic person, a fine lawyer, a keen gardener and great mother to our children. I know the strains that holding elected office places on a family, including the many absences from home that other members have already reflected on in their inaugural speeches. That is a heavy burden. Public life is built on the sacrifices of families and this hidden price should never be forgotten.

Notwithstanding this, Alison and the children have supported me in my previous roles as councillor and mayor over more than a decade and continue to support me now that I have embarked upon this parliamentary journey. To Alison and our children, whom I love more than words are able to express, I say thank you and, I am sure, not for the last time. As our son James often says, "I love you more than the tenderest of love hearts." In return I say to them, "I do too. I love you with all my heart."

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

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

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

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

#### **ADJOURNMENT**

**The Hon. MICHAEL GALLACHER** (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [6.32 p.m.]: I move:

That this House do now adjourn.

#### **RIDING FOR THE DISABLED**

**The Hon. NIALL BLAIR** [6.32 p.m.]: On Sunday 29 May 2011 I had the honour of attending, along with my wife and son, the Moss Vale Chicken Run, which was a fundraising event for Riding for the Disabled held at Moss Vale in the Southern Highlands. The Chicken Run is a fun, one-day horse event comprising equestrian dressage, showjumping and cross-country. It is the annual fundraiser for Riding for the Disabled Moss Vale Branch and is put together by a bunch of fantastic volunteers and held at the Moss Vale Showground. On the day there were more than 97 competitors. Ages ranged from the very young, as young as four or five years, right up to many riders well and truly into their twilight years. It is not a competitive day; it is a day for people to gain experience in the finer arts of one-day eventing. It is held in great spirit with the major objective of raising funds for Riding for the Disabled.

Riding for the Disabled in the Southern Highlands commenced in 1975 and was originally kicked off at Throsby Park, a very famous old property in the Southern Highlands, by the then Dell Throsby. It continued to operate in the Southern Highlands at Throsby Park until 1999 and then moved to the Fitzroy Equestrian Centre at Fitzroy Falls. I am a great advocate for the work done by Riding for the Disabled. The primary objective of Riding for the Disabled is to provide most people with a disability the opportunity to ride and enjoy all of the activities connected with horse riding. For people with a disability riding is both therapeutic and recreational. Riding for the Disabled is one of the few organisations that offer a multidisciplinary service catering for people with a wide range of disabilities.

The objectives of Riding for the Disabled are to encourage, support and assist centres to provide riding therapy, sport, recreation, training and safety programs for people with disabilities. The programs include horse riding, carriage driving, vaulting and dressage for people with all kinds of disorders, including specific learning disorders, injuries resulting from accidents, cerebral palsy, psychiatric disorders, spina bifida, multiple sclerosis,

visual and hearing impairments, autism and amputations. Horse riding is a unique form of exercise and rehabilitation. The complex movement of the horse helps to improve coordination, balance, muscular development and fitness. Horse riding and horse-related activities assist greatly and often dramatically in the development and restoration of personal confidence, self-esteem, communication skills, leadership and trust. For people with challenging behaviour, for example, horses offer a powerful medium for restoring a sense of personal control, which significantly improves behaviour towards family, teachers and friends.

That information was taken directly from the Riding for the Disabled Association website. I have seen first-hand how a person's mannerisms, behaviour and attitude change when they are working around horses in particular. Horses are very receptive animals and are fantastic with children. I acknowledge the organisers of the event on the weekend—Mima Ware, Poppy Becher, Judy Hollis, Alexandra Dowling and, of course, Angus and Neattie Malcolm, who run the Fitzroy Equestrian Centre—for their tireless work on the day and for continuing to support this fantastic cause. I also acknowledge the Moss Vale Show Society for allowing the event to take place at the showgrounds and also for the use of the Moss Vale Pony Club. It was a fantastic day, with fantastic Southern Highlands weather. A fun day was had by all and everyone received a ribbon at the end.

## COMMUNITY

**The Hon. JAN BARHAM** [6.37 p.m.]: Tonight I speak about community. "Community" is defined as a group of people living in the same locality, and community resilience is about how well that group of people is capable of withstanding and absorbing the challenges of change and/or crisis. In recent times communities have been increasingly exposed to the challenges of crisis. We have seen droughts, fires and floods in our country and, in nearby regions, the impact of earthquakes and tsunamis. It is anticipated with the impacts of climate change there will be additional risk of exposure to emergency situations.

The media have brought into our homes and lives the images of the impacts associated with the disasters and that has reminded us of the importance of community connection and engagement as mechanisms to withstand the dramatic impact of these events. Many of the reports of affected communities remind us of the courage and preparedness of people to help others and this is commendable. But we have also been made aware of the lack of connection and knowledge of our local environments that have determined the ability to support and help those in need and in some cases the fatal consequences of the lack of local connection and community cohesion.

Federal and State governments are now focusing considerable resources on preparing communities for crisis. The term "community resilience" is being used to unite communities in preparing for the likely outcome of crisis. Much has been learnt from disaster management both here and overseas and there are some key understandings of how society can ensure it is capable of withstanding the impacts of disasters. Community development and resilience is now a portfolio area that The Greens New South Wales have adopted and I am pleased to provide a focus in relation to the preparedness of communities.

I intend to present examples of positive community projects which contribute to building social inclusion and cohesion and which often involve recreation and cultural engagement. These programs most often involve volunteer participation and encourage diverse groups of people to connect and network under a common interest. It is well documented that social connections and networks are a determinant of community resilience. The principle of resourcing and supporting social connections has an important role in enhancing quality of life now as well as preparing society to withstand the possibility of disaster and crisis.

The unintended but associated product of social and cultural gathering is the introduction of diverse groups of people to provide them with the necessary connections. Governments collect and collate significant amounts of information that identify the inequities and vulnerabilities that exist in society. The focus in research and emergency management fields promotes community vulnerability mapping as a tool to define communities of high risk or social vulnerability. Once these groups or geographical areas are identified there is potential to target resources to these groups to improve not only their quality of life but also their capacity to be prepared for any crisis. Governments can provide a range of programs to improve community involvement and participation.

I acknowledge the initiatives by the New South Wales Government to support and resource communities to overcome vulnerability. The Community Builders program has provided at-risk groups access to funds for the delivery of programs and projects with an identified disadvantage that can be addressed or have the potential for increasing the social capital of a group. The importance of social connection cannot be overlooked in the strengthening of social networks to enhance resilience. The degree of connection—be it family, friends,

social, education or other organisations—is an important source of information, advice and assistance. Government at all levels has an important role in supporting communities to connect and engage in the good times so that they are empowered and informed to respond when risks or disasters are impending or present.

The assistance by government to enhance community involvement should be viewed as an essential pathway to building strong and resilient communities that are able to cope and withstand disaster, crisis and change that challenge the day-to-day functioning of society. The goal to empower and assist communities requires a respect for localised resilience. To build social capital and strong community social structures will require the support of government. Programs that unite communities across social and cultural divides are often those that engage diverse groups of people in positive activities such as land care, sport, book clubs, community gardens, soup kitchens and other forms of volunteering.

There is a responsibility to prepare the community so that it is able to respond to a potential crisis. Government at all levels can make the process of community development, resilience and preparedness for disaster and crisis more effective by recognising the important role of community projects that build connections and improve quality of life. It is these projects that will enhance in the present and build the strength and capacity for community to withstand and cope with change and crisis if needed in the future.

### NATIONAL EQUAL PAY ACTION DAY

**The Hon. HELEN WESTWOOD** [6.42 p.m.]: Tonight I inform the House about an important event being held next week: the National Equal Pay Action Day. This will be recognised by rallies across Australia, but particularly across New South Wales. Rallies will be held in Sydney, Lismore, Newcastle and Canberra. Members are probably aware that the rally is in response to the action—one of the first anti-worker actions—of this anti-worker Liberal-Nationals Government when it made its final submission in its early days in office to Fair Work Australia arguing against the former Government's support for equal pay for community and disability workers who are paid under the social and community services [SACS] award.

**The Hon. Greg Donnelly:** Shame!

**The Hon. HELEN WESTWOOD:** As the Hon. Greg Donnelly has interjected, it was absolutely shameful. The Liberal-Nationals submission was based on three points. They argued the potential budgetary impacts, they argued that the proper construction of equal remuneration provisions had not been demonstrated by the Australian Services Union and they argued against the comparison made between government workers and workers employed under the social and community services award that demonstrated workers undertaking work of equal value were not receiving equal pay. One can imagine the outrage of community and disability workers on learning that the Government had argued against their right to equal pay. The sector is predominantly made up of female workers and for many decades they have been underpaid for their very important work. Regretfully, their work has been undervalued and it is time that governments recognised their important role in local communities.

Fair Work Australia made a decision, although not a complete decision. Fortunately for social and community services workers, not surprisingly given the arguments of the unions and workers, Fair Work Australia rejected the New South Wales Government's arguments. Fair Work Australia agreed that gender had been important in creating the gap between pay in the social and community services industry and pay in comparable State and local government employment. The decision of Fair Work Australia is important, not surprisingly, given the important role of these community workers.

Fair Work Australia heard evidence from many witnesses, including workers and their representatives, employers and employer organisations, and funding bodies, which are predominantly government bodies throughout Australia. Fair Work Australia also travelled to various workplaces. However, it is the evidence of the workers that is important; I urge honourable members to read it. It is clear that community and disability workers have complex roles in helping to keep communities together. They support the most vulnerable members of our communities and provide support in areas of geographical and social disadvantage. I urge all members who support equal pay and these workers to attend the rally on 8 June 2011. [*Time expired.*]

### ABORIGINAL HERITAGE SITES

**Mr DAVID SHOEBRIDGE** [6.47 p.m.]: Many members would have noted with interest the fact that Australian actor Jack Thompson is working with Griffith University's rock art expert, Paul Tacon, to launch

"Protect Australia's Spirit", a campaign designed to protect and catalogue the estimated 100,000 sites of Aboriginal rock art in Australia. Jack spoke compellingly about his experience as a boy of seeing rock carvings in the cliffs and outcrops of Bondi, less than 10 kilometres from the Chamber where I stand today. It is heartening that in some areas so much is being done to protect Aboriginal culture and heritage. However, there are still significant areas where change is desperately needed.

That the planning system is currently skewed in favour of big developers at the expense of environmental, social and cultural concerns is no surprise, but the destruction that is its legacy continues to come to light. Construction of a KFC restaurant in Newcastle west has recently brought the issue of adequate protection of sites of significant Aboriginal heritage to broader notice. The development was that of Australia's largest KFC restaurant, built approximately one year ago. The site is located on Hunter Street in Newcastle west and was formerly occupied by the Palais Royale building, which was demolished in 2008. Disturbingly, this fast-food restaurant has been constructed over one of Australia's most significant Aboriginal heritage sites.

The excavation report on Aboriginal heritage on the site was not released until a month ago, almost a year after the restaurant was built, thus making its assessment of the heritage impact of the development largely redundant. The report states that the site had "high to exceptional cultural and scientific significance" and has revealed that the site contained more than 5,700 ancient Aboriginal stone tools with unique stonework and campsite remains. The artefacts date back a remarkable 6,700 to 6,500 years. This makes the artefacts the oldest evidence of human settlement in the Newcastle region. Excavation reports are commissioned by developers as a condition of receiving an Aboriginal heritage impact permit. Remarkably, it is unclear whether there is any obligation for a developer to make these reports public. In this instance the report was released only because local groups brought enormous pressure on the developer to make it public.

In addition to the ancient Aboriginal artefacts discovered, the report has also revealed the presence of a large array of colonial-era artefacts. This amalgamation of historical pieces has been primarily destroyed through the construction of the KFC building. Surely, had this report be made public earlier, evidence of such a significant store of artefacts would have been sufficient to justify retention of the site as a State-significant site of Aboriginal cultural heritage.

The justification for allowing excavation and construction on the site before relevant information was available was based upon the developer holding an Aboriginal heritage impact permit. Essentially, these permits are issued when it is known that a development will have an impact that is more than transitory on Aboriginal heritage sites. The Government then allows the developer to permit the destruction of the heritage. Because of lax regulation, this can mean that the development is allowed to progress without the information from the excavation report even being known to those giving the permits.

Under the previous Government, such permits were given at the rate of approximately five per week. Members of the local Awabakal people have stated that the final excavation report "highlighted the lack of rigour in the state government's assessment of Aboriginal heritage". A further example of the destructive nature of the current process is Ashton Coal's proposed mine in the Hunter Valley near the town of Camberwell. The Ashton Coal project includes an open-cut coal pit, an underground mine and rail siding. Local groups have significant concerns that Aboriginal heritage impact permits will be issued to allow the proposed mine to be developed on what was previously public land at the expense of increasingly rare Aboriginal heritage in the Hunter Valley.

The area has seen protests from the local community, with members of the Wonnarua people joining with other local activists to raise their concerns about the potential environmental and heritage impacts of any mine. This is a reminder of the ongoing danger of the Aboriginal heritage impact permits process. Clearly, it cannot continue to be the case that such permits are issued, construction is undertaken, Aboriginal heritage is destroyed, and the real significance of a site is only discovered by the broader public after the heritage has been destroyed. This would be a tragedy.

Al Oshlack, a representative from the Indigenous Justice Advocacy Network, has expressed outrage at the process. He and his network have taken numerous cases to court in attempts to protect and preserve significant Aboriginal heritage sites. However, despite their efforts, more than 2,500 Aboriginal sites have been destroyed, due to the excessive numbers of Aboriginal heritage impact permits that were distributed by the former Government and are still being distributed by the current Government. This history proves the overwhelming need to reform this State's laws that notionally protect Aboriginal heritage but in practice palpably fail to do so. I refuse to believe that the current system is the best this Parliament can provide to safeguard important heritage sites of the oldest, continuous culture in the world.

## REGIONAL ARTS

**The Hon. SARAH MITCHELL** [6.52 p.m.]: Tonight I speak about an issue that is very close to my heart: the importance of the arts in regional communities across New South Wales. In my inaugural speech to this House I spoke about how as a Government we must do all we can to keep young people and families in regional towns. While obviously we need to focus on provision of services to do this, we cannot ignore the fact that people living in these towns need something to do for recreation. Arts and culture are central to building the potential of regional New South Wales. The arts are often at the heart of community life and are essential to creating vibrant and thriving communities.

I have been a big supporter of regional arts for a long time, and I was able to make a contribution in this area when I lived in Moree and was a member of the Moree Arts Council. As a group, we worked to bring several arts and cultural events to Moree each year, including plays, musical acts and art shows. Our events were always well attended and welcomed by members of the community. Having now moved from Moree, I am sad that I am no longer a part of this group. However, I was delighted to learn when I returned to my hometown of Gunnedah to live that there continues to be strong support for the arts in the region.

The Two Rivers Arts Council is responsible for the organisation and coordination of arts and cultural activities and events in the Gunnedah shire. This organisation encompasses the visual arts group, Filmtrac, Two Rivers Amateur Players, a circus school, sports mentoring, family markets, the biannual Two Rivers Arts Festival and the youth choir, and is a real asset to the community. It is pleasing to know that there are many similar organisations working across regional New South Wales. As the duty member of the Legislative Council for the Northern Tablelands, I am particularly proud that many of the arts and cultural events that are held in the region are beginning to gain a reputation as world-class events. A few that come to mind are Inverell's popular Opera in the Paddock, which attracts hundreds of visitors each from across the State—

**The Hon. Rick Colless:** Hear! Hear!

**The Hon. SARAH MITCHELL:** I am sure my colleague the Hon. Rick Colless has attended that event on many occasions. Others include Frost over Barraba, a popular regional art festival held later this month, which is expected to attract more than 500 entries, and the Glen Archies Competitive Portrait Exhibition in Glen Innes, a major biannual competition open to artists across Australia. These events show the great respect and interest for the arts in our communities.

I am proud to be part of a Liberal-Nationals Government that recognises the importance of the arts. We are committed to revitalising and supporting the growth of regional New South Wales communities through support for the arts. Support is provided for regional cultural infrastructure, including the network of 14 regional arts boards and regional arts officers; a network of writers' centres at Armidale, Broken Hill, Byron Bay, Newcastle, Orange, Wagga Wagga and Wollongong; 35 regional galleries across the State; 17 regional conservatoriums; local arts organisations, such as the Flying Fruit Fly Circus, the Fling Physical Theatre, the Hothouse Theatre, Octapod, Shear Outback and Tantrum Theatre; and a range of film festivals and screen events and tours in regional centres, including the Dungog Film Festival and the Byron Bay Film Festival.

New South Wales State cultural institutions also make a valuable contribution to arts initiatives and programs in regional New South Wales through tours, outreach programs and online initiatives. For example, the Art Gallery of New South Wales will tour the Archibald Prize entries to seven regional venues this year, including the Moree Plains Gallery, which will host the exhibition from 17 September until 23 October. This will give the people of Moree, and the surrounding communities, the chance to see an incredible display of artwork—an opportunity that would not ordinarily be made available to them.

Aboriginal arts and culture is also a priority for this Government. The New South Wales Aboriginal Arts and Cultural Strategy has delivered more than \$1 million in funding for a range of projects including a number of regional partnerships and initiatives in 2011. These include \$100,000 in funding to nine Aboriginal arts initiatives in regional areas from across the State. These include the Fabric of Our Culture project, an exhibition of weaving and textile arts by Bundjalung women of the Northern Rivers region of New South Wales; the Cool Kids Are Hot cultural art program, which will engage 40 Aboriginal children from the Forster area; and Carvin' it up with Moorambilla Voices, where Aboriginal artists from Warren will devise and deliver workshops to the 200 participants.

There is a rich diversity of cultural infrastructure and activities in regional and rural New South Wales. The Government works with a range of organisations to support regional initiatives. Arts and cultural activity is a major key to revitalising regional communities, building a sense of place, local identity, local ownership and community pride. The Liberal-Nationals Government recognises that support for creativity at the community level, telling local

stories and preserving local history, as well as providing opportunities for local artists, will make for a richer community in which to live. As I said at the beginning of this speech, I am a proud supporter of the arts in regional communities, and I will continue to actively work to support this cause during my time in this place.

### **PALLIATIVE CARE**

**The Hon. GREG DONNELLY** [6.57 p.m.]: In the past I have spoken in this House about palliative care, an important issue about which I and many others in this Parliament feel very strongly. Tonight I wish to make a report to the House on the 2011 Palliative Care Awards, organised by Palliative Care New South Wales. The awards event was held at the University of Sydney on Friday 27 May 2011. This was the third year the event has been held and it has now become a fixture in the palliative care calendar of this State. While I was not able to attend, the New South Wales Parliamentary Friends of Palliative Care was represented by the Hon. Marie Ficarra, who attended with her husband, Alan. From all reports it was a great night and a good time was had by all.

The formal part of the evening—the presentation of the awards—was an opportunity to showcase the best of what palliative care has to offer in this State. There were eight award categories this year. The first award was for Leadership In Palliative Care. The nominees for that category were Dr Frank Brennan, a well-known palliative care specialist in this State; Julie Garrard, and Jane Connolly. The winner was Dr Frank Brennan. The second award was for an outstanding contribution to specialist palliative care—which is otherwise known as the Quite Achiever Award. The nominees were Annette Sachse, Janice Thompson, Julie Garrard, Jane Williams, Janeane Harlum and Diane Kavanagh. Because the two top nominees could not be separated, Julie Garrard and Jane Williams were declared the winners.

The third award was for Innovation In Palliative Care. The nominees in that category were Linda Hansen and Georgene McNeil, Michelle Jeffries, and the PEACH project. The winner of this category was the PEACH project. The fourth award was for Volunteers Supporting Palliative Care, for which the nominees were Jan Aitken and Christine Jones. The winner of this category was Christine Jones. The fifth award was for Excellence in the Provision of Palliative Care within primary non-specialist care settings. Unfortunately no nominations were received for this category and new initiatives will be looked at to promote this award in 2012. The sixth award was for Excellence in the Provision of Palliative Care within residential aged care facilities. Unfortunately once again no nominations were received for this category and new initiatives will also be looked at to promote this award in 2012.

The seventh award was for Significance in Palliative Care Research, for which the nominees were Meera Agar, who was nominated twice; the ImPACCT Project; and Professor Katy Clark. The winner of this category was Meera Agar. The eighth and final award was the Media Award. This award was given in recognition of positive media coverage that demonstrates a better-than-average understanding of palliative care. The winner was "Facing Death", which was a series of articles plus a special multimedia feature on coming to terms with the process of dying. Julie Robotham and Kimberley Porteous were the reporters and Steven Siewert the photographer—all from the *Sydney Morning Herald*.

Without doubt the awards night was once again a great success. Full credit must be given to Peter Cleasby and Linda Hansen, respectively the President and executive officer of Palliative Care New South Wales. Both Peter and Linda are devoted and hardworking officers. I express my thanks to them for their tireless work in promoting and advancing the cause of palliative care in this State. Palliative care is an integral part of our healthcare system. It is fitting that we should acknowledge and recognise in the course of one week each year—the last week in May—the excellent work done by those involved in palliative care. I offer my thanks to everybody New South Wales who participates in palliative care. I encourage them to keep up the great work they are doing and to expand it.

Finally, I note that earlier in May the Victorian Government announced an additional \$34.4 million to be added to its Health budget to augment palliative care in that State. The New South Wales Government will be delivering its first budget in September this year. I urge the Minister for Health, the Treasurer, the Minister for Finance and Services, and the Premier to take a close look at how they might be able to improve the funding for palliative care in this State.

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

**Motion agreed to.**

**The House adjourned at 7.02 p.m. until Thursday 2 June 2011 at 9.30 a.m.**

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