LEGISLATIVE COUNCIL

Wednesday 15 June 2011

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

The President read the Prayers.

BUSINESS OF THE HOUSE

Formal Business Notices of Motions

Private Members' Business item No. 97 outside the Order of Precedence objected to as being taken as formal business.

Private Members' Business item No. 106 outside the Order of Precedence objected to as being taken as formal business.

TABLING OF PAPERS

The Hon. Greg Pearce tabled the following paper:

Community Services (Complaints, Reviews and Monitoring) Act 1993—Report of Official Community Visitors for the year ended 30 June 2010.

Ordered to be printed on motion by the Hon. Greg Pearce.

AUDITOR-GENERAL'S REPORT

The Clerk announced the receipt, pursuant to the Public Finance and Audit Act 1983, of a performance audit report of the Auditor-General entitled "Government expenditure and transport planning in relation to implementing Barangaroo—Barangaroo Delivery Authority, Department of Transport, NSW Treasury", dated June 2011, received out of session and authorised to be printed on 15 June 2011.

PETITIONS

Coal-Fired Power Stations

Petition requesting that the Government halt its electricity privatisation plans, ensure no new coal-fired generation in New South Wales and implement a transition plan to a jobs rich, renewable energy future, received from **Dr John Kaye**.

Battery Cage Egg Production

Petition requesting the House to support a moratorium on the construction of new battery cages for egg production, phase out battery cages and demand that the Government lobby the national regulator, Food Standards Australia and New Zealand, to ban the sale of battery cage eggs in Australia, received from **Dr John Kaye**.

Electricity Generation and Sale

Petition requesting that the House legislate to reverse the sale of energy retailers, call on the Government to invest in publicly owned renewable energy generation and protect households from massive increases in electricity bills by improving energy efficiency, received from **Dr John Kaye**.

Solar Bonus Scheme

Petition opposing the Government's legislation to terminate the Solar Bonus Scheme and requesting that the House fulfil its promise to existing customers, vote against the retrospective reduction of the bonus tariff and support moves for a sustainable scheme to nurture the solar industry, including a grid parity buy-back tariff for new customers, received from **Dr John Kaye**.

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Order of the Day No. 1 postponed on motion by the Hon. Michael Gallacher.

BUSINESS OF THE HOUSE

Postponement of Business

Business of the House Notice of Motion No. 1 postponed on motion by Mr David Shoebridge.

COURT SECURITY AMENDMENT BILL 2011

Second Reading

The Hon. DAVID CLARKE (Parliamentary Secretary) [11.22 a.m.], on behalf of the Hon. Michael Gallacher: I move:

That this bill be now read a second time.

The bill before the House gives effect to recommendations arising out of a five-year statutory review of the Court Security Act 2005, which has previously been tabled in this House. The Court Security Act 2005 provides a statutory basis for the exercise of security powers in New South Wales courts. The legislation provides security officers with a range of powers that are specifically directed at ensuring the secure and orderly operation of courts. Sheriff's officers generally undertake court security and have the power to undertake limited searches of court users and confiscate offensive implements or prohibited items, such as weapons. The existing power of arrest under the Court Security Act applies to such matters as absconding to avoid arrest—known as a power of "hot pursuit"—the obstruction of security officers, failure to obey a direction by a security officer and the destruction of signs in court premises.

Security incidents in New South Wales courts are relatively uncommon. Nevertheless, there have been a number of incidents where sheriff's officers and people on court premises have been subject to violence. The bill provides that security officers may arrest a person where they or other people attending court premises are the subject of an act of violence under part 3 of the Crimes Act 1900. Part 3 of that Act relates to offences against the person. Consistent with the safeguards contained in the Law Enforcement (Powers and Responsibilities) Act 2002, the bill also provides that a security officer may discontinue an arrest at any time if the arrested person is no longer a suspect or the reason for the arrest no longer exits. Security officers will receive further training in relation to their new powers.

The definition of "court premises" in the bill has also been amended. The definition makes it clear that court premises extend to areas used in relation to the operations of the court or nearby areas used for other purposes. The proposed amendment will enable security officers to intervene where members of the public are being harassed or altercations occur in areas adjacent to the court, such as in a justice precinct or on a footpath. The Court Security Act currently provides that a judicial officer may order that members of the public leave court premises or be denied entry to court premises where this is considered necessary for securing order and safety in court premises. Currently, such orders may be open ended. The bill clarifies the operation of the provision so that an initial order is limited to 28 days but may be renewed.

Other relatively minor amendments to the legislation introduce restrictions concerning the bringing of alcohol and animals into court premises and the wearing of helmets on court premises. Assistance animals will, of course, continue to be permitted in court premises. The bill updates the Court Security Act and will help to ensure that security officers in courts can continue to perform their role in protecting court personnel and other court users. The bill will commence towards the end to the year, once security officers have received appropriate training relating to the changes to the Act. I commend the bill to the House.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [11.26 a.m.]: I lead for the Opposition in debate on the Court Security Amendment Bill 2011. As we have heard, the Court Security Act 2005 was a significant and progressive step to ensure that the inherent powers of the court were put on a proper statutory basis to codify what may be called the vagaries of the common law. Providing a proper basis for court security

is important for the administration of justice. While the principle of the public's access to the court remains, and is enshrined in the legislation, that legislation provided a number of restrictions, including provisions consistent with move-on powers under the Law Enforcement (Powers and Responsibilities) Act, search powers, arrest powers and the like, and they were given a proper statutory form.

As we have heard, a five-year review was enshrined in the legislation, and that review has been tabled in each House. The bill before the House provides a number of slight but important modifications, such as clarifying the duration of orders that may be made by judicial officers that exclude members of the public generally or certain members of the public from court premises. As the Hon. David Clarke said, the bill also contains measures preventing the taking of animals and alcohol into court, and enables a court security officer to require a person not to wear a helmet that obscures the face while in court. It also enables court security officers to arrest a person who is committing an act of violence against another person in court premises or has done so, and it extends the definition of "court premises". These are slight but important modifications to ensure that the legislation passed in 2005 continues to meet its proper statutory objectives, and the Opposition supports that.

The Hon. TREVOR KHAN [11.28 a.m.]: I enthusiastically support the Court Security Amendment Bill 2011. In the past some members have, in a derisive way, made reference to most of my legal practice having been in the Local Court. In that respect, what one learns in that jurisdiction particularly is that the bulk of our justice is rendered in courthouses that are often extraordinarily busy and where one sees both the highs and lows of human nature and the dynamism of human relationships. The bill reinforces the need to finetune the Court Security Act 2005, which is important.

I note that specific reference has already been made to the need to exclude somebody with an animal from a courthouse. One need only practise in a country area to know that it is not entirely uncommon to see a member of the public turn up at court with his dog, for instance, or some other animal. In those circumstances it is sometimes appropriate that there be the capacity to exclude that person from court premises. It is worth noting that the amendments sought in schedule 1 [3], proposed section 7A (3), specifically provide that the power to exclude does not extend to assistance animals. Clearly, it is important that people with a disability who need the assistance of an animal are not excluded.

I also note that item [5], which amends section 11 of the Act, will enable court security officers to require the surrender of alcohol. Again, particularly in a Local Court context, from time to time people will attend armed with some fortifying substance and problems can arise. One would hope in all sincerity that the powers in this proposed section are applied reasonably and in a considered fashion. In the Local Court context, people are often poor, uneducated and suffer from a variety of disabilities. The removal of alcohol rather than the arrest of the person or the like is the appropriate way to proceed. Such a measure will ensure that appropriate security is maintained without leading to unnecessary intrusions on a person's liberty. I refer to item [6], which deals with section 14 and the removal of helmets and the like. I have not seen that problem in the courts. Clearly, there are many circumstances where the wearing of items such as a helmet may present as a problem. However, my experience is that people around courthouses wear hats, not helmets.

This appears to be a considered review of the legislation. It appears to appropriately arm court security officers with some additional modest powers. I hope that these powers are used in a considered and thoughtful way that ensures the protection of members of the public and, at the same time, ensures the dynamism of the culture of the people who appear before our courts is not unduly interfered with. I support the bill. I congratulate the Government on introducing it so early in its term. This bill will ensure that people before our courts are safe and it will reduce the possibility of violence occurring in and about our courthouses. I am sure it will be successful in that regard.

Reverend the Hon. FRED NILE [11.33 a.m.]: On behalf of the Christian Democratic Party, I support the Court Security Amendment Bill 2011, which provides security officers with a range of powers that are specifically directed at ensuring the security and orderly operation of courts. New South Wales Sheriff's officers usually carry out court security functions. This bill arose from the recommendations that came out of the five-year statutory review of the Court Security Act 2005, which was previously tabled in both Houses of Parliament. There has been consultation about this legislation with various stakeholders, including the legal profession, law enforcement agencies and court and justice related agencies, and it has their support. One of the main changes to the legislation clarifies the power of arrest. The existing power of arrest under the Act applies to matters such as absconding to avoid arrest, the obstruction of security officers, failure to obey a direction by a security officer and destruction of signs in court premises.

I will give an example to illustrate why the role of security in courts needs to be addressed. A few years ago my son was a police prosecutor. A prisoner who was charged and under examination jumped up and ran out of court. I understand that there was a great deal of hesitation as to who should pursue the prisoner. My son gave chase and tackled, apprehended and returned him to court. Later the prisoner laid a complaint that my son had used excessive force in apprehending him, but that case was dismissed. The issue was whose job was it to watch prisoners who were being examined? This legislation introduces restrictions concerning the bringing of alcohol and animals, other than assistance animals, into court premises and the wearing of helmets that obscure the face on court premises. Item [6] of schedule 1 to the bill amends section 14 of the Act to give court security officers power to give directions. It states:

> (2A) Without limiting subsection (1), a security officer may give either or both of the following directions to a person who is entering or in court premises:
>
> (a) a direction to remove a helmet that is being worn by the person,
>
> (b) a direction to not wear a helmet while in court premises.
>
> (2B) A security officer may give a direction under subsection (2A) only if the helmet concerned is obscuring the face of the person wearing it or would obscure the face of a person wearing it.

When drafting future legislation, I ask the Government to consider why the focus is only on helmets. The legislation should state "such as a helmet or any other article of clothing which is obscuring the face of the person wearing or so as to conceal their identity". The legislation would be far more practical if it included those words and would assist the security of the court. Recently a Muslim woman was stopped when driving a car. The police officer checked her licence. As she was wearing a burqa the police officer could not confirm her identity. The woman complained that the officer was abusive towards her, had tried to remove her burqa and a court case was brought. The woman brought a friend to court and both were wearing a burqa. There was confusion in the court as to which was the woman involved in the complaint with the police officer. Practical problems were raised. It is important that the identity of a person in court is clearly established. I urge the Government to review the legislation in the future to ensure that a person's identity is abundantly clear. I support the bill.

Mr DAVID SHOEBRIDGE [11.38 a.m.]: On behalf of The Greens, I support the Court Security Amendment Bill 2011, which is a relatively modest compendium bill dealing with some small amendments to court security. I have heard Government members speak at length about the wonderful reforms in this legislation, but I think that probably over-eggs the pudding. However, it is a useful piece of housekeeping in relation to the Court Security Act. I will deal briefly with the proposed sections in schedule 1 to the bill that are substantive in any way. The first is item [1], which inserts new section 4 and increases the definition of "court premises" to include:

> (d) any part of premises or a place used in relation to the operations of a court, or referred to in the preceding paragraphs, that is also used for other purposes.

This is a sensible provision to expand the scope in which court security officers can operate. A case in point would be the relatively new Parramatta Court precinct, which has associated with it a number of agencies, such as probation services. In other courts, drug courts and the like, litigants who come before the court may be referred to other agencies as part of the ordinary operations of the court. It seems only sensible that court security officers who are there to ensure the court is a safe and secure place can exercise their powers in relation to those closely related agencies that are increasingly part of a modern court. Therefore, The Greens support this amendment. It is sensible, modest in scope, and will work towards ensuring that the court precincts are able to be properly secured under the Court Security Act.

The amendment proposed by item [2] provides a limitation of 28 days on the period in which a judicial officer may close court premises for security reasons. This is a limitation on what otherwise is an unlimited power. It is a sensible limitation. It is good, modest reform by the Government, and The Greens support it. Item [3] of schedule 1 will insert a new section 7A in the Act. The new section allows a security officer to refuse entry to court premises of a person who is in possession of an animal.

Other members have said that there is an exclusion from the operation of the new section if the person has an assistance animal within the meaning of the Disability Discrimination Act. That would most often be a guide dog or the like. Clearly, those animals should not be the subject of a bar, and they are not intended to be. That is a sensible exemption. In cases where someone attends court with a parrot, a ferret or their favourite

guinea pig or whatever it is they bring to court, it is quite sensible that the security officer be able to require the person to leave. I am glad the Government was not considering confiscating the animals. Requiring the person to leave does seem the appropriate course to adopt in such cases.

The Hon. Michael Gallacher: It could be a legal adviser who brings an animal to court.

Mr DAVID SHOEBRIDGE: I note the interjection by the Leader of the House that it might be a legal adviser. We did hear Mr Trevor Khan speak earlier about his experience.

The Hon. Michael Gallacher: Having a pet iguana, and bringing in an iguana.

Mr DAVID SHOEBRIDGE: I hear the Leader of the House suggesting that Trevor Khan might be one of those animals in his previous act, if that was his intent.

The Hon. Michael Gallacher: You are better than that.

Mr DAVID SHOEBRIDGE: And Trevor is better than that, too. It is disappointing to hear that presentation. Item [5] of schedule 1 to the bill relates to the capacity to require a person to surrender for safe keeping, rather than confiscate, alcohol. That of course is another sensible provision. There really is no place for alcohol in our courts, or in this Parliament, or in any part of premises where public business is conducted by public officials. The Greens support the prohibition of alcohol and the capacity to require the surrender of alcohol for safe keeping, under new section 11 (1) (c). Again, this is a sensible provision, and The Greens commend the Government for introducing it.

In relation to the power to give directions provided by subsections (2A) and (2B) of proposed section 14, the power is very explicitly limited to directing someone to remove a helmet. It is intended to be for the limited purposes of directing removal of a motor cycle helmet. I, like the Hon. Trevor Khan, have not yet seen anyone ever walking around any court premises wearing a motor cycle helmet. It is difficult to know what has compelled this amendment being brought forward. But if there are people lurking in some dark and forgotten courts of New South Wales wearing motor cycle helmets—and there does seem to me to be some potential for that to happen—the ability to direct such a person to remove the helmet while on court premises seems to be a fairly modest power and it is appropriate that court security officers have that power.

The Greens would be vehemently opposed to expanding the power to any kind of face covering. I am very glad that the Government does not propose that by this legislation. The Greens hope that the Government will not in any way advance the agenda being proposed by Reverend the Hon. Fred Nile, which suggests that these kinds of directions could be used against women of the Muslim faith who have face coverings. Clearly there is quite a distinction between a motor cycle helmet, which has nothing to do with one's faith, religion or personal beliefs but is an item designed for safety when travelling on roads, and face coverings that are worn as part of a person's faith and religious belief. We want to ensure that our courts are safe and secure places for all persons in our society, whatever their religion and belief, so that they may come before the courts and feel they can be part of the public administration of justice and feel safe and secure as a litigant or witness in proceedings.

Reverend the Hon. Fred Nile: How do you establish their identity?

Mr DAVID SHOEBRIDGE: The proposal of Reverend the Hon. Fred Nile—which I am very glad to say does not have any support from the Government—would seriously erode the capacity of those persons, particularly women of the Muslim faith, to have that part in these key public institutions here in New South Wales.

Reverend the Hon. Fred Nile: How do you establish their identity?

Mr DAVID SHOEBRIDGE: The Greens support this limited ban.

Reverend the Hon. Fred Nile: You will not answer the question.

Mr DAVID SHOEBRIDGE: I note the interjection of Reverend the Hon. Fred Nile about a person's identity. Reverend the Hon. Fred Nile would be well aware that there is inherent within the powers of any courts powers to do what is required to ensure that the courts are aware of a witness or a litigant's identity, and that is a matter that quite properly rests in the discretion of a judicial officer. If the issue arises, it can be dealt with in a

thoughtful manner, on a case-by-case basis, in a way that respects people's religious beliefs and the integrity of the system of justice here in New South Wales. There is simply no cause or need to reform the existing powers, when there has not been a single instance evidenced where it is causing mischief in the operation of justice here in New South Wales.

Finally, in relation to the powers of arrest proposed by the insertion of new section 16 (1) (c) into the Act, clearly including the power to arrest a person who is assaulting another person in the premises or has just assaulted another person in the premises is sensible. Indeed, it almost certainly would be an inherent power already for those court officers, but putting it in clear legislative terms is not offensive; indeed, it is probably sensible. Also, allowing a security officer to discontinue an arrest at any time probably is an inherent power that a security officer already has. Inherent in any power of arrest is the power to cease the arrest. But making it clear in legislative terms that an arrest can be discontinued at any time is another modest step forward. So The Greens support the bill. It is modest legislation. It is a sensible package of reforms, and The Greens are glad to lend their support to it in this House.

The Hon. MARIE FICARRA (Parliamentary Secretary) [11.48 a.m.]: I will make a short but supportive contribution to the Court Security Amendment Bill 2011. The bill will provide security officers with the power of arrest in relation to acts of violence that constitute an offence under part 3 of the Crimes Act. While there have been some serious incidents on court premises over a number of years, it should be noted that our courts remain a relatively safe environment, and for that we are grateful. In recent years the number of security incidents has remained relatively steady, at about 350 to 360 per year. This is a low number of incidents in the context of the thousands of matters heard every year in the 164 courts located in New South Wales.

The vast majority of incidents concerned less serious incidents of aggression, intimidation and disruption—events which can themselves cause those attending courts to feel less safe, and the Government is cognisant of that. However, there has been a serious increase in the number of confiscated weapons, ranging from knives to corkscrews to knuckledusters. Obviously, the Government needed to act, and therefore the bill is before the House. The bill will ensure that court security officers have adequate powers to address any situations that may involve acts of violence. The power to require the surrender of alcohol also will assist in preventing disturbances on court premises. I commend the bill to the House.

The Hon. SHAOQUETT MOSELMANE [11.49 a.m.]: I support the comments of the Deputy Leader of the Opposition in relation to the Court Security Amendment Bill 2011. As a lawyer who has attended Local Courts and District Courts I think there are sufficient security measures in place, but the bill will certainly add to the sense of security that is needed. I have not seen people in court wearing helmets; that is an interesting amendment, but if that has been an issue for the Local Court, District Court or the Supreme Court its inclusion in the bill is fair enough. I support the idea of restricting animals in court precincts, particularly in the Local Court. I have attended Sutherland and Kogarah courts and have seen animals outside the court. I have not seen any inside a court, but this is another sensible amendment.

I note the comments made by Reverend the Hon. Fred Nile and by Mr David Shoebridge with his fairly eloquent way of putting things. Reverend the Hon. Fred Nile should note that his constant attack on the Muslim community is unnecessary. He needs to cease vilifying this community. Parliament is a very important place and one that all communities look to for laws, rules and regulations, and respect. It is incumbent on the Government to ensure that respect is extended to the Muslim community. I will hold this Government responsible for such attacks on the Muslim community by Reverend the Hon. Fred Nile in future, given that his party is a partner with the Government.

It is unfair to single out communities in this way, particularly the Muslim community. I know Reverend the Hon. Fred Nile has made it a pet issue but it is important for the House to recognise that it is time people ceased vilifying certain communities because of their culture or practices. As long as their culture, practices and habits are within the law they should be respected. Reverend the Hon. Fred Nile's comments are uncalled for. That is why this sensible bill makes no reference to the burqa or scarf. Once those sorts of things are included there will be no end of it. I support the comments of my colleague the Deputy Leader of the Opposition, Adam Searle, and also those of the Hon. David Clarke, the Hon. Marie Ficarra, and Mr David Shoebridge. I commend the bill to the House.

The Hon. SARAH MITCHELL [11.52 a.m.]: I will briefly add my support for the Court Security Amendment Bill 2011. I do not have the extensive legal experience of many of my colleagues in this place. One of the few times I have been in a courtroom was when I was on jury duty in Moree. While I am certainly not an expert, I recognise the importance of the bill and will speak in support of it.

Section 33 of the Court Security Act 2005 requires the Minister to review the Act to determine whether the policy objectives of the legislation remain valid and the terms of the Act remain appropriate for securing the objectives. The report on the five-year statutory review of the Court Security Act, which has previously been tabled in both Houses of Parliament, recommended a number of changes to update the legislation. The proposed amending legislation will ensure that security officers can effect an arrest where people commit an act of violence that constitutes an offence under part 3 of the Crimes Act 1900.

The bill also amends the definition of "court premises". As currently defined, "court premises" mean the premises or place where a court is held or that is used in relation to the operations of a court. This includes areas such as forecourts, parking areas, and entrances and exits. There have been instances where disturbances have taken place in areas which, while located close by, do not fall within the precise definition of "court premises". It is inevitable that incidents involving people who are attending court will take place in the vicinity of the court and it is appropriate that security officers be able to act in such circumstances. Therefore, the definition of "court premises" has been expanded to cover such areas, which may include the footpath or an area of a justice precinct.

Where security officers exercise their powers in such situations existing safeguards under the Act will continue to apply. These safeguards include requirements that security officers only use reasonable force in exercising their power, give reasons for the exercise of the power, give a warning that failure or refusal to comply with a direction or requirement of the security officer may be an offence, and discontinue an arrest at any time if the person is no longer a suspect or the reason for the arrest no longer exists. As has previously been stated, this is a sensible bill. The updated powers will help ensure the continued safety of court operations. I commend the bill to the House.

The Hon. DAVID CLARKE (Parliamentary Secretary) [11.55 a.m.], in reply: I thank honourable members for their contributions to the debate. The Court Security Amendment Bill 2011 updates the powers of security officers under the Court Security Act 2005. The Act currently gives security officers in courts certain powers of arrest. The bill makes it clear that security officers can arrest a person where a person is the subject of an act of violence as provided for under part 3 of the Crimes Act 1900. Appropriate safeguards will apply and security officers will undergo additional training prior to the amendments being commenced.

The bill also extends the definition of "court premises" to ensure that security officers can intervene where altercations occur in areas adjacent to the court. Other minor amendments address some practical issues, such as the bringing of animals or alcohol onto court premises. The amendments provided for in the bill will assist in ensuring the continuing safety of court premises and the people who use them. As the Hon. Trevor Khan said, this bill is a considered response to issues that needed resolution. I commend the bill to the House.

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

Motion agreed to.

Bill read a second time.

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

Third Reading

Motion by the Hon. David Clarke agreed to:

That this bill be now read a third time.

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

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

Second Reading

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [11.58 a.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Credit (Commonwealth Powers) Amendment (Maximum Annual Percentage Rate) Bill 2011. It is a short bill but one which preserves an important consumer protection measure that was first introduced by the Fahey Government in 1994. Last year this Parliament passed legislation to transfer regulatory responsibility for consumer credit from New South Wales to the Commonwealth. This was the first phase of national credit reforms agreed by the Council of Australian Governments. It corrected an anomaly by which the Commonwealth had power to regulate all financial products and services except consumer credit and finance broking. The credit marketplace is very much a national marketplace and all parties welcomed the introduction of consistent national laws.

New South Wales has always been a leader in consumer protection for borrowers and played a leading role in the development of the Consumer Credit Code. The code was uniform legislation that operated successfully for 14 years in the States and Territories. When power to regulate credit was transferred to the Commonwealth the code was also transferred, largely unchanged except for some modernising amendments, and is now known as the National Credit Code. Despite the undoubted advantages of national legislation, a Federal system of government can benefit from innovation in different jurisdictions to find solutions to problems, leading to better public policy and service delivery. Regulatory innovation can also benefit the community. The Fahey Government was responsible for such innovation when it proposed an amendment to the Credit Act 1984 to provide for a maximum annual percentage rate which took effect on 1 July 1994. This measure was not adopted by all States and when the Consumer Credit Code commenced in 1996 interest rate caps were among the regulatory arrangements that fell outside the Uniform Credit Laws Agreement. New South Wales decided to keep its cap and introduced a maximum rate of 48 per cent.

The consumer credit market has changed over the past decade and the interest rate cap has changed with it. The most recent adjustment was made on 1 July 2010 when New South Wales introduced a cap of 48 per cent inclusive of fees and charges, including fees paid to third parties such as brokers. And 1 July 2010 also marked the commencement of phase one of the national credit reforms. This involved the transfer of regulatory powers and the introduction of a national licensing system for credit providers and finance brokers and new requirements for responsible lending. Although the Consumer Credit Code was transferred to the Commonwealth, non-uniform provisions were not. This meant that those jurisdictions with interest rate caps were free to retain them while the phase two reforms were developed. Victoria, Queensland and the Australian Capital Territory have all retained their interest rate caps. None has a cap that is as comprehensive as that operating in New South Wales, although Queensland and the Australian Capital Territory include fees and charges in the calculation of the maximum rate.

The comprehensive interest rate cap in New South Wales is particularly targeted at the short-term small-amount lending industry—also known as the payday, fringe and predatory lending industry. It was understood that phase two would, among other things, include an examination of the approach to be taken to short-term small-amount lending with any further legislation required to be in place within 12 months. For this reason the Credit (Commonwealth Powers) Act 2010 provided for the maximum annual percentage rate in New South Wales to expire 12 months after 1 July 2010. It is now clear that phase two reforms will not be in place until December 2011 at the earliest.

The O'Farrell Government is not prepared to leave vulnerable and disadvantaged consumers at risk of exploitation by these lenders. We are talking about loans from $100 to $5,000, with repayment periods ranging from a week to two years. Payday lending, a particular category, generally refers to a loan under $1,000 and for a duration of less than three months. Low income consumers are a significant proportion of the borrowers. Research shows that between 50 and 74 per cent of borrowers earn an annual income of less than $36,000 and up to 25 per cent fall beneath the Henderson poverty line. Approximately 70 per cent of loans are used to meet recurrent or basic living expenses, including utility bills, food, rent, car repairs and registration. Such lending is targeted at people who have difficulty accessing funds in an emergency or who struggle to meet regular household payments and expenses. These loans are high-cost loans. Annualised interest rates may be as high as 1,000 per cent, late payment fees may be up to $75 for every day that a payment is late and establishment fees may be 50 per cent of the amount borrowed. Very few consumers choose these loans on the basis of cost. The advertising focuses on features such as speed, accessibility and lack of credit checks.

In the absence of a competitive market, the New South Wales interest rate cap is designed to protect disadvantaged and vulnerable consumers from excessive costs. There are micro-lenders who operate lawfully in the market and comply with the cap. Without charging excessive costs they are assisting people who do not have ready access to mainstream financial services and find it difficult to manage large bills and sudden emergencies. These borrowers appreciate the accessibility, convenience and customer service they receive. The Government

proposed to extend the operation of the maximum annual percentage rate beyond 12 months in order to maintain consumer protection and certainty in New South Wales until assured that the Commonwealth regulatory and enforcement measures in respect of short-term small-amount lending are appropriate and adequate.

I turn now to the provisions of the bill. Schedule 1 amends schedule 3 to the Credit (Commonwealth Powers) Act 2010 to provide for the repeal of the maximum annual percentage rate provisions by proclamation rather than repeal 12 months after 1 July 2010, as is currently the case. Schedule 1 provides for the repeal of clause 9 of schedule 3 by proclamation rather than repeal 12 months after 1 July 2010, as is currently the case. Clause 9 is a savings provision that applies the maximum annual percentage rate applicable prior to 1 July 2010 to credit contracts entered into prior to 1 July 2010. As these contracts may still be on foot, the relevant provisions are continued. Schedule 1 also amends schedule 3 to enable regulations to be made of a savings or a transitional nature consequent upon the enactment of the proposed Act. This bill gives New South Wales the discretion to decide when and whether its 48 per cent interest cap is no longer needed. I commend the bill to the House.

The Hon. SOPHIE COTSIS [12.05 p.m.]: I represent shadow Minister Cherie Burton and lead for the Opposition in debate on the Credit (Commonwealth Powers) Amendment (Maximum Annual Percentage Rate) Bill 2011. The Opposition does not oppose this bill, which has as its object to amend the Credit (Commonwealth Powers) Act 2010 to allow for the repeal of provisions in that Act that provide for the maximum annual percentage rate for credit contracts when appropriate legislation has been enacted by the Commonwealth to address that matter. I have been advised that the Commonwealth indicated it would enact this legislation in its spring session later this year. Accordingly this bill will remove the current expiry date of 1 July 2011 for provisions that specify a maximum annual percentage rate for credit contracts and will enable those provisions to be repealed by the Governor by proclamation.

Essentially, as the Minister said in his agreement in principle speech, last year when Labor was in office we passed legislation to transfer regulatory responsibility for consumer credit from New South Wales to the Commonwealth. In her speech the then Minister commented on the importance of allowing a single regulator to act quickly and decisively to protect consumers as the need arose. A streamlined approach is important also when dealing with credit and lending. Dating back to 1994 there has been a maximum annual percentage rate in New South Wales. However, not all States adopted it. New South Wales also has the most inclusive cap which includes fees and charges and fees paid to third parties, such as brokers, and it protects those most vulnerable in the community from short-term lenders who often are referred to as shonks. I have been advised that not all short-term lenders are shonks; some of them run reputable businesses to help those who are experiencing short-term financial strife. However, there will always be lenders in the community who choose to exploit those who are vulnerable and desperate. The aim of this legislation is to protect the most disadvantaged and vulnerable consumers from excessive costs.

The Opposition recognises the urgency of this legislation and does not oppose it. The Act provides a deadline of 1 July 2011 and unless the legislation is amended the 48 per cent cap would not apply beyond that date, which would expose vulnerable people to the shonks in the industry. The Government proposes to extend the operation of the annual percentage rate beyond 12 months, which will maintain consumer protection and certainty in New South Wales, while awaiting the Commonwealth's regulatory enforcement measures. The Opposition believes that this legislation protects those in our community who are vulnerable and I commend the Government for dealing expeditiously with this matter. When the Commonwealth legislation is enacted by proclamation of the Governor, which I understand will be in the spring session, the State legislation will fall into line with the Commonwealth legislation. The Opposition supports the bill. People in need must be protected. Opposition members are proud that New South Wales consumers enjoy the best protection. The Opposition supports the continuance of that protection. I commend the bill to the House.

Dr JOHN KAYE [12.09 p.m.]: The Greens do not oppose the Credit (Commonwealth Powers) Amendment (Maximum Annual Percentage Rate) Bill 2011, which extends the 48 per cent cap on interest rates until the Commonwealth implements a uniform cap on interest rates. When the original legislation was debated in this Chamber, I raised a number of concerns about the way in which payday lenders and microcredit lenders were being regulated. In particular I raised concerns about the issue of capping the interest rate as a mechanism for protecting individuals from predatory lending.

While The Greens support the cap on interest rates, I reiterate very briefly that it must also be understood that a cap is a very blunt instrument. The reality is that whether a loan is for $300 for three weeks or for $5,000 for six months, the fixed costs of that loan are more or less the same. Unlike larger credit providers

who provide longer-term credit for larger amounts, the fixed costs become quite dominant in a transaction. The 48 per cent rate sounds large—and indeed it is large for a larger loan over a long period—but it is quite small with respect to fixed costs attached to a short-term loan for a small amount.

It must also be understood that short-term loans for small amounts are important in the day-to-day lives of people who live in low-income households and who deal with exigencies. Some people experience emergencies, such as needing to escape from an abusive relationship, and a short-term low-interest loan works well for them. Although the provision of short-term low-interest loans fulfils a very important social function in many cases, the problem is that a number of operators behave in an exploitative manner and go out of their way to ensure that the people to whom they lend become more heavily indebted. The Greens support the extension of the interest rate cap. After all, if this legislation is not supported, interest rates would not be capped.

However, I again urge all governments involved in this legislation to closely examine two key features. The first is regulation to allow for payments that incorporate some measure of fixed costs associated with loans, particularly with respect to very short-term small loans. The second is to re-examine regulation so that there is a registration process that drives the truly awful exploitative businesses out of the industry. I understand the Commonwealth Government is moving in that direction. I reiterate that The Greens do not oppose the legislation.

Reverend the Hon. FRED NILE [12.12 p.m.]: The Christian Democratic Party is pleased to support the Credit (Commonwealth Powers) Amendment (Maximum Annual Percentage Rate) Bill 2011, which will ensure the retention of maximum annual percentage rates for consumer credit contracts. The bill will amend the Credit (Commonwealth Powers) Act 2010 to retain the maximum lending interest rate for consumer credit contracts or loans in New South Wales until appropriate protection is provided through phase two of the Council of Australian Governments national credit reforms. Similar legislation has been discussed a number of times in Parliament because members share concern for vulnerable members of the community who in desperation sign contracts for high interest rate loans that they are not able to afford. Their suffering is compounded when they are hit with higher fees if ever they are late with repayment. Vulnerable people who take out payday loans often find themselves in debt traps necessitating further borrowing from one lender to make repayments to another.

New South Wales always has supported maximum lending interest rate provisions that were introduced in 1994. By virtue of this legislation, the interest rate cap will remain in place until further protection is provided through national reforms. The payday lending industry is not happy with retention of the cap and has met with members of Parliament on previous occasions. It claims that it cannot recover costs and will go out of business. So far the retention of the interest rate cap does not seem to have had any major impact on the payday lending industry. The operation of the legislation will be monitored, particularly the Commonwealth legislation that will be implemented in due course. This bill will amend the Credit (Commonwealth Powers) Act 2010 to repeal the existing sunset provision and extend transitional application of the maximum lending interest rate until appropriate protections in phase two of the Council of Australian Governments national credit reforms are implemented. The Christian Democratic Party supports the bill and hopes the Commonwealth legislation will be enacted and implemented in the very near future.

The Hon. WALT SECORD [12.15 p.m.]: I support the Credit (Commonwealth Powers) Amendment (Maximum Annual Percentage Rate) Bill 2011. As the shadow Minister indicated in the other place, the Opposition supports the legislation. This bill has bipartisan support because it builds on and complements work by previous State Labor governments. Its origins date back to the historic consumer protections introduced by the Neville Wran Government in the early 1980s. The Minister for Fair Trading said in the other place that this bill is intended to protect the most vulnerable members of our society and protect vulnerable people from a minority of unscrupulous short-term lenders and fringe credit providers who charge excessive interest rates.

It is about protecting people who take up loans when they are in desperate circumstances, such as a young mum who is in short-term financial strife due to sudden unemployment, a marriage breakdown, divorce, or a death in the family. It will protect those who do not have a credit rating, who do not own a home or vehicle and whose income is very low or reliant on government benefits. Those members of society find it next to impossible to borrow from a mainstream bank. While not all payday lenders and other small-amount lenders are unscrupulous, unfortunately there will always be lenders in the community who exploit those who are in desperate financial straits. That is why this legislative protection is necessary and why Labor supports the bill.

We are talking about loans from $100 to $5,000 with repayment periods from as little as a week up to two years. Interest on a $100 loan for a seven-day contract can be $7. Generally loans of less than $1,000 are for

periods of less than three months. Not surprisingly, low-income families comprise a significant proportion of people using short-term small-amount lenders. Up to 74 per cent of borrowers receive an annual income of less than $36,000 a year. Approximately 70 per cent of loans are used to meet cost of living and basic living expenses, such as food, white goods, rent, car repairs and vehicle registration. In 2008 the National Financial Services Federation stated that payday lending and microloan advances provided approximately $500 million worth of loans a year in Australia. Anecdotally it would appear a significant increase in the market has occurred since that estimate. Industry members estimate that approximately 400 lenders operate in Australia. Last year throughout New South Wales more than 40,000 people sought advice from financial counselling services. NSW Fair Trading has a hotline—13 32 20—to refer people to counsellors and experts.

I would like the O'Farrell Government to do more to help people who are experiencing financial problems, struggling with the cost of living and suffering mortgage stress. I look forward to the Coalition Government's first budget later this year and hope that it will provide genuine assistance to struggling families. In technical terms the Credit (Commonwealth Powers) Amendment (Maximum Annual Percentage Rate) Bill 2011 amends the Credit (Commonwealth Powers) Act 2010 to allow for the repeal of the provisions of that Act. This bill will provide for a maximum annual percentage rate to apply to credit contracts when appropriate legislation has been enacted by the Commonwealth Government. The Minister for Fair Trading advises that the Commonwealth intends to enact complementary legislation in its spring session of the national Parliament. I support a national approach. The bill removes the current expiry date of 1 July 2011 for provisions that specify a maximum annual percentage rate for credit contracts. The Opposition recognises the urgency of 1 July and does not oppose the bill.

Last year the Labor Government passed legislation to transfer regulatory responsibility for consumer credit from New South Wales to the Commonwealth. This legislation represents a continuation of that work. State Labor agrees that a single regulator is required to act quickly and decisively to protect consumers. A streamlined approach is important also when dealing with credit and lending. New South Wales has had a maximum annual percentage rate since 1994. New South Wales also has had the most inclusive cap as it includes fees and charges, and fees paid to third parties such as brokers, and protects the most vulnerable in our society. Unless the legislation is amended, the 48 per cent cap will not apply beyond 1 July and vulnerable people could be exposed to unscrupulous lenders.

In the United States the cap is set at 36 per cent and the United Kingdom has no maximum cap but lenders are required to state the rates in their contracts. I hope that the State, Territory and Federal fair trading Ministers in about three or five years time will re-examine the 48 per cent cap. Again, I am pleased to be associated with legislation that protects the most vulnerable in our community. We support and commend the Government for dealing with this matter quickly. Opposition Labor members are proud of the fact that families in New South Wales enjoy the best consumer protection in Australia. The bill builds on the fine work of Labor fair trading Ministers, who include Faye Lo Po', Linda Burney, Virginia Judge, Brian Langton, John Watkins, John Aquilina and the late Jeff Shaw. We will support the continuation of that protection. I commend the bill to the House.

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [12.20 p.m.]: It certainly gives me pleasure to support the Credit (Commonwealth Powers) Amendment (Maximum Annual Percentage Rate) Bill 2011. As members would be aware, the object of this bill is to amend the Credit (Commonwealth Powers) Act 2010 to allow for the repeal of provisions of that Act that provide for the maximum annual percentage rate for credit contracts when appropriate legislation has been enacted by the Commonwealth to address that matter. Accordingly, this bill removes the current expiry date of 1 July 2011 for provisions that specify a maximum annual percentage rate for credit contracts and enables those provisions to be repealed by the Governor by proclamation. It is worth reflecting on some of the history surrounding this bill. I note in particular the contribution of the Hon. Walt Secord about the time spent in this area by a number of former Labor Ministers. I also note in particular the contribution of the Hon. Kerry Chikarovski, a former Liberal fair trading Minister on this issue.

The Hon. Walt Secord: She brought in the cap.

The Hon. MATTHEW MASON-COX: In fact, this bill is a direct link in the sense that in 1996 Kerry Chikarovski brought in the 48 per cent cap that is the subject of this debate. It was an important innovation at the time and certainly was a first for all States as it provided real consumer protection to some of the most vulnerable people in our community. Over the past decade the consumer credit market has changed, and the interest rate cap has changed with it. There has been a rapid growth of payday and other short-term

small-amount lending, which is marketed to disadvantaged and vulnerable consumers in particular and is characterised by high interest charges and exploitative fees. Over the years this fringe-lending industry has adopted several innovative avoidance techniques to deny consumers the protection of the cap. As a result, adjustments have been made, with the most recent being in July 2010 when New South Wales introduced a cap of 48 per cent inclusive of fees and charges and including fees paid to third parties, such as brokers.

Industry members argue that they cannot recover costs under the cap and will go out of business, with the result that low-income consumers will be denied access to credit. We can debate these claims, but there are strong counterarguments. Some short-term small-amount lenders operate lawfully in New South Wales despite the cap; others continue to operate, but use avoidance techniques. A quick scan of the internet or suburban shopping centres shows that there is no shortage of offers to vulnerable consumers who have difficulty accessing mainstream credit. The comprehensive cap is due to expire from 1 July 2011. It was retained for 12 months in New South Wales while the Commonwealth Government decided whether to adopt a similar mechanism as part of its national credit reforms. These reforms began on 1 July 2010 when the States and Territories referred power to the Commonwealth to regulate consumer credit. The Consumer Credit Code was transferred to the Commonwealth and is now known as the National Credit Code.

The transfer did not extend to interest rate caps. It was agreed that States and Territories with caps could keep them while an assessment was made of their effectiveness in addressing predatory or fringe lending. In the meantime, in the first round of national credit reforms, the Commonwealth Government introduced an Australian Credit Licence, with membership of an external dispute resolution body a mandatory condition of obtaining a licence. Responsible lending requirements were part of the package of reforms. The industry argues that the national reforms provide sufficient protection for consumers, yet at the same time some lenders admit to structuring their businesses so that they operate outside the National Credit Code and its associated protections. Community legal centres and financial counsellors who see clients caught up in the debt spiral and other negative effects of high-cost lending maintain that despite the avoidance mechanisms, the New South Wales interest rate cap is an effective consumer protection mechanism.

The 48 per cent maximum annual percentage rate, inclusive of fees and charges, sends a clear signal to the market about what constitutes lawful or unlawful lending. Advocates are able to negotiate remedies for their clients on the basis of an alleged breach of the cap. The Commonwealth Government is still consulting with stakeholders and developing options for the increased regulation of payday and other short-term small-amount lenders at a national level. Whatever is decided, it is not likely to commence until 2012. Therefore, this Government will retain the comprehensive interest rate cap in New South Wales until satisfied that disadvantaged and vulnerable consumers will be adequately protected by national credit laws. Accordingly, I commend the bill to the House.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [12.25 p.m.], in reply: I thank all members for their participation in the debate and for their support of this important Credit (Commonwealth Powers) Amendment (Maximum Annual Percentage Rate) Bill 2011. As members have heard, this bill makes it possible for New South Wales to retain a comprehensive interest rate cap for consumer credit contracts while national regulation is developed. As I have outlined, in 2010 all States and Territories transferred to the Commonwealth their regulatory power with respect to consumer credit. This transfer did not extend to the imposition of maximum annual percentage rates on the understanding that States and Territories with interest rate caps could retain them and the Commonwealth would examine their impact as part of the second phase of national credit reforms.

The latest information we have from the Commonwealth is that these second wave reforms will not be ready before the end of 2011. The New South Wales Government is not prepared to allow the interest rate cap to sunset when no equivalent protection is in place. For this reason the bill amends the Credit (Commonwealth Powers) Act 2010 to remove the current expiry provisions and replace them with provisions that permit the interest rate cap to be repealed by proclamation. The New South Wales Government's primary concern is the protection of consumers, particularly vulnerable and disadvantaged consumers. If national reforms provide this protection there will be no need to retain a State-based cap. On this basis, the power to repeal would be exercised on the date on which substitute Commonwealth legislation commenced. Again, I thank members for their contributions to the debate and commend the bill to the House.

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

Motion agreed to.

Bill read a second time.

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

Third Reading

Motion by the Hon. Greg Pearce agreed to:

That this bill be now read a third time.

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

APPROPRIATION (SUPPLY AND BUDGET VARIATIONS) BILL 2011

Second Reading

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [12.28 p.m.]: I move:

That this bill be now read a second time.

This bill has three main objectives: to give the Treasurer authority to make payments from the Consolidated Fund until the end of October or enactment of an Appropriation Act, to set out payments from the Treasurer's Advance for recurrent services since the last appropriation bills, and to appropriate amounts from the Consolidated Fund for the exigencies of government under section 22 of the Public Finance and Audit Act 1983.

First, the bill permits the Treasurer to make payments from the Consolidated Fund during the months of July, August, September and October 2011 until enactment of a 2011 Appropriation Act. With the 2011-12 budget set for release in September 2011, there will be no Appropriation Act passed before the start of the 2011-12 financial year. In the absence of an Appropriation Act, the Public Finance and Audit Act 1983 empowers the Treasurer to pay amounts from the Consolidated Fund for the financial year. The Treasurer's authority under the Public Finance and Audit Act is restricted to one-quarter of the 2010-11 appropriation, indexed by two-thirds of the consumer price index, and ends on 30 September 2011. However, the need for cash appropriations by a number of government agencies in the first few months of the financial year considerably exceeds the amount allowable under the Public Finance and Audit Act. For example, the Department of Education and Training provides bi-annual grants to the non-government sector in July every year.

The bill will address this need by appropriating $18.3 billion for recurrent expenses and $600 million for capital expenditure for the months of July, August, September and October 2011. These amounts compare with the $17.6 billion for recurrent expenses and $1 billion for capital expenditure for the same period in 2010-11 and have been calculated based on lower capital spending under the Commonwealth fiscal stimulus package than occurred in 2010-11, and expected growth in expenditures, including a prudent buffer. All payments made under the authority of this bill will be regarded as payments made out of the subsequent 2011 budget appropriation bill. In addition, the bill gives the Treasurer authority to make payments from the Consolidated Fund for the Legislature and offices of Parliament until the end of October or enactment of an Appropriation Act.

The Hon. Luke Foley: They're burning you in effigy right now.

The Hon. GREG PEARCE: I hope it will be on television. Secondly, the bill sets out recurrent services and capital works and services expended from the advance to the Treasurer. This bill appropriates payments totalling $279,511,000 from the Treasurer's Advance for recurrent expenses made during 2010-11, $76,133,000 for capital expenditure made from that advance during 2010-11, and $281,066,000 from that advance made during 2009-10 that have not previously been reported, thus ensuring a transparent and accountable process to Parliament.

Thirdly, the bill appropriates payments totalling $157,900,000 to provide for the exigencies of government during 2010-11, and $54,000,000 to provide for those exigencies during 2009-10 that have not yet been reported. These amounts were paid by the Treasurer pursuant to section 22 of the Public Finance and Audit

Act 1983. Finally, the practice of introducing further appropriation bills has enhanced accountability for the expenditure of public moneys from the Consolidated Fund. It is evidence of the Government's commitment to transparent and full financial reporting to the Parliament and the community. I commend the bill to the House.

The Hon. LUKE FOLEY (Leader of the Opposition) [12.32 p.m.]: I speak on behalf of the Opposition on the Appropriation (Supply and Budget Variations) Bill 2011. This is a bill for an Act to appropriate certain amounts out of the Consolidated Fund towards the services for the 2011-12 financial year, and to give effect to certain budget variations required by the exigencies of government for the years 2010-11 and 2009-10. The bill is unremarkable. As the Minister said in his speech, the bill permits the Treasurer to make payments from the Consolidated Fund during the months of July, August, September and October 2011 until the enactment of the 2011 Appropriation Act.

With the budget set for release in early September 2011, no further appropriation legislation will be passed before the commencement of the 2011-12 financial year. In the absence of a bill such as this, the usual annual services of government would stall. There have already been sufficient attacks on government employees. I note the noise coming from the large rally of government employees outside Parliament House that is occurring now. I understand that they are currently burning the Minister in effigy. Making provision for the weekly or monthly pay of government employees with the passage of this bill seems entirely appropriate.

Part 2 of the bill sets out the moneys that may be issued out of the Consolidated Fund for recurrent services. In accordance with this bill, appropriation of that amount will provide for payment for recurrent services of the State other than those referred to in parts 3 and 4 during the months of July, August, September and October. Clause 5 in part 2 appropriates $600 million from the Consolidated Fund to provide for the payment of certain capital works and services. Clause 6 authorises the Treasurer to pay sums appropriated. The Opposition has been through each line item in schedules 1 and 2 to the bill and, as I said at the outset, there appears to be nothing remarkable in them. The Opposition has been advised by the Treasurer of the calculations used and the underlying assumptions in relation to inflation. The Treasurer has assured the Opposition that he has used the figure of 3 per cent for those calculations, which seems to be prudent and appropriate. The Opposition will support the bill.

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [12.35 p.m.]: It is a pleasure to speak in support of the Appropriation (Supply and Budget Variations) Bill 2011. As noted by the Minister for Finance and Services, clearly this bill is a machinery bill to overcome the realities faced by a late budget this year, which comes out of the review of the State's finances that occurred directly after the election. I will not reflect on that review in detail, but it is worth noting the very large black hole that was discovered by the Government when it came to office and the need for a comprehensive audit of the State financial sector and services to ensure that the issues identified in the initial review by the acting Treasurer could be acted on and good management of the budget and all related processes could be restored to New South Wales.

With the 2011-12 budget set for release in September 2011, there is a distinct possibility that the 2011-12 budget will not receive assent until October 2011. This bill will ensure that government agencies have sufficient funds to operate between 1 July and the date the budget receives assent. It is proposed that $18.3 billion be appropriated for recurrent services and $600 million for capital purposes to permit such expenditure between 1 July and 31 October. It is further proposed that $45 million be appropriated for recurrent services and $1 million for the capital purposes of Parliament—I am sure members will be pleased to see that in the bill—with a further $90,700,000 for recurrent services and $1,021,000 for the capital purposes of offices of Parliament. Those offices are detailed in the bill.

In addition, each year Parliament makes an advance available to the Treasurer to meet unforeseen expenditures in the annual appropriation bill. Members will be familiar with the many debates we have had about supplementary appropriations, particularly as they related to the former Treasurer, the Hon. Eric Roozendaal, and some of the rather colourful examples of appropriations that were endorsed by this House as a result of the Treasurer's Advance being subject to rigorous examination.

The Minister for Finance and Services spoke at length many times at the lectern on the other side of this Chamber—a place to which we do not wish to return—about the poor financial management of this State under the previous Government. Whilst I could spend a lot of time detailing those failures in this place, I want to reflect particularly on the contribution of the Hon. Eric Roozendaal because it is only seven sitting days before the former Treasurer retires from this House.

The Hon. Marie Ficarra: What a shame.

The Hon. MATTHEW MASON-COX: It is a shame because he made a very significant contribution to the former Government. I cannot say that he has made a very significant contribution to the budget safety and security of this State. The reality is that this Government is determined to fix the problems that were caused by 16 years of poor financial management on the part of the former Government. This bill also gives Parliament the opportunity to scrutinise payments as the details do not appear in the original budget. This practice has been endorsed by the Auditor-General as well as General Purpose Standing Committee No. 1 of the Legislative Council, of which I was a member.

The reports on appropriate processes were given in the former Parliament. In addition to the Treasurer's Advance, the bill includes details of payments previously approved by the Treasurer pursuant to section 22 of the Public Finance and Audit Act 1983. This section permits the Treasurer, with the approval of the Governor, to determine the amounts that should be paid for exigencies of government from the Consolidated Fund in anticipation of appropriations by the Parliament. As the Opposition has made clear, this is an unremarkable bill that is important for the machinery of government so it is important that it receives the support of this House, which it no doubt will. I commend the bill to the House.

Dr JOHN KAYE [12.41 p.m.]: The Greens will not oppose the Appropriation (Supply and Budget Variations) Bill 2011. We note that it arises because the incoming Government wishes to delay its budget until September, the current budget allocation runs out in July and there is a need to keep the public sector running. It is ironic that we are debating this legislation when 12,000 public sector workers are demonstrating in Macquarie Street in front of Parliament House. I remind the House that those 12,000 people are just the tip of the iceberg when it comes to what will happen next to the O'Farrell Government.

The Hon. Lynda Voltz: Take your shoes off, Matthew.

Dr JOHN KAYE: He already has. No matter what we do with this budget variation, the reality remains is that—

The Hon. Matthew Mason-Cox: Point of order: I bring to the attention of the House that there are only 2,000 people outside under umbrellas in the rain.

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

Dr JOHN KAYE: It is interesting that the Hon. Matthew Mason-Cox poked his nose around the corner and saw what is about one-quarter—if that—of the crowd and made an estimate. Even with his percipient powers, he failed to see that the crowd stretches all the way back to Hyde Park. He could not have seen the nurses, the firefighters, the police or even the largest teachers contingent present at a rally. This variation of the budget will not save the O'Farrell Government from what happens next. Regardless of what this variation does to the budget, the O'Farrell Government has attempted to balance the budget off the backs of public sector workers. By trying to destroy the pay and conditions of public sector workers—and along the way undermine the Industrial Relations Commission—the Government has thrown itself into a state of outright war with public sector workers and unions, and, more significantly, with the community. After all, those workers deliver the essential health, education, transport and safety services to the community. They are the glue that holds our society together.

This budget variation hands over to the Treasurer the sort of power that should be exercised by Parliament. Of course, Parliament will be able to examine retrospectively some of the Treasurer's handiwork in the budget, which we understand will be handed down in September. But between 1 July and the September budget, the Treasurer will be exercising the power of Parliament. In doing so, he will be held accountable retrospectively but not prospectively. That plays havoc with a great principle of who controls the purse strings. It has been a great tradition of Westminster democracy since the 1650s that the purse strings are controlled by Parliament, not by the Government. This Government has traversed many great traditions, including the independence of the judiciary and this House being a House of review. This is another tradition that it seeks to traverse—that is, one of accountability and where the money decisions are made.

I remind the Government once again that Charles I was beheaded specifically over the issue of who got to control the purse strings. Was it the executive Government run by the corrupt Stuart regime, or was it the Parliament? I would like to say that Parliament then represented the people of the United Kingdom, but it did

not; it represented about 10 per cent of the people because the events predated universal franchise. Nonetheless, this Chamber, this Parliament and the tradition we belong to by being here, has evolved from a complex series of historical events, one of which was the execution of Charles I. This Government is well advised to think carefully about how it spends public sector money—in particular, how it spends that money to protect the public sector workforce.

The Government should back off from its threat to freeze public sector pay at 2.5 per cent with all further gains to be made by cutting back on the quality of services or the conditions of workers. This Government, which is wet behind the ears, needs to understand that what makes this State and our great Australian society work is the provision of quality public sector services. This bill, in part, continues the funding of those services, and therefore The Greens will not oppose it. But when the glue that holds our society together is diluted and government undermines the concept of a civil society—handing it over to market forces and the provision for profit—the very essence of our civilisation is undermined.

Approximately 12,000 working people are demonstrating outside Parliament House at a rally organised at very short notice. In August there will be 10 times that number, and the number will continue to grow so long as the Government fails to recognise the importance of fair pay and conditions, and an appropriate system of independent arbitration in industrial relations for public sector workers in New South Wales. This Government will become a victim of history, in the same way as the Stuart regime fell because it did not understand its own history. This Liberal-Nationals Government does not understand what happened to John Howard—why he was tossed out of office and what led to his demise.

The Hon. Charlie Lynn: They want him back.

Dr JOHN KAYE: I acknowledge the interjection of the Hon. Charlie Lynn because it is relevant. The only reason the people of New South Wales have not turned on Tony Abbott the way they turned on John Howard is that he stays away from WorkChoices. The Government of this State has made that mistake in turning to work no choices, which is something worse than WorkChoices. It has turned to outright war against working people. The Greens do not oppose this legislation. However, we make it very clear that not only will we continue to campaign for budget accountability—we will go through the budget with a fine-tooth comb in September—but also we will not rest until the abomination that is the industrial relations law is repealed.

The Hon. Dr PETER PHELPS [12.49 p.m.]: I support the Appropriation (Supply and Budget Variations) Bill 2011. Dr John Kaye said it would not save the O'Farrell Government. The O'Farrell Government does not need saving; it is riding high on a crest of popularity because it is doing what needs to be done for this State. The vast majority of people in New South Wales know that the Government is doing the right thing. The member said that the rally taking place outside these premises was organised at short notice. That is nonsense. There were at least 10 days to organise the rally, but a mere 2,000 people turned up. You could go to Chinatown, draw the unionists out of the Chinese restaurants and get more people than are attending the rally at the moment. Why? It is because this is an Opposition scare campaign—a scare campaign based on a lie. The vast majority of the people in this State and the public sector workers know that.

The people will not be fooled. The Government does not need saving because there is nothing from which it needs to be saved. The historical analogy is not the Stuarts but the Whitlam Government. Yes, there were protests then by the losers, but when 1977 rolled around Gough Whitlam was comprehensively rejected. Despite the protests and marches in favour of the Labor losers, the people of Australia spoke. That is the appropriate analogy with what is happening now. As I said, the Opposition has launched a scare campaign based on a lie. One of the lies being perpetrated is that there will be no real wage rises. That is simply false. The base wage rise—I stand to be corrected if I am wrong—will be 2.5 per cent. On top of that are wage rises based on productivity offsets. This seems to be some strange and radical idea in New South Wales. If the people out the front of this place were to go 50 metres down the road to the Reserve Bank of Australia building, they would find Federal employees who, for at least the past 10 years, have been negotiating 100 per cent of their wage rises as productivity offsets.

Federal public servants are still doing that today—even under a Labor Government. Even under the Rudd and Gillard governments, productivity offsets have been the basis of wage rises in the Federal public service. Members opposite claim that New South Wales public sector workers will have to agree to cuts in conditions to get an increase. As I said in my speech on the industrial relations bill, that is nonsense. The staff of members of Parliament, as I said in that debate, are arguably the least powerful group because the majority of those workers will never go on strike or take their matters to an industrial relations tribunal.

Though employers know those workers are in a hopeless negotiating position because they will never go on strike, the workers still manage to maintain significant wage gains as well as significant productivity offsets. Why was it so hard for us to do that? It was not. That is my answer to the people outside these premises. It is not hard. It is not about cutting conditions; it is about improving conditions. It is about getting rid of old-fashioned, reactionary, ridiculous, unnecessary work practices and implementing modern work practices that result in real productivity gains across the board. People will not be fooled. We have out the front of Parliament House a tiny protest from an aggrieved minority, who have been revved up by the trade union leaders—trade union leaders who now represent 15 per cent or 17 per cent of the workforce.

The Hon. Charlie Lynn: At the most.

The Hon. Dr PETER PHELPS: At the most, 15 per cent or 17 per cent of the workforce. The days when the trade union movement could command a majority of the workforce, when it had some sort of self-perceived right to have a say in Labor Party affairs, are long gone. The sooner the Labor Party dissociates itself from the trade union movement, the better both will be. The sooner the factional warlords and the trade union heavies who decide who gets into Parliament and who does not, are gone, and there is a return to the grassroots of the party, in line with recommendations made by former member of Parliament and current member of the Socialist Left, Rodney Cavalier, the better the party will be and the better the trade union movement will be. I support the bill. It is fairly uncontroversial, and I hope I have conveyed that.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [12.54 p.m.], in reply: I thank honourable members for their participation in the debate. This is an important machinery provision, and I commend the Appropriation (Supply and Budget Variations) Bill 2011 to the House.

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

Motion agreed to.

Bill read a second time.

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

Third Reading

Motion by the Hon. Greg Pearce agreed to:

That this bill be now read a third time.

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

[*The President left the chair at 12.56 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 SECTOR WAGES POLICY

The Hon. LUKE FOLEY: My question is directed to the Minister for Finance and Services. I refer the Minister to the following comments made by the Premier:

> If our front line workers are going to have their salaries limited to 2.5 per cent, the same restriction should apply to members of Parliament and other senior public servants as well.

Will the Minister now admit that his intention was always to limit all public sector wage increases to 2.5 per cent?

The Hon. GREG PEARCE: No. Obviously the Hon. Luke Foley has been so enmeshed in his own interests, his own party affairs, that he has not listened. The policy is very clear.

The PRESIDENT: Order! I call the Hon. Sophie Cotsis to order for the first time.

The Hon. GREG PEARCE: Our policy is that we will give pay rises where they are fair, just as the previous Government did. We will initially fund 2.5 per cent wage increases, which is the midpoint of the Reserve Bank's inflation range and the 15-year average of the appropriation range.

The Hon. Luke Foley: Your appropriations bill factors in a 3 per cent inflation rate.

The Hon. GREG PEARCE: The Hon. Luke Foley does not seem to want to listen. I am trying to answer his question. I will then come back to his interjections. We have said repeatedly that we are happy to pay additional pay rises provided that the previous Government's policy was met—that is, that the additional pay rises are out of employee-related savings. We want to pay more than 2.5 per cent because we want people in the public sector to work with us to improve their employment conditions, to improve their workplaces, to improve services and to make the savings. We want to pay them more than 2.5 per cent. We want them to do that. So we will come back to the member's other issue: inflation. I know that he does not have an economics background, and that is not a problem, but—in fact, what is his background? It is sensible that he does not—

Dr John Kaye: When did this happen to you? When did you become like this?

The Hon. Sophie Cotsis: He was in a photo with Malcolm Turnbull.

The Hon. GREG PEARCE: Do not divert me. The Hon. Luke Foley needs to understand that inflation and other indicators go up and down. He might ask Eric about it; he was very good at explaining. He would use the expression "lumpiness" in relation to numbers. Numbers move. We need to look at the number over a cycle—

The Hon. Luke Foley: And you will keep them at 2.5 per cent; they will not go up in their pay.

The Hon. GREG PEARCE: It is interesting that the member should mention the 2.5 per cent. He might talk to his colleagues—they are still in government in Queensland and South Australia, are they not? Are they in government in Victoria? No, they are not. He might even talk to his colleagues in Canberra about what they fund. Does he know what they fund in Canberra? We fund 2.5 per cent; Canberra funds 2 per cent.

STORM AND FLOOD DAMAGE

The Hon. SARAH MITCHELL: My question without notice is directed to the Minister for Police and Emergency Services. Will the Minister update the House on the latest information in relation to severe weather currently hitting New South Wales?

The Hon. MICHAEL GALLACHER: I thank the honourable member for her timely question and her keen interest in the outstanding work done by our State Emergency Service and other emergency personnel during this current period of destructive weather patterns. As all members would be aware, a complex low pressure system has impacted—

The Hon. Sophie Cotsis: Has he got a meteorological background?

The Hon. MICHAEL GALLACHER: Mr President, this is an important matter and I ask that Opposition members keep their interjections to a minimum. This low pressure system has impacted the New South Wales North Coast and is slowly moving south, causing significant storm and flood damage through continuous heavy showers and thunderstorms. This weather pattern is very destructive because it contains several low centres within it, all delivering damaging winds of up to 100 kilometres an hour and rainfall in excess of 200 millilitres.

Towns that have been hardest hit by these destructive winds are Red Rock, where multiple houses and the local bowling club have lost their roofs, Corindi, Woolgoolga, Sapphire Beach and Coffs Harbour. The State Emergency Service has advised me that all these areas have incurred significant tree uprooting, flash flooding, road closures and inundation. I express my deepest sympathy for the family of the man who was fatally injured by a falling tree while driving in Hillville near Taree earlier today. This morning a car with three people inside was swept away by floods. Luckily these three individuals survived and I understand that they were taken for assessment at Manning Base Hospital.

I have been monitoring this developing situation since the weekend. Government members know that I saw firsthand what was going to come when my own property was inundated by two to three feet of water over the weekend. During the past few days I have been receiving regular updates from the State Emergency Service throughout the day and night on the measures it has been taking in communities from the Hunter right up to the North Coast. Due to the seriousness of the situation, on behalf of the Government I have this afternoon made natural disaster declarations in relation to Clarence Valley, Bellingen, Kempsey Shire and the Upper Hunter. These declarations make financial support available to people directly affected, which is an important safety net for families, small businesses and primary producers. The Government will continue to closely monitor the situation to determine whether further natural disaster declarations are required, particularly in light of continuing rain along the coast.

I have asked the State Emergency Service to continue to provide me with ongoing updates as response needs develop over the coming days. In fact, the member for Oxley and the member for The Entrance travelled to their regions today on behalf of the Government to inspect firsthand the damage and rescue efforts of our emergency services personnel. In light of what is likely to be an ongoing emergency situation, I will be travelling to the area on Friday to receive briefings and to speak with emergency services personnel about what further assistance the Government can provide. I will be travelling right through the region, as much as is possible given the road closures.

Flood warnings have been issued for a number of river systems. The Nambucca, Paterson, Williams, Macleay and Hastings Rivers are in major flood. Approximately half an hour ago the Manning River also began to flood. As a result, the State Emergency Service has issued evacuation warnings for Kempsey central business district, Smithtown, Jerseyville, Kinchela, parts of Gladstone, Rawdon Island and Settlement Point. As of 12 o'clock today more than 1,200 people have been asked to leave their homes and businesses. Many other townships are now isolated, including Bellingen, Bowraville, Stewarts Point and surrounding areas of Kempsey. I understand that overnight the Department of Family and Community Services opened seven evacuation centres across these affected areas. Further centres remain open in Kempsey and Wauchope. I am advised by State Emergency Service Commissioner Kear that the danger posed by the floods and storms is still present. [*Time expired*.]

The Hon. SARAH MITCHELL: I ask a supplementary question. Will the Minister elucidate his answer.

The Hon. MICHAEL GALLACHER: According to the Bureau of Meteorology, a slow-moving low pressure system is continuing southwards with significant rain and destructive winds. For the benefit of members who check the Bureau of Meteorology home page, the low pressure system is now impacting on the Hunter, not just on the coast. It extends right up to Singleton, Muswellbrook and surrounding areas with quite significant rainfall. The Hunter region is listed as having rising water levels. The State Emergency Service is planning for possible impacts in the Forster and Hunter regions. Additional State Emergency Service crews from other areas are being deployed to provide additional assistance during this busy operational period.

Also at midday the State Emergency Service received more than 1,300 separate requests for assistance from the community and businesses. They successfully completed 26 separate flood rescues. For the hundreds of State Emergency Service volunteers currently in the field, who are supported by Fire and Rescue NSW and the Rural Fire Service firefighters, the next few days will be a busy period. I am sure all members join me in applauding the State Emergency Service, the Rural Fire Service and other emergency service personnel for their tireless efforts in responding to calls for assistance and coordinating such a significant storm and floods operation. In New South Wales we have thousands of dedicated men and women who volunteer for our State Emergency Service. It is crucial that we recognise their work.

JOBS GROWTH

Dr JOHN KAYE: In directing my question to the Minister for Finance and Services, I refer to the modelling of the $4,000 payroll tax rebates for up to 100,000 new jobs in New South Wales and specifically to Treasury's modelling of the number of additional jobs, but not new jobs. Under average elasticity assumptions, what will be the number of jobs created that would not otherwise have been created?

The Hon. GREG PEARCE: I thank the member for the opportunity to inform the House of the Government's policy to kick-start the New South Wales economy with 100,000 additional jobs. I begin by making it plain that the payroll tax rebate is to be applied only to new and additional jobs.

Dr John Kaye: That is fine.

The Hon. GREG PEARCE: That is the key point. Of the 100,000 new jobs created over two years, the Government is targeting 60,000 in metropolitan areas and 40,000 in regional areas. The jobs may be permanent or part time. The target has been designed not to discriminate against job opportunities. It is meant to encompass all the job opportunities that can possibly be created. The short answer is that we expect the initiative to assist us in providing 100,000 new jobs.

Dr John Kaye: And Treasury's model?

The Hon. GREG PEARCE: I do not have Treasury's modelling with me, but it supports the policy.

INDUSTRIAL RELATIONS LEGISLATION

The Hon. ADAM SEARLE: In directing my question to the Minister for Finance and Services, I refer to comments made by Arthur Moses, SC, in relation to the Minister's industrial relations legislation.

Dr John Kaye: Who is Arthur Moses?

The Hon. ADAM SEARLE: Arthur Moses is a Senior Counsel—a man who is most learned in the law.

The Hon. Greg Pearce: Now we know.

The Hon. ADAM SEARLE: That is what I say. I cite Mr Moses' advice, which states that there are grounds upon which to conclude that the legislation "would impair the institutional integrity of the Commission" so as to render its exercise of judicial power "incompatible with Chapter III of the Australian Constitution". What action has the Minister taken to rectify any constitutional issues arising out of the Industrial Relations Amendment (Public Sector Conditions of Employment) Bill?

The Hon. GREG PEARCE: If the Hon. Adam Searle had been a member of this place a little longer, he would know that it is out of order to ask for a legal opinion.

The Hon. Adam Searle: Point of order: I did not ask for a legal opinion.

The Hon. GREG PEARCE: I will not take the point because it is much more important to discuss the issue. Yesterday a press release was issued by John Robertson. I am not sure whether he is honourable or not.

The Hon. Sophie Cotsis: He is.

The Hon. GREG PEARCE: No. I do not think he has the title.

The Hon. Adam Searle: He has the title.

The Hon. GREG PEARCE: I thank the Hon. Adam Searle. I stand corrected.

The Hon. Duncan Gay: No, he should not have the title.

The Hon. GREG PEARCE: No, I do not think he does have the title as Leader of the Opposition.

The PRESIDENT: Order! If a member wishes to make a remark about whether it is appropriate to use the honorific in relation to a member, those are the terms by which a member should refer to it, not by questioning whether or not the member is honourable. Such references may well be unparliamentary and are not appropriate. Further, that a member has declined the use of the honorific does not mean that the member is not honourable; such decisions should be respected. All members should use the honorific when referring to members who have not declined its use.

The Hon. GREG PEARCE: I thank you, Mr President, for your learned ruling. The press release issued yesterday by Mr Robertson contains a list of members of his new shadow ministry. It is a very interesting shadow ministry, especially member No. 6.

The Hon. LUKE FOLEY: Point of order: My point of order relates to relevance. The question was very specific. It relates to the constitutional issues arising from the industrial relations legislation. The Minister should be relevant and answer that question.

The Hon. GREG PEARCE: To the point of order: The question dealt at length with the opinion of Mr Moses, who is a distinguished barrister and obviously somebody with whom the Hon. Adam Searle has worked on legal cases. I was dealing with that part of the question.

The PRESIDENT: Order! I remind the Minister of the requirement for his answer to be generally relevant.

The Hon. GREG PEARCE: The Hon. Luke Foley is No. 6 on the list.

The Hon. Luke Foley: Point of order: Mr President, the Minister is ignoring your ruling. He is attempting to address anything but the question about the constitutional issues arising from the industrial relations legislation.

The PRESIDENT: Order! There is no point of order. From the limited response the Minister has made, it is not possible for me to judge whether he was breaching the relevant ruling.

The Hon. GREG PEARCE: Now that the question is much clearer, I can say that there are no constitutional issues. The Industrial Court is specifically excluded from the legislation in its court status. The bill deals only with the tribunal. On the list of shadow Ministers, Steve Whan is No. 7. Where is Steve Whan? Who is Steve Whan?

The Hon. Luke Foley: Point of order: Mr President, addressing a shadow Cabinet list cannot in any way be relevant to the question the Minister has been asked. I ask you to haul him into line.

The PRESIDENT: Order! Government members will come to order. I uphold the point of order. The Minister's response will be generally relevant to the question asked.

The Hon. GREG PEARCE: I answered the question. I was using the remainder of my time to ask about Steve Whan. [*Time expired.*]

ROAD FLOOD DAMAGE

The Hon. MELINDA PAVEY: My question is addressed to the Minister for Roads and Ports. Will the Minister update the House on the effect of recent heavy rainfall and flooding on the State's roads?

The Hon. DUNCAN GAY: This is an important question.

The PRESIDENT: Order! Opposition members will come to order.

The Hon. DUNCAN GAY: They do not care about anyone who lives outside Sydney. Extreme weather conditions in northern New South Wales—

The Hon. Mick Veitch: Point of order: As someone who lives west of the Great Dividing Range, I take offence at the statement made by the Hon. Duncan Gay. I ask him to withdraw.

The PRESIDENT: Order! Does the Minister wish to withdraw?

The Hon. DUNCAN GAY: No. There is no personal offence. To the point of order—

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

The Hon. DUNCAN GAY: To the point of order: So much noise was coming from that side of the Chamber that, quite rightly, I stated no-one cares about regional New South Wales. Frankly, that is not something a member should be asked to withdraw. People across this State are suffering the effects of floods and all the Labor Party wants to do is play games.

The PRESIDENT: Order! The Minister will resume his seat.

The Hon. Lynda Voltz: To the point of order: In this Chamber last week when Opposition members were constantly asked to withdraw their comments when they said members on that side of the Chamber were embarrassed by Tony Abbott's policies, we withdrew them.

Mr David Shoebridge: To the point of order: I ask the Minister to withdraw his comment, which clearly caused offence.

The PRESIDENT: Order! Under the standing orders I can rule that remarks are offensive only if they are directed at an individual. If the remarks are directed at the Opposition, the Government or a political party they cannot be ruled to be offensive. I have on occasion asked members to voluntarily withdraw their remarks, but I cannot direct them to withdraw their remarks unless I rule them to be offensive. The standing orders require them to be offensive in some personal way. I cannot make the Minister withdraw.

The Hon. DUNCAN GAY: Extreme weather conditions in northern New South Wales have resulted in significant road closures, notably on parts of the Pacific Highway. The New South Wales Government takes road— [*Time expired*.]

The Hon. MELINDA PAVEY: I ask a supplementary question. Could the Minister elucidate his answer?

The Hon. DUNCAN GAY: This is an important issue. The New South Wales Government takes road safety seriously, unlike some Opposition members. Due to the amount of rain that has fallen we have been forced to close roads. In some locations it is simply too dangerous for vehicles to pass due to the height and speed of the rising floodwaters. The Pacific Highway has been closed between Port Macquarie and Nambucca Heads with initial reports suggesting the highway at Kempsey is expected to remain closed for approximately five days due to rising floodwaters. The following roads also are closed: the Oxley Highway at Long Flat, which is west of Port Macquarie, and around Wauchope—eastbound motorists are being turned around at Walcha and westbound motorists are being turned around at Wauchope; Orara Way just north of Nana Glen; and Hastings River Drive at Port Macquarie.

One lane of the Pacific Highway at Corindi near Coffs Harbour has reopened, along with Waterfall Way between Bellingen and the Pacific Highway. Motorists are being advised to avoid all travel on the Pacific Highway between Port Macquarie and Nambucca Heads. Motorists can use the New England Highway as an alternative route. A comprehensive communications strategy has been put in place to warn motorists to stay away from areas that are currently closed, and includes regular updates on the Transport Management Centre's Live Traffic website *www.livetrafficnsw.com.au* as well as regular media alerts. Motorists also can call the toll-free number 132-701 for the latest information on flood-affected roads. The New South Wales Traffic Management Centre also has been in contact with the Transport Management Centre in Queensland to ensure all motorists— [*Time expired*.]

LIVE ANIMAL EXPORTS

Reverend the Hon. FRED NILE: I ask the Hon. Duncan Gay, representing the Minister for Primary Industries, the Hon. Katrina Hodgkinson, a question without notice. Has the Federal Government prohibited all live cattle exports to Indonesia for six months? What impact will this premature ban have on New South Wales cattle producers? Has the Federal Government discussed with the New South Wales Government the provision of compensation for New South Wales cattle producers in the $700-million-a-year live export industry?

The Hon. DUNCAN GAY: I thank the member for his important question about an issue affecting many people.

The Hon. Jeremy Buckingham: You said none last week. You said 1 per cent.

The Hon. DUNCAN GAY: Sorry?

Dr John Kaye: You said 1 per cent last week.

The Hon. Jeremy Buckingham: You said 1 per cent.

The Hon. DUNCAN GAY: Well, that is a lot of people.

The Hon. Jeremy Buckingham: No, they're cattle; it was 1 per cent of cattle.

The Hon. DUNCAN GAY: What The Greens understand about cattle production could be written on the back of the Labor Party rule book—and that has not been seen for a long time.

The PRESIDENT: Order! The House will come to order.

The Hon. DUNCAN GAY: Many people saw the disturbing images on *Four Corners* two weeks ago, whether they were cattle producers or members of the community. More disturbing is the lack of a proper response from the Federal Government. Eventually, the Federal Minister, Senator Ludwig, closed down the export industry unilaterally.

The Hon. Jeremy Buckingham: No he didn't.

The Hon. DUNCAN GAY: When he was there did he visit them? No, he did not. A large number of abattoirs in Indonesia meet Australian standards.

Mr David Shoebridge: Make it up as you go along. It's a fairytale.

The Hon. DUNCAN GAY: Mr David Shoebridge, the member who refuses the title "honourable", knows a lot about the live cattle industry. The extent of his knowledge is what he knows about the end product.

Dr John Kaye: Point of order: I will have the Minister know that Mr David Shoebridge is a fine product of an agricultural high school.

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

The Hon. DUNCAN GAY: The concern is that some abattoirs in Indonesia meet Australian standards and some that were shown on *Four Corners* do not. The Minister should not have stopped trade entirely; he should have stopped it to abattoirs that do not meet our standards. That would have been the sensible way to do things. When it came to compensation, having made this decision that affected many farmers across Australia—

Mr David Shoebridge: There is no control as to which abattoir they go. Just make it up.

The Hon. DUNCAN GAY: Six hours should have been enough for Mr David Shoebridge without him cackling on.

The PRESIDENT: Order! I call Mr David Shoebridge to order for the first time.

The Hon. DUNCAN GAY: When asked for compensation for their cattle in holding yards by the forwarders who face financial risk, what did the Minister do? He said the meat industry should pay. That money is farmers' money. This bloke made a decision and then tried to spend farmers' money. His decision on the day and in the first place was totally inappropriate. We accept that there are concerns in the community about the improper handling of livestock, as there should be. We should have been sensible and used facilities that are up to Australian standards, rather than simply gutting an industry overnight and disadvantaging people who have come out of drought and who have been facing economic hardship over the past decade. [*Time expired.*]

PUBLIC SECTOR WAGES POLICY

The Hon. SOPHIE COTSIS: My question is addressed to the Minister for Finance and Services. When the Premier justified his plan to exempt police from the Government's wages policy he said that his action recognised the particular role of the police. Why does the Government value this role over that of New South Wales nurses, midwives and teachers?

The Hon. GREG PEARCE: Our Government values all New South Wales public servants. We are working hard to give due recognition to the New South Wales public sector. We are working to improve their wages and conditions and their workplaces. A public service commission will be established to ensure rigour and to support public servants. Everything we are doing is to support public servants in their role in delivering services to the public of New South Wales. Every chance I get I re-emphasise our gratitude to the public service and our commitment to the future of the public service and to ensuring that while we are in office we will do everything we can—

The Hon. Sophie Cotsis: Point of order: My point of order is relevance. The question is about exempting police and why the Government values police over New South Wales nurses, midwives and teachers.

The PRESIDENT: Order! There is no point of order. The member will resume her seat.

The Hon. GREG PEARCE: Mr Nathan Rees is the shadow Minister for Police and Emergency Services. I think we all remember how members opposite value people's jobs and their loyalty. Was Nathan Rees not Premier for a little while before this mob politically executed him? They simply took him out. That is the sort of respect Labor members show for their own side.

The Hon. Amanda Fazio: Point of order: My point of order is relevance. This is the second time the Minister has tried to use a list he obtained somewhere to answer a question. However, it is not relevant to either of the questions he has been asked and it is particularly not relevant to the question asked by the Hon. Sophie Cotsis. I ask you to direct the Minister to answer the question.

The PRESIDENT: Order! I remind the Minister of the need for him to be generally relevant in his responses.

The Hon. GREG PEARCE: The question was about valuing police and I thought it was important to talk about the shadow police Minister and how he was valued by members opposite. Look at all the glum faces; they are all looking down at their shoes.

The Hon. Amanda Fazio: Point of order: Again my point of order is relevance. I ask you to ask the Minister to stop flouting your rulings and to give a relevant answer to the question he has been asked.

The PRESIDENT: Order! I ask the Minister to continue to be generally relevant. If he does not have any other relevant information to bring to the House, he will conclude his answer.

The Hon. GREG PEARCE: As I was saying, this Government values our police service. We value the police, and we have the police Minister in this Chamber. We value the police.

SYDNEY WATER TWITTER ACCOUNT

The Hon. CHARLIE LYNN: My question is directed to the Minister for Finance and Services, and Minister for the Illawarra. Will the Minister update the House on Sydney Water's Twitter account?

The Hon. GREG PEARCE: That is a good question from a member who is interested in what is happening. I am pleased to inform the House that the Illawarra will be the first region to receive Sydney Water's new Twitter project to update messages. Residents will be about to stay in touch with the progress of the next project in Sydney Water's $30 million SewerFix Program at Gwynville. The use of this contemporary technology will be a valuable resource to further improve consultation with the community.

The Hon. Luke Foley: The first message: "Greg Pearce has turned his tap off."

The PRESIDENT: Order! The Leader of the Opposition will come to order. I call the Hon. Sophie Cotsis to order for the second time.

The Hon. GREG PEARCE: Sydney Water currently distributes timely information in newsletters and letters to the community, posts on its website and consults with councils and other relevant authorities. Recognising that people communicate in different ways, Twitter is another way in which Sydney Water can stay in touch with its customers. This is an example of a Government moving with the times. It is an example of how technology can be used by Government to ensure that residents are getting the important information they need. Indeed, many members of this House enjoy using Twitter to communicate. On her Twitter page the Hon. Penny Sharpe lists the so-called achievements of 16 years of Labor. What was she able to list? She was able to identify one rail line that was completed in 16 years under the former Government. That was the Chatswood to Epping rail link, which was originally promised as the Parramatta to Epping rail link in 1998, to be delivered in 2006 at a cost of $1.4 billion.

The Hon. Lynda Voltz: Point of order: I distinctly recall that the question related to Twitter accounts and Sydney Water. The Minister has not got within a bull's roar of that.

The PRESIDENT: Order! Although the Minister is permitted to make general comments, his answer should be generally relevant to the question he was asked.

The Hon. GREG PEARCE: I was giving some examples of Twitter. Sydney Water is one example and I am using other examples. On the Hon. Penny Sharpe's Twitter page she mentioned as a so-called achievement of 16 years of Labor the Epping to Chatswood rail link. Only half the line was delivered, it was three years late and it was double the cost. Unlike the former Government, the O'Farrell-Stoner Liberal-Nationals Government envisages technology as a tool for providing the information that New South Wales residents need to make informed decisions. We will not dwell on the 16 years of waste and lost opportunities under Labor; to do that, I would have to challenge Mr David Shoebridge's six hour record for a speech.

The Sydney Water Gwynville Twitter project is a first that will allow residents to be kept informed of local Sydney Water projects in their area. The project is part of the $30 million SewerFix Program, which has 22 projects that aim to reduce the frequency of wet weather sewage overflows. I am sure members will be interested to know that Sydney Water is installing new piping around Mercury Road and Wiseman Park. Members can visit Sydney Water's Twitter account, as well as Sydney Water's SewerFix website, which is *www.sydneywater.com.au*. I suggest that members spend a fair bit of time at that site.

POLICE DEATH AND DISABILITY SCHEME

Mr DAVID SHOEBRIDGE: My question is directed to the Minister for Police and Emergency Services. Will the Minister guarantee that police death and disability benefits will not be required to be reduced or bargained away by the New South Wales Police Force in return for any wage increase that it may be granted in the upcoming awards negotiation?

The Hon. MICHAEL GALLACHER: This question gives me an opportunity to reflect on my very warm and cordial meeting last week with executive members of the Police Association at their headquarters. It was a fantastic afternoon and I thoroughly enjoyed the opportunity to exchange ideas. They were pleased to see me and I assure the House it will be the continuing practice that this Government will continue to meet with the entire executive as it has done for some time now. I had an opportunity to discuss death and disability benefits and I am grateful that Mr David Shoebridge raised this matter. The team opposite continues to talk about police but for some days I have not been asked a question about police. I wonder whether members opposite are at all interested in police. The Hon. Greg Donnelly, who is laughing, just worked out that he is sitting in this House today. He did not know where he was. It is good to have him back. Stick with us, Greg. It will not be for much longer.

[*Interruption*]

Members opposite do not want to hear about death and disability benefits. It appears they are satisfied so I am happy to leave my answer at that.

Mr DAVID SHOEBRIDGE: I ask a supplementary question. Will the Minister elucidate by providing an answer to the question about whether death and disability benefits will be required to be negotiated as part of the award negotiations.

The Hon. MICHAEL GALLACHER: Mr David Shoebridge from The Greens might advise his coalition partners that this answer is important and ask them to keep quiet.

The Hon. Amanda Fazio: We do not have any coalition partners.

The Hon. MICHAEL GALLACHER: We know about the Labor-Greens alliance. As Mr David Shoebridge is aware, this Government has indicated that there are two separate awards.

Mr David Shoebridge: I would like you to answer the question.

The Hon. MICHAEL GALLACHER: I do not think Mr David Shoebridge understands that there are two separate awards. We have given an undertaking to the Police Association and therefore rank and file members of the New South Wales Police Force that we will maintain a scheme to protect workers.

Mr David Shoebridge: That scheme?

The Hon. MICHAEL GALLACHER: No. That scheme is one that those opposite designed. The former Government's whole approach to death and disability benefits was to throw money at the problem. Not once did it sit down and look seriously at injury management, the protection of injured workers and getting them back into the workforce. Mr David Shoebridge asked me about death and disability benefits but he seems to be afflicted by the former Government's approach to the current scheme, which is limited in its inability to protect injured workers. I have asked for a review of the way in which we look after our injured workers. Under the former Government, if someone left the New South Wales Police Force due to an injury or stress, or because they had had a gutful and could not be promoted or transferred to where they wanted to be, no-one asked them why. That was a failed approach on how to deal with officers. This Government will continue to work with front-line police to ensure that a scheme is put in place. [*Time expired.*]

PUBLIC SECTOR WAGES POLICY

The Hon. GREG DONNELLY: My question is directed to the Minister for Police and Emergency Services. How does the Minister justify exempting police from his Government's wages policy but not firefighters and other emergency service workers?

The Hon. MICHAEL GALLACHER: Again members of the Australian Labor Party purport to be the workers' friends but either they are not being honest with the Parliament or they know that before the State election the Fire Brigades Union representing its members—I saw it a week ago and had a great meeting with my union friends—signed up for a 2.5 per cent wage increase when the Australian Labor Party was in office. Someone has not told the Hon. Greg Donnelly the truth. Under the former Labor Government the Fire Brigades Union signed up for that 2.5 per cent wages policy.

The Hon. Greg Donnelly: Point of order: There may be a misunderstanding by the Minister. The question was very specific.

The PRESIDENT: Order! Is the member's point of order relevance?

The Hon. Greg Donnelly: Yes, it is.

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

The Hon. MICHAEL GALLACHER: I will assist the Hon. Greg Donnelly by stepping him through it. The position taken by the Fire Brigades Union, when negotiating with the former Labor Government, was to agree to the former Government's 2.5 per cent wage increase. Prior to the March 2011 State election the Fire Brigades Union recognised that the former Government's 2.5 per cent wages policy was a fair deal for the union and it signed up for that 2.5 per cent.

The PRESIDENT: Order! I call the Hon. Lynda Voltz to order for the first time.

The Hon. MICHAEL GALLACHER: The Fire Brigades Union award was dealt with by the former Government and an agreement was reached relating to its 2.5 per cent wages policy. Put simply, if the Hon. Greg Donnelly had any questions or concerns about the approach of the former Government to wages and to that agreement, he should have raised them then. I do not remember the Hon. Greg Donnelly speaking on this matter at all.

The Hon. GREG DONNELLY: I ask a supplementary question. Will the Minister elucidate his answer with respect to the criteria that firefighters and other emergency service workers have to meet to be able to be treated the same as police with respect to their wages?

The Hon. Michael Gallacher: Point of order: That is a brand new question.

The PRESIDENT: Order! The supplementary question is in order.

The Hon. MICHAEL GALLACHER: I suggest that the Hon. Greg Donnelly refers to the priorities and parameters that the former Government set in negotiations with the Fire Brigades Union in coming to that agreement.

The Hon. Greg Donnelly: Point of order—

The PRESIDENT: Order! Has the Minister concluded his answer?

The Hon. MICHAEL GALLACHER: Yes.

CRIME TRENDS

The Hon. TREVOR KHAN: My question is addressed to the Minister for Police and Emergency Services. Will the Minister update the House on recent crime trends in New South Wales?

[*Interruption*]

The Hon. MICHAEL GALLACHER: No, there has not been any significant increase in fraud. This is a timely question as the New South Wales Bureau of Crime Statistics and Research [BOCSAR] has just released its March quarterly update on recorded crime in New South Wales. The Bureau of Crime Statistics and Research is an independent reporting body and provides crime data to the Government and the community. The latest data from the Bureau of Crime Statistics and Research shows that the hard work of officers in the New South Wales Police Force is continuing to achieve results. Members of the Government and some crossbench members recognise that and continue their support for the New South Wales Police Force. Levels of most crimes remained stable or were driven down across the State.

The report found that for the past 24 months to March the decreases were: robbery without a weapon, down 12.9 per cent; robbery with a weapon not a firearm, down 11.1 per cent; break and enter non-dwelling, down 10.4 per cent; motor vehicle theft, down 10.3 per cent; and malicious damage to property, down 9.1 per cent. Only one major crime category is trending up and by only a very small margin—that is, domestic violence related assault, which increased by 1.2 per cent. All other major offence categories remained stable. Police are working hard to drive down domestic violence and to encourage victims to report incidents. It is likely that the increase in reported domestic violence assault is partly as a result of more victims coming forward to report these crimes than was the case in the past.

However, any rise in domestic violence is disturbing and this Government will continue to support our Police Force in its ongoing fight against domestic violence, and in its work in providing support to victims. There have also been increases in possession and detection of supply and trafficking offences for a number of drug crimes. It is noted that the overall increase in trends is largely confined to detected crime—that is, as a result of increased police enforcement activity, rather than reported crime. A good portion of this increase can most likely be attributed to increased police activity, increased detections and more effective police investigative work. We have seen police continue to have enormous success in shutting down hydro-houses in south-western Sydney, as just one example.

Dr Weatherburn of the Bureau of Crime Statistics and Research has raised concerns that the figures may indicate an increase in amphetamine use, due to concurrent increases in overdoses. However, I note that overdoses can also be a sign of a decreased quality of drug, which is cut with other harmful substances. Whatever the cause, we take these numbers seriously. The O'Farrell Government will provide police and the courts with the resources and the powers they need to target and punish drug traffickers and dealers as well as help drug users kick the habit. We want to end the cycle of drug dependence and crime. That is why we are establishing a second Sydney Drug Court and a Metropolitan Drug Treatment Facility. Getting people off drugs is obviously good for them and their families, and it will lower the amount of recidivist drug-related crime.

But many of these drugs are not produced on our shore so the best way to stop them from causing havoc on our streets and in our community is to eliminate them before they get here. The New South Wales Police Force is working hard behind the scenes and joining forces with the Australian and New South Wales crime commissions, the Australian Federal Police, the Australian Customs and Border Protection Service and other law enforcement agencies around the country to target drug traffickers and reduce the quantities of drugs, such as cocaine, that are smuggled into New South Wales. Police have established a special squad to investigate crime in the ports called Operation Polaris. Polaris has grown out of a joint task force with some of the agencies I have just mentioned. A squad such as Polaris is much needed and I look forward to seeing the results of its investigative efforts. I will continue to update the House on this matter.

SHENHUA WATERMARK COALMINE

The Hon. JEREMY BUCKINGHAM: My question is directed to the Minister for Roads and Ports, representing the Minister for Resources and Energy. Will the Government stand by its election commitment to the Caroona Coal Action Group that it "will not consider any mining or coal seam gas development application on the Liverpool Plains prior to the completion of the Namoi Catchment Water Study"?

The Hon. Greg Donnelly: That is a very good question.

The Hon. DUNCAN GAY: It is a good question. One thing I will not do is accept The Greens' interpretation of what I may or may not have said.

The Hon. Michael Gallacher: Very wise.

The Hon. DUNCAN GAY: I agree with you.

The Hon. Jeremy Buckingham: What about the Caroona Coal Action Group's interpretation, which is that you said yes and now you are saying no?

The Hon. DUNCAN GAY: I will come to that in a moment. The New South Wales Government has always been open about its commitment to attracting investment to New South Wales. Any attempts to progress a project of significant economic benefit to the State, and particularly to regional New South Wales, are completely legitimate. It is a role of Cabinet Ministers to encourage critical investment in New South Wales, and several Ministers were giving the issue due consideration. Under the new State Government, the Shenhua Watermark project will have to go through a more stringent approval process than it did under the former Government—a process that I put in place. All due diligence on this project will be followed, and ultimately it is up to the planning—

The Hon. Jeremy Buckingham: Point of order: I asked a specific question about the Namoi Catchment Water Study. You answer the question!

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

The Hon. DUNCAN GAY: When you take too many bogus phone calls from friends of Pauline Hanson you have a problem.

The Hon. Jeremy Buckingham: Yes or no? It's the biggest coalmine in the State. Get it right.

The Hon. DUNCAN GAY: The question that the—

The Hon. Jeremy Buckingham: They're all watching, Duncan.

The Hon. DUNCAN GAY: Would you like me to answer the question? If so, sit down and be quiet, take your green pills and behave. The answer to the question is that any commitment I made to the Caroona Coal Action Group before the election, I stand by.

The Hon. JEREMY BUCKINGHAM: I ask a supplementary question. Has the Minister just sold out the people of Caroona, for a fast buck, to the coalminers?

The Hon. DUNCAN GAY: This member is very excitable. He asked the question and was given an absolutely appropriate answer. But he just wants to make a point. I note you have got the leadership tie on today, and we will excuse you for that. And I know you have had some disappointment on phone calls from people recently—

The Hon. Lynda Voltz: Point of order: Members are required to address their remarks through the Chair and not to individual members in the Chamber.

The PRESIDENT: Order! As I was taking advice from the Clerks on another matter I am unaware whether the Minister was or was not directing his remarks through the Chair. I remind members and all Ministers that they should direct their remarks through the Chair.

The Hon. DUNCAN GAY: I accept that, Mr President.

PUBLIC SECTOR WAGES POLICY AND POLICE

The Hon. LYNDA VOLTZ: My question is to the Minister for Police and Emergency Services. Will the Minister confirm that all employees of the Police Force will be covered by the proposed exemption to his Government's wages policy, or will only uniform police officers be covered?

The Hon. MICHAEL GALLACHER: The lack of understanding of the award by members opposite is quite breathtaking. It is all those who are subject to the police award that is currently going through the process of being renegotiated—in other words, all sworn personnel. But I am amazed that members opposite—

The Hon. Lynda Voltz: So the same—

The Hon. MICHAEL GALLACHER: You continue to interject; I am giving you advice. The fact is that it is all sworn personnel subject to the current award, and I would have suggested to members opposite that—

The Hon. Lynda Voltz: So only uniform coppers?

The Hon. MICHAEL GALLACHER: For starters, the member used the term "coppers", which is a derogatory comment used against police. I would have expected more from her. If the member had listened, she would have heard me say that sworn police officers can be uniform police or indeed non-uniform police, those who operate in plain clothes; they are those who are actually sworn as police officers, not those whom we refer to as unsworn personnel who are not actually police officers.

LIVE TRAVEL TIME TECHNOLOGY

The Hon. JOHN AJAKA: My question is directed to the Minister for Roads and Ports. Will the Minister update the House on the rollout of live travel time technology that is being installed on Sydney motorways?

The Hon. Shaoquett Moselmane: He should know: he's your Parliamentary Secretary.

The Hon. DUNCAN GAY: I am glad to be reminded that the member is my Parliamentary Secretary. In case I have not told the House, he is the finest Parliamentary Secretary I have ever had—an absolute cracker.

The PRESIDENT: Order! The House will come to order.

The Hon. DUNCAN GAY: Last week the New South Wales Government announced that the rollout of live travel time technology would be fast-tracked on the M7 and eventually installed across all Sydney motorways. Live travel time technology will be up and running on the M7 by the end of September, three months ahead of schedule. The technology will also be available on the M4 by the end of December this year. Unlike the inaction of the former Labor Government, this Government is committed to improving road services for commuters. Electronic message signs will provide updated information every three minutes to keep motorists informed as they travel.

In the event of a crash, the electronic message signs will alternate between providing incident information and projected travel times. For example, if you have the misfortune to crash your mate's $400,000 Lamborghini, your fellow commuters can be advised of alternative routes or measures to potentially deviate you’re your misadventure. Likewise, commuters held up by your luxury car crash can be notified of potential delay times. Live travel time technology works by detecting vehicles at points along the road and calculating the time taken to get from one point to the next.

The New South Wales Government wants to ensure that motorists' journeys are as hassle free as possible. Having proper live travel time information in place and early warning systems like we currently have on the F3 are important steps to achieving this. I have also instructed the Roads and Traffic Authority to negotiate with the operators of the M2 and M5 to try to include the installation of live travel time technology in the upgrade projects. For people stuck in traffic with children, on their way to an appointment or an important business meeting, knowing how long it will be before they reach their destination makes life a lot easier. Unlike the F3, there will not be an initial trial; we have committed to ensuring this will become a permanent service during the week and on weekends. This is part of our commitment to ensure the customer is at the centre of everything we do. We want customers—in this case, motorists—to have the best possible experience on Sydney motorways.

NEWCASTLE FREE CENTRAL BUSINESS DISTRICT SHUTTLE

The Hon. MICHAEL GALLACHER: On 11 May 2011 the Hon. Mick Veitch asked me a question about the Newcastle free central business district shuttle bus. I provide the following answer:

> I refer the honourable member to the answer provided to the question asked by the Hon. Helen Westwood, the response to which was printed in *Hansard* on 14 June 2011.

HACKING RIVER SEWAGE SPILL

The Hon. GREG PEARCE: On 30 May 2011 the Hon. Cate Faehrmann asked me a question about the Hacking River sewage spill. I provide the following response:

> I refer the honourable member to the answer provided to the question asked by the Hon Trevor Khan, the response to which was printed in *Hansard* on 31 May, 2011.

M5 WIDENING PROJECT

The Hon. DUNCAN GAY: On 14 June 2011 the Hon. Penny Sharpe asked a supplementary question regarding the M5 motorway. I provide the following supplementary answer:

> I can advise that the private operator of the M5 West, Interlink roads, submitted a proposal to the RTA to widen the motorway from four lanes to six lanes in each direction between King Georges Road and Camden Valley Way in September 2009.
>
> The proposal has been developed by Interlink Roads and the RTA to enable a detailed environmental assessment to be completed, which was publicly exhibited during September and October last year.
>
> Following consideration of the public submissions, a preferred project report was recently exhibited in May. Further submissions were invited and are currently being considered by the Department of Planning & Infrastructure.
>
> The environmental assessment not only considers any environmental impacts of the project, but also examines the need and justification for the M5 West Widening proposal.
>
> The proposal fits the longer term strategy to expand the capacity of the M5 corridor, including the M5 East and the Tunnel.
>
> Infrastructure NSW will be considering the priority of the M5 East Expansion shortly, along with other major projects to expand the Sydney motorway network.
>
> Although the M5 West Widening project is justifiable as a stand alone project, the traffic performance and environmental impacts have been assessed taking into account the potential traffic scenario with an expanded M5 East, including the tunnel.
>
> The M5 West Widening is designed to provide transport benefits, including travel time savings, fuel savings, improved reliability and improved safety to freight, commercial and passenger vehicles on a stretch of motorway which is increasingly at or near capacity for longer periods of the day.
>
> Traffic modelling indicates that if the M5 West Widening project was not implemented, the travel time between Raby Road near Campbelltown and King Georges Road will deteriorate substantially. However, if the M5 Widening project is implemented, there will be significant travel time savings, compared with the do nothing scenario, in the order of six minutes in the eastbound peak period and a saving of about 12 minutes in the westbound peak period.

Questions without notice concluded.

Pursuant to resolution business interrupted to permit an address to the House by Magistrate Jennifer Betts.

CONDUCT OF MAGISTRATE JENNIFER BETTS

[*Attendance of Magistrate Jennifer Betts at the bar of the House.*]

The PRESIDENT: Order! I propose to call Magistrate Jennifer Betts to appear at the bar of the House and address members in relation to the report of the Conduct Division of the Judicial Commission of New South Wales, dated 21 April 2011, and show cause why she should not be removed from office. I ask members to extend to Magistrate Betts the usual courtesies during her address. I remind those in the public gallery and in my gallery that the address is to be heard in silence. Anyone who transgresses that direction will be immediately removed from the Chamber. I remind members that the resolution does not allow members to address questions to Magistrate Betts at the conclusion of her address. I direct the Usher of the Black Rod to admit Magistrate Betts and conduct her to the lectern at the bar of the House.

[*Magistrate Jennifer Betts was conducted onto the floor of the Chamber by the Usher of the Black Rod.*]

MAGISTRATE BETTS: Mr President, honourable members, I am grateful for the opportunity given to me to address you in relation to the Conduct Division report concerning my conduct as a Local Court

magistrate. From the outset I have acknowledged my wrongdoing and accept responsibility for my behaviour, and sincerely apologise to the respective complainants. I would like to point out that in its report the Conduct Division said this:

> We wish to emphasise that this report ought not to be taken as the expression of opinion that the magistrate ought to be removed from office. That is a matter peculiarly within the province of Parliament.

All the Conduct Division report has found is that the complaints established against me could give rise to both Houses of Parliament petitioning the Governor that I be removed from office. The question of whether the Houses should do so is your decision alone, to be made after considering all of the evidence.

On 24 October 1994 I was sworn in as a magistrate for the State of New South Wales. On that day I took the Oath of Allegiance and the Judicial Oath, swearing to God that I would do right to all manner of people after the laws and usages of the State of New South Wales, without fear or favour, affection or ill will. On 29 June 2009, being the Castle matter, and 9 October 2009, being the Maresch matter, I let down the people of New South Wales when I did not adhere to that oath. That was in a period of time that I was not taking medication for my depressive illness. I voluntarily recommenced medication in early November 2009. During the course of the proceedings before the Conduct Division I received a full psychiatric assessment, and have been given a complete program of treatment and rehabilitation. I now understand that I am a person who needs to take medication for life, and I undertake to do so.

I am a hardworking magistrate who has a reputation for being fair and firm. Before becoming a magistrate I worked for eight years in the local courts of New South Wales, three years at the Attorney General's Department and eight years in the Office of the Director of Public Prosecutions. I returned from Hong Kong, where I was a Senior Crown Counsel for two and a half years, to take up the position of magistrate. I have given, I believe, great service to the people of New South Wales for over 34 years. Throughout my working life I have endeavoured to serve the people of New South Wales with dedication and distinction. In my role as a solicitor in the Office of the Director of Public Prosecutions I earned high accolades for my role in the prosecution of the five men convicted of the murder of Anita Cobby. The learned Crown Prosecutor described me as being "one of the best instructing solicitors I have encountered during my career as a Crown Prosecutor". The learned trial judge described me as being a "hardworking, honest, reliable and efficient instructing officer". The police involved in that case said this:

> In this instance we received the greatest co-operation, consideration, consultation and importantly encouragement from both Crown Officers. The harmony between the Police team and our Crown team was an important factor in the smooth running of the trial and its subsequent success.

The Deputy Commissioner of Police at that time said this:

> I would like to take this opportunity of conveying to Mr Saunders and Ms Betts my sincere congratulations on the excellent manner they performed their duties during the proceedings in question.

In my 17 years on the bench I have endeavoured to continue to serve the people of New South Wales with that same determination, skill and ability. I appreciate that it is incumbent upon all judicial officers to ensure that they act judicially at all times—that is, to be impartial, to be fair, not to prejudge any matter before them, and to give all relevant parties the opportunity to be heard and to give a rational, balanced decision based on the admissible evidence and the applicable law.

Being a judicial officer involves the making of decisions that impact upon people's lives. It is an onerous task and, on occasions, an almost impossible one. I do not believe there is any judicial officer who derives pleasure in imposing sentences of imprisonment upon defendants who come before them. I know that I do not. But those hard decisions need to be made on occasions in the interests of justice. The public require and deserve a judicial system in which they have confidence. The standard of behaviour of a judicial officer is a high one, but it is unrealistic to expect that we are perfect; we are not—that is just simply not attainable.

Apart from the two matters from 2009 and the two revived complaints from 2003 and 2007, I believe that I have been able to fulfil my judicial role with distinction. In my 17 years on the bench I have dealt with over 50,000 matters. The proportion of matters for consideration by you amounts to 0.0008 per cent of all those matters I have dealt with in that time. This means that I have been able to discharge my duties in accordance with my oath on 99.9992 per cent of occasions. I am not known for making outlandish decisions, nor have I earned the wrath of any superior court. In fact, only one matter has gone to the Supreme Court for review, that

being a matter from Sutherland Local Court in 1997 in which I refused an application for professional costs after dismissing a charge of goods in custody against the defendant. Justice Wood, as he then was, upheld my ruling and found no errors of law on my behalf.

The only other matter—that I can recall, that is—which went to a superior court was a matter involving the awarding of costs in a copyright case. That matter was determined by the Federal Court and was remitted back to me to calculate the actual costs, which involved professional work done in the United States of America. No error of law was made by me. There have been no stated cases from any of the matters I have dealt with and no errors of law. Severity appeals to the District Court have been dealt with on their merits, as have the all grounds appeals. Defendants have automatic rights of appeal to the District Court; they are heard as a rehearing on the transcript alone and not on the basis of errors of law.

Since the Conduct Division report has become public by its tabling before both Houses I have been inundated with emails, letters, texts and phone calls of support from colleagues, former colleagues, court staff, members of the legal profession, members of the public and even the police. I am indebted to each and every person who has expressed their support to me in what can only be described as the most difficult 19 months of my life. Only a handful of colleagues were aware of my being before the Conduct Division at the time and members of my family were only advised once public airing became inevitable. That includes my 90-year-old father, who is an uncomplicated man from the country.

My son is now aged 17 years and is in his final year of school. Being a very important year for him—it is his Higher School Certificate year—he has dealt with the situation with a maturity beyond his years and I can only say that I am very proud of him. It was with his encouragement that I decided to fight on and address you today. It is perhaps ironic that on the morning of the resumption of the inquiry, on 21 March 2011, he texted me to say that he had come first in Legal Studies. I will not discourage him from his ambition to study law, which in my view is one of the noblest professions of all where you can make a real difference in many people's lives. My son's school has been wonderful in ensuring that he receives appropriate pastoral care at this difficult time.

To appear before you today has been difficult in itself. I am a very private person who has recognised that I am not perfect. My privacy has been put aside whilst you debate my future, and I only have myself to blame for being in this position. This is also an historic occasion, being only the second time that Parliament has had to consider the future of a judicial officer. The first occurred in 1998, when this honourable House voted against the motion to dismiss that judicial officer. Your power comes from section 53 of the New South Wales Constitution Act 1902, which states:

> No holder of a judicial office can be removed from office, except as provided by this Part.
>
> Legislation may lay down additional procedures and requirements to be complied with before a judicial officer may be removed from office.

The Judicial Officers Act 1986 lays down those additional requirements. You must have a Conduct Division report that forms an opinion that the matter could—and I emphasise "could"—justify parliamentary consideration of the removal of the judicial officer complained of because of proven misbehaviour and/or proved incapacity. The Constitution Act 1902 provides that once the Conduct Division report is tabled both Houses of this Parliament are required to form a view that it has been proved to them that I do not have the capacity to perform my duties as a Local Court magistrate. I will endeavour today to persuade you that there is overwhelming evidence to show that I have the capacity to perform my duties as a Local Court magistrate.

The Conduct Division in my matter came to a determination that in three of the four matters under consideration the claim of misbehaviour was substantiated. I say that the extent of that misbehaviour does not warrant dismissal from office. In the Conduct Division's own words, you would "need a convincing accumulation of instances for dismissal." There is no such accumulation of instances here. In fact, the evidence is quite to the contrary. The Conduct Division also came to the view, principally because of the manner in which I gave evidence before it, that I was incapable of performing the role of a Local Court magistrate. I would suggest that it would be a dangerous precedent to set to dismiss a judicial officer on the basis of evidence given at such an inquiry whilst effectively giving little or no weight to the other evidence in relation to capacity. There is no suggestion that my evidence was given dishonestly or incompletely. It was, as I perceive, the manner in which I answered questions that led the Conduct Division to find in that manner. In a speech given in Hong Kong on 14 June 1998 the Hon. Justice Michael Kirby said this:

> The problem which the judiciary, and the community, face in such cases of judicial default is a difficult one. How can the independence of the institution be safeguarded without tolerating a performance of a highly skilled and important public function

> which falls short of the appropriate standard? The danger of a too easy and intrusive system of discipline for judges is that judges will be made constant targets by disgruntled litigants, professional rivals, media editorialists who thirst for simple (and generally more punitive) solutions to every problem, and politicians or others on the make?

I am not suggesting anybody here is on the make. I am medically fit for duties and there is no reason to suspect that I will unexpectedly lapse into an undiagnosed and untreated condition in the future. In reality, all judicial officers are at risk of succumbing to the stresses of judicial office, not just those who suffer from a medical condition such as depression. Those of us who have had such a condition should not be discriminated against because of it. I ask that you examine the report and the exhibits and my response in great detail. You must make a decision based on the facts and not on media speculation. I ask that you also take into account that I have been a judicial officer for nearly 17 years. I have continued in my role for the past 18 months that this matter has been pending, with no complaints being made against me. There is no hint that I have not discharged my duties in accordance with my oath. That fact alone should give you great confidence that I can and will continue to perform my duties in the appropriate manner in the future.

The past 18 months have been very stressful and I have been able to conduct my court in accordance with my oath. At the present time I work in a very happy, collegiate environment at Parramatta Local Court. Magistrate Marsden, who is the coordinating magistrate at Parramatta, gave evidence to the effect to the Conduct Division. He said that I am a very valuable member of the team at Parramatta who did not shy away from any demands made of me. I am the most senior magistrate at that complex and I have made a useful contribution to the development of new magistrates who are rostered there.

I suffer from depression and have been on medication for that condition since late 1995. I sought professional assistance at that time to cope with a challenging career as well as being a single mother of a young child. I accepted at that time that I was not Wonder Woman. My son was aged 14 months when I was sworn in. As all parents are aware, the demands of parenthood are immense. The calls from school about illnesses, the rushing from the workplace to pick up for sports training and the like, the rushing from work to pick up from after-school care are a full-time career, especially when it is done properly. It is a 24/7 commitment, which is perhaps the most rewarding career of all. I am currently prescribed Cipramil for my illness, which is a serotonin reuptake inhibitor. It is important for members to know how that mitigation works. In the evidence of Dr Phillips, he said:

> ... what happens in the body is that there are certain neurochemicals which control the mood state which we all experience. Let's take two of them, serotonin, which is probably of most importance, and noradrenaline. What happens in the brain is serotonin is pumped out into the spaces between the brain which allows an electrochemical circuit to continue. In depression there is failure or a diminution of this process to the degree that a person does not have sufficient chemicals to maintain their mood. A serotonin reuptake inhibitor does little more than to ensure that the molecules of serotonin are maintained in the space between the neurons and are not reabsorbed and degraded by the liver and secreted from the body. All it is doing is taking a person back to the homeostasis which they should have enjoyed, short of them being depressed.

This means that on medication I am well. I understand Dr Phillips' diagnosis of biological depression and I also appreciate the need to take medication for that condition for the rest of my life to remain well. In Dr Phillips' view, a person who has biological depression is less resilient to stressors and therefore at risk of an exacerbation of their disorder. The two complaints in 2009, the two most serious matters, occurred at a time when I was off medication and thus more vulnerable to life and work stressors. I acknowledge that my unilateral decision to wean myself off the medication without medical supervision was both foolish and unwise. I do not intend to ever make that mistake again. I now have the benefit of frank psychiatric assessment in written reports from Dr Klug and Dr Phillips, which confirm my condition is ongoing and that I need to be medicated for life. I did not appreciate that when I weaned myself off the medication in early 2009.

Dr Phillips was also of the view that in 2009 I was suffering from burnout, which is a "metaphor for someone who is worn down over a period of time by the stressors and the pressures of their particular profession". He later said that burnout is a reversible disorder with stressors being reduced with a reasonable break from the workplace. Since the Conduct Division handed down its report on Thursday 21 April 2011 I have been on leave. I have had a lengthy break and I am fit and well to continue in my role as a judicial officer once this matter has concluded. I will now briefly comment on the four matters which were before the Conduct Division.

The Passas and O'Regan complaints relate primarily to my hearing of an application by Ms Passas in 2003 at Burwood Local Court to revoke a personal violence order to which she had previously consented. That application did not meet the statutory threshold for revocation, which required a demonstrated change of circumstances. Ms Passas was a disgruntled member of Ashfield council. Her application was made in a context

of significant personal animosity between members of a local council. There were multiple personal violence orders and cross personal violence orders between various councillors. When she appeared before me Councillor Passas was unhappy and aggressive in her demeanour. That is clearly demonstrated by listening to the tape. Nevertheless, I accept that I responded to her in a manner which was just not appropriate and which I now regret. The merits of the application were argued before me and I ruled against Ms Passas. It was open for Ms Passas to appeal my decision, which she did not do.

The other complainant in the same matter was Mr O'Regan, who was a supporter of Councillor Passas and who was sitting in the court gallery. He had no right of appearance in the matter. He interjected after I had ruled and I responded to that interjection quite sternly. I ask Parliament to accept that nothing I did in either of those two complaints constituting one matter would warrant removal from judicial office, whether individually or in conjunction with the other complaints. When the Judicial Commission dismissed these complaints in 2004, it did not provide any feedback or constructive criticism to me.

The next matter in chronological order is the 2007 matter, the Farago complaint. In Mr Farago's case, I was terse when I perceived that he had not provided me with authorities sufficiently in advance of the hearing date. I accept that I was discourteous to Mr Farago. I apologise to Mr Farago for my discourtesy. I stress that I listened carefully to Mr Farago's legal arguments and tested them through dialogue. I accepted his argument, upheld his submission and dismissed the charge of negligent driving against his client. I note that the Conduct Division does not find proven any misbehaviour on my behalf in relation to this complaint. When this matter was referred to the Chief Magistrate for counselling by the Judicial Commission, the Chief Magistrate and I had an extremely brief conversation in relation to it. There was no mention by him of any of the details of the determination of the commission and in my view that did not take the form of counselling.

The Castle matter is the matter that is of great concern to me. It concerns unfairness in the way I handled an administrative appeal against the cancellation of a young lady's provisional driver's licence. When I heard the tape-recording of the case, I was horrified at how I had dealt with it, and I still am. I took over questioning of the appellant, which was clearly not fair; nor was my tone or language. I acknowledge that I acted in a substantially inappropriate way. I fully appreciate the tone of my voice and the words I used gave the perception that I prejudged that matter. I did not intentionally prejudge that matter. This was a licence appeal and not a matter in which the court has to come to any findings of fact. There is no presumption of innocence in such proceedings.

I acknowledge and accept that Mr Castle was not given the opportunity to conduct the matter in the way in which he wished. This was also unfair. I acknowledge that the words and questioning by me was unfair. The decision I made was one that was not perverse in any way, shape or form, and was one available to me in the light of the evidence of the appellant. However, I accept that that decision is tainted by how I conducted those proceedings. I ask Parliament to consider that my behaviour at that time was influenced by my decision to cease taking antidepressant medication earlier that year, the fact that my illness was not being treated, and lastly the recent death of a close relative in a motor vehicle accident caused by a learner driver. That death occurred on 4 June 2009.

The last matter is the Maresch complaint, which was before me on 9 October 2009. It was not before me for a substantive hearing but for mention only. It was an administrative listing which occurred as a practice that I implemented to deal with the growing number of minor traffic matters being listed as defended hearings. This practice is also undertaken by many other magistrates of the Local Court.

I found it useful for the court's administration to investigate in advance of the hearing the nature of the defence and the evidence that might be available. Mr Maresch would not otherwise have been entitled to see the photographic evidence, which might have defeated his defence at the hearing. I found that in some cases the process I adopted assisted defendants. Sometimes the photographic evidence supported their defence. Indeed, one of the random sample recordings of 2 May 2008 reviewed by the Judicial Commission involved a similar-type matter. The investigator there reported in that case:

> It seems to me that Her Honour's actions saved both the court and the defendant considerable time and inconvenience and are to be commended.

But I accept that I should not have used the language or tone that I did in this instance. It appears also that Mr Maresch understandably misconstrued my reference to "people like you". By that I only meant other litigants with similar matters; I was not categorising or stereotyping him or intending any offence. I accept that he was offended and I sincerely regret that. I did not decide Mr Maresch's case. I disqualified myself from hearing it

after considering the matter further. Mr Maresch retained his right to defend the charge and the matter was heard by another magistrate on 8 December 2009 without prejudice to Mr Maresch. At the hearing before that other magistrate the prosecution case was proven.

I ask Parliament to consider that my behaviour at this time was influenced by my decision to cease taking antidepressant medication earlier that year and my underlying medical condition. What was also operating on my mind at that time was a sharp increase in defended matters at Ryde court, which is a one-magistrate complex. In relation to medical evidence, both Dr Phillips and Dr Klug are of the view that I am fit and capable to continue in the workplace. In their opinion, the risk to the community is negligible. In Dr Phillips' opinion I am "safe to continue in professional practice in the future." He said also that "the risk of further problems in her court as a consequence of her conduct will be minimal, if at all." In his most recent report of 9 June Dr Phillips says quite a number of things. I certainly will make available to the Clerk a copy of that report for each and every member of Parliament. I shall just quote some of it. Dr Phillips said:

> Persons holding professional positions such as judicial officers, medical practitioners, even parliamentarians, are affected by mental health disorders. Fortunately, almost all persons suffering from mental health disorders can be successfully treated these days. People with mental health disorders will continue to live normal lives. They will be competent family members, responsible members of the community and at most times will continue to work in a completely successful manner. They will not bring risk to themselves or others.

Dr Phillips continues:

> I am a very experienced psychiatrist having spent nearly 40 years as a consultant in this medical speciality. I treat persons with a full range of mental health disorders. I treat numerous high-ranking members of the legal and medical professions and a number of Australia's most senior aircraft pilots. These persons continue to work successfully almost all the time. They make a substantial and important contribution to the Australian community. I can categorically state that there is no reason why a judicial officer is any different to any other well-educated professional person. Judicial officers experience the same set of mental health disorders as other members of the community. As a group they have a somewhat better outcome because of their level of education and their motivation to do well.

He continues:

> Obviously, where a judicial officer has a mental health disorder it is important to continue to monitor that person on a regular basis. Equally obvious is the need to remove the person temporarily from his or her job if the person were to suffer a significant recurrence of the disorder. Magistrate Betts is no exception to the rule. I have described her psychiatric problems in depth in my two reports being the reports before you of 25 October 2010 and the report of 3 March 2011. Simply, magistrate Betts has suffered in the past from an adjustment disorder with depressed mood. This is a relatively low grade but very common mental health disorder. She has been without symptoms for a considerable period. She no longer can be diagnosed as suffering from an adjustment disorder. Whilst I accept that Magistrate Betts will require psychiatric monitoring in the future, she has a low risk of recurrence of the disorder and will continue to do well. As I highlighted in my earlier reports, Magistrate Betts has no mental health disorder which will affect her capacity to continue with her professional career. She will not put the public at risk.

No doubt that is a matter of concern to each and every one of you. Dr Phillips continues:

> Further, Magistrate Betts does not have any cognitive impairment or physical impairment which will impede her future career.

He continues:

> I do not dispute the risk that Magistrate Betts could again experience symptoms of an adjustment disorder with depressed mood. However, there will be little concern, assuming she continues to be monitored for mental health problems. The Parliament and the people of New South Wales can be assured that Magistrate Betts is competent to continue in her career and will present no danger to anyone.

There is also an updated report from my treating psychiatrist, Dr Klug, who I saw recently on 2 June and who I will be seeing again tomorrow. A copy of that report will be made available for each and every one of you. By examining the history of complaints about judicial officers I hope to give you a perspective in relation to my matter. Currently there are approximately 295 judicial officers in New South Wales who are subject to the complaint mechanism of the Judicial Commission. Of that number, 134 are Local Court magistrates. It is not surprising that the majority of complaints about judicial officers involve magistrates. Local Court magistrates deal with 98 per cent of criminal matters in this State. Their jurisdiction expands on a year-by-year basis not just in relation to criminal matters but also in relation to civil matters.

That workload also increases every year while the resources remain the same. Each magistrate conservatively deals with approximately 3,000 matters a year. The main causes of complaint lodged with the Judicial Commission are fail to give a proper hearing, bias, incompetence, inappropriate comments, discourtesy, delay, collusion, et cetera. In the period 1999 to 2010, 870 complaints were lodged with the Judicial

Commission about the behaviour and conduct of judicial officers with nine references being received from the Attorney General. Such references are treated as complaints under the Act. In 2002 one of those complaints resulted in the constitution of a Conduct Division to inquire into the conduct of a magistrate who was allegedly involved in a cause of conduct designed to influence the outcome of a criminal prosecution in which he was presiding. One can only say that the conduct complained of in that matter was of an extremely serious nature. That judicial officer resigned.

In my respectful view, there is no comparison to the serious nature of the matters that are before you today. In 2004-05, 15 of the 118 complaints were of discourtesy or inappropriate comments, of which 53 matters, including the Passas and O'Regan matters, were summarily dismissed pursuant to section 20 (1) (h) of the Judicial Officers Act—namely, in all the circumstances further consideration of the complaint is unnecessary or unjustifiable. One matter that year that went to the Conduct Division involved allegations of a judge who suffered from a medical condition that caused him to fall asleep. The judge was declared medically unfit for office and was able to retire on medical grounds with his full judicial pension. In 2005-06, seven of the 68 complaints were classified as minor. The legislation has since been changed. Each of those matters was then referred to the respective head of jurisdiction, who can counsel the judicial officer or make administrative arrangements within the court designed to avoid a repetition of the problem.

A Local Court magistrate has a far-reaching jurisdiction in both criminal and civil areas. Their work involves both list courts and defended hearing courts. List courts are the most stressful of a magistrate's work and require the judicial officer to be able to complete such a list with expediency and with competence. Upon appointment a new magistrate generally does defended hearings and is introduced to list work gradually. I note that in my case on the examination of the "random recordings" from 2008 the person who conducted such examination was of the view:

> As in all sound recordings to which I have listened, her honour exercised strong control over the court. There is no doubt that she is very efficient at calling a list and dealing with matters in an efficient manner … I found no matters of rudeness or discourtesy.

In relation to the recordings of 2 May 2008, he—I am assuming it is a he; I do not know who it was—said this:

> In my respectful opinion the list was much too heavy for one magistrate to be expected to deal with.

That is not an uncommon situation for any Local Court magistrate. I recall on one Wednesday in 2009 at Ryde the list completed at 7.20 p.m. It was not uncommon regularly for the list at Ryde, being a one-court complex, to finish well and truly after four o'clock. That is part and parcel of a magistrate's office. In relation to the 2010 recordings, it was noted:

> In my opinion the sound recording indicate that Her Honour dealt with the matters before her in an appropriate manner. While generally her remarks Her Honour made in imposing the penalties included a lengthy and stern lecture, I do not believe that it could be said that the remarks were necessarily inappropriate. In many instances the remarks were completely appropriate and in some instances quite perceptive.

He continues:

> I found an interesting contrast between Her Honour's manner on 10th February 2010 with that exhibited on 5th May 2010. In February she appeared tense and very serious. However, in May her manner was more relaxed. This appeared to have a positive effect on those appearing before her.
>
> I think it is fair to say that not only was there nothing in the three days of hearings I examined to justify any criticism of Her Honour, in a number of matters Her Honour demonstrated a sensitivity and understanding of a high order.

The significance of the difference between February and May 2010 was this: I received the letter from the Judicial Commission on 21 December 2009 indicating that those two matters from 2009 were being referred to a Conduct Division. I had leave and commenced work in early February, so those matters were still fresh in my mind. All the "random recordings" of Ryde in 2008 and from Parramatta in 2010 were of list courts and not defended hearings. This should also give you great confidence that I am capable of performing my judicial role and will continue to do so. It is important also to point out that there is no conduct on my behalf which was unlawful.

As can be seen from an examination of Conduct Division matters over the years, the serious nature of those matters involved allegations of misconduct that had within them an element of unlawfulness. In matters where incapacity was proven, it is clear that that incapacity was sufficiently serious to make the judicial officer incapable of performing their role as a judicial officer. I would respectively submit that the Conduct Division finding of incapacity in my case is not borne out by the evidence. I acknowledge that I was defensive in the witness box, but this of itself should not see me dismissed.

The existence of the "random recordings" was first known to me and my legal team on the resumption of the hearing on 21 March 2011. We had no prior knowledge of that existence, and that matter was on my mind at the time I gave my evidence. The fact that I have been able to fulfil my role while I have had this matter pending, without any hint of any misbehaviour, discourteousness, unfairness and the like, should cause you to have great confidence that I will be able to continue to fulfil my role in the future in accordance with my oath.

To substantiate this claim, I will give you details from unsolicited correspondence I have received from persons who have appeared in my court from the period 2007 to 2009. As you can appreciate, a judicial officer rarely receives praise for their work. The reality is quite the opposite. Generally we get verbally abused in court and certainly are subject to discourtesy, not just from members of the public but also members at the bar table. Our role is to make decisions which impact upon the lives of those who come before us, either as defendants or victims. It is an adversarial situation and there is always someone who is not happy with the court's decision. As I said before, it is an onerous task, and each and every one of you will have to undertake such a task when you consider my fate.

By letter of 11 May 2009, when I was not on medication, a lady wrote to me in relation to her experience of being in attendance at Ryde Local Court on Wednesday 6 May 2009. That was a very busy list day at Ryde, and the lady was accompanying her elderly mother who pleaded guilty to a serious traffic offence. She commences her letter with this:

> I could not pass up the opportunity to tell you of my experience in your courtroom on Wednesday 6th May, I suppose there are not many people that correspond with you to inform you of the positive experience that they have had whilst in court.

She continues:

> As Principal of a school for children with extreme and challenging behaviour, with students that at times have had very limited restrictions and boundaries placed on them as well as a history of not accepting consequences, it was refreshing to watch as you imposed realistic consequences on those appearing before you. At our school, we always inform our students of consequences of both positive and negative behaviour and enforce that life is all about making choices and when making choices that there needs to be an acceptance of the consequences of their choice. As I sat in the courtroom, listening to legal personnel and individuals delivering excuses for a variety of charges, I was impressed by the statement of the facts, especially in relation to P plate drivers and their irresponsible behaviour in the use of alcohol.

The lady continues:

> Fortunately she—

meaning her mother—

> appeared before a magistrate that recognised her excellent record and took that into account. I think that acknowledging that she had been driving since 1964 with only one red light incident in front of the court hopefully may have sent a message to others, that it is possible to be a law abiding citizen. The impact of losing her licence would have been huge for her as her pulmonary disease very much limits the distance she is able to walk. Therefore I am writing to thank you for your realistic approach and the message that you sent to many people on the day. Her 12 month good behaviour bond was a good outcome for all.

As I have said before, such letters rarely come across the table. In an email received from a plaintiff in a civil matter at Ryde dated 24 November 2009 this was said:

> We refer to our presence in your court on two occasions. On both occasions when attending I was personally very moved and extremely impressed with how all the court staff, both in the office, the sheriffs and court staff and Magistrate Betts dealt with matters whilst very challenging at all times everyone conducted themselves in a very compassionate and professional manner. I feel compelled to take this opportunity to express my appreciation and gratitude to you all as in today's fast and uncompassionate world many of us don't appreciate what you all have to do every day.
>
> Today people in general don't understand the stress of what you [go] through day by day when faced with the distress that others who are less fortunate are faced with. You guys are the front line with respect to many social issues and I would personally like to express my gratitude to your efforts and empathy.

In March 2007 a young lady with special needs—she could not read or write—sent me a thank you card and with the assistance of her carers wrote, "to a very special Judge Jenny, thank you for understanding my problem. I have no designs of ever going down that road." Another young lady wrote to me in 2008 about my dealing with her matter at Ryde. She said this:

> … to make a long story short, you told me that you wanted me to be able to walk down the street and see my father and not to react, and you sent me to counselling. I wanted to write this letter to you and tell you how much [you] have changed my life. I truly believe that had you not sent me to counselling that I would have continued down the destructive path that I was on.

That young lady was studying at university and was working in a youth crisis refuge. She continued:

> I wanted to tell you this because I know without a doubt had I not received the counselling there is no way I would have been able to achieve the things that I have in my life. So let me end this letter by saying from the bottom of my heart, THANK YOU, for seeing beyond the broken girl who sat before you, and believing that I had the potential to be something more.

Another card I received in 2009—and I believe English is not the first language of this person—stated:

> People say "courts are blind and even innocent people are denied justice many times. We have never seen a court that so scared us. Exposure to your court changed my whole wrong concept of court and magistrate. I believe now that court is a temple/church and the magistrate is Goddess sitting there (I saw in you), smiling, soft spoken and very kind and doing justice with everybody. You know who is right and who is wrong.

He then goes on to thank me. Another gentleman who appeared before me in March 2009 said this:

> … the magistrate displayed a well mannered, objective, positive, almost friendly without being too friendly, helpful attitude when dealing with all members of the community appearing before her. She did not display, as some judicial officers do, a superior or unctuous demeanour, especially when confronted with criminals guilty of horrendous crimes as happened on the day in question.

He then goes on to say how impressed he was. Another area of a judicial officer's role was to attend psychiatric hospitals and deal with mental health inquiries involving involuntary patients. Since June last year we are no longer involved in that sort of work. Whilst at Ryde I attended Macquarie Hospital on Tuesday mornings before then returning to Ryde to conduct hearings. In a Christmas card from staff at Macquarie it was noted "Magistrates hearings are now anticipated with great pleasure at Macquarie Hospital." And there was a brief "thank you".

Conducting mental health inquiries was not an easy task. I recall in my first week on the bench I went with a colleague to Rozelle Hospital to observe my colleague conducting such inquiries. Whilst there, one of the patients committed suicide by hanging himself in one of the wards. Thankfully nothing so eventful occurred again whilst I was on the bench. However, I was subject to a threat from a female patient who stood over me at St George Hospital. With persuasion from me she was able to settle and become compliant. I believe that I have always treated patients in the mental health jurisdiction with respect.

In conclusion, I respectfully submit that there is a plethora of evidence to show that the two matters from 2009 were an aberration and caused by my un-medicated medical condition. With my understanding of my illness and my willingness to continue to take such medication for the rest of my life I respectfully submit there is no likelihood of any such behaviour happening in the future. The past 19 months has been a difficult time for me. This process has cost the people of New South Wales quite a substantial amount of money. It has also cost me physically, mentally and financially. I know that I will never behave in such a manner again and the deterrent effect alone is sufficient for me to ensure that I adhere to my oath at all times in the future.

If I were dismissed from judicial office then my future professional future is quite bleak. Magistrates do not have available to them any form of judicial pension. We are subject to the same superannuation rights as public servants. This no doubt is a leftover from the days of appointing magistrates from within the public service. But it creates an anomaly between the jurisdictions which may never be remedied because of the financial cost. Removal from office is a massive penalty. My professional future is in your hands and so too are my future prospects. Your role is to determine my fate on the evidence. I respectfully submit that the sanction of removal from office is far out of proportion to the findings of the Conduct Division. Once again I quote from the Conduct Division report which states:

> The Conduct Division clearly wishes to emphasise to you that it "ought not to be taken as the expression of the opinion that the magistrate ought to be removed from office".

That is your decision, and yours alone. In conclusion, I ask that you have regard to the fact that my misconduct does not involve allegations of criminal, corrupt, or even unethical behaviour; my 17 years of otherwise unblemished service as a magistrate in New South Wales; my previous service to the people of New South Wales in my work for the Attorney General's Department and the Office of the Director of Public Prosecutions; the fact that these complaints comprise just four of the almost 50,000 matters—perhaps even more by now—I have dealt with in my time on the bench; the testimony from my peers, and, in particular, the coordinating magistrate at Parramatta, that I am a valuable contributor to the busy court complex there; the enormous burden I have endured during the more than 18 months that these proceedings have been with the Conduct Division.

I ask you also to have regard to the strong incentive I have to ensure that I never have to go through an ordeal of this type again; the overwhelming medical evidence that the underlying condition that contributed to

my conduct is being effectively managed; the express medical evidence that I am fit to continue and should continue my duties as a magistrate; the message that dismissal from office would send to other members of the judiciary, the legal profession, and the community at large, who are or will be touched by any form of mental illness; the enormous financial impact that dismissal would have on me and my son; and that in doing so you give me a second chance to continue to make good the oath I took all those years ago by voting not to dismiss me from office. Thank you.

[*Magistrate Jennifer Betts was escorted from the Chamber by the Usher of the Black Rod*.]

PAYROLL TAX REBATE SCHEME (JOBS ACTION PLAN) BILL 2011

EVIDENCE AMENDMENT (JOURNALIST PRIVILEGE) BILL 2011

Bills received from the Legislative Assembly.

Leave granted for procedural matters to be dealt with on one motion without formality.

Motion by the Hon. Duncan Gay agreed to:

That the bills be read a first time and printed, standing orders be suspended on contingent notice for remaining stages and the second readings of the bills be set down as orders of the day for a later hour of the sitting.

Bills read a first time and ordered to be printed.

Second readings set down as orders of the day for a later hour.

GENE TECHNOLOGY (GM CROP MORATORIUM) AMENDMENT (POSTPONEMENT OF EXPIRY) BILL 2011

Second Reading

The Hon. DUNCAN GAY (Minister for Roads and Ports) [4.29 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The bill seeks to extend the operation of the Gene Technology (GM Crops Moratorium) Act 2003 for a further 10-year period. Currently the Act is due to expire on 1 July this year.

If the Act expires on 1 July, it will mean that GM food crops approved by the Commonwealth Government will be able to be cultivated in NSW without needing approval by this Government.

The cultivation of GM food crops is strongly regulated by both State and Commonwealth Governments.

It is important to note the Commonwealth Government and the New South Wales Government have clear and distinct roles when it comes to the regulation of genetically modified, or GM, crops in New South Wales.

It is the Gene Technology Agreement, signed by the Commonwealth and all Australian States and Territories in 2001, which defines these roles.

It is the Commonwealth Government's role to ensure that genetically modified organisms are safe for people and the environment.

It is the role of the New South Wales Government, together with industry, to manage market or trade issues affecting GM crops.

The approval process for a GM food crop happens at two levels.

Firstly, the Commonwealth must grant a licence for commercial release.

Secondly, the GM food crop must be approved for commercial cultivation in New South Wales by the New South Wales Minister for Primary Industries.

The New South Wales Act, the Gene Technology (GM Crop Moratorium) Act 2003, provides a blanket prohibition on the cultivation of all GM food crops in New South Wales, except those which have been specifically approved.

The Act ensures a balanced approach to the management of GM food crop cultivation in this State.

The blanket prohibition on the commercial cultivation of GM food plants affords substantial protection to New South Wales growers, industry and the community.

In order to obtain approval for a specific GM food crop, the Act requires a detailed assessment of industry's capacity to manage cultivation in accordance with market requirements.

This means that the requirements of key domestic and international markets must be met, and relevant supply chain management processes must be in place before approval will be granted.

An extra mechanism the Act provides is for an Expert Committee on Gene Technology to provide advice on whether an applicant meets the criteria and is ready to cultivate a GM crop.

The Act was last reviewed and amended in July 2007 when the former Government established an independent panel to review the Act.

The Review Panel was chaired by the Hon. Ian Armstrong OBE, a well-respected former NSW Minister for Agriculture and Rural Affairs.

The panel was asked to provide advice on the best way forward for the regulation of GM food crops in New South Wales. The review process included extensive public consultation. The panel recommended that the Act be amended to remove the moratorium orders on the cultivation of GM canola, and to provide a clear "path to market" for GM food products.

As a result, amendments removed the moratorium orders on GM canola but introduced a blanket moratorium on the commercial cultivation of all GM food plants, except those approved by the Minister.

This approach was taken as it was considered to be the best outcome for all stakeholders.

Further, the amendments extended the expiry date for the Act from 3 March 2008 to 1 July 2011.

GM canola is the only GM food crop grown commercially in New South Wales. It is designed to be herbicide resistant and to provide some increased yield.

GM canola was approved for commercial cultivation in New South Wales in March 2008. The first canola crops were sown at that time. In 2010, 24,000 hectares was under GM canola cultivation out of a total canola crop of 308,000 hectares. GM canola accounted for almost 8 per cent of the total canola harvest.

Market conditions have changed since 2003, when the Act first came into force. GM canola now represents 70 per cent of the world's trade in canola.

Canola is a significant agricultural crop for New South Wales and contributes to the economic development of regional and rural New South Wales. The ability of New South Wales canola growers to access and utilise GM canola varieties provides them with choice in their production systems and importantly will enable them to compete in international markets if they choose.

The bill before the House will provide for the Act to operate for a further 10 years.

The New South Wales Farmers Association supports this approach. In a letter to the Director General of the Department of Primary Industries on this issue, they state their priority will always be to provide choice for growers to produce whichever crop they desire.

The Association believes that in 10 years time it may be appropriate to reconsider the need for the legislation to continue.

By that time the community and other stakeholders might be more open to removing the legislation and relying on industry self-regulation.

The bill will maintain the current regulatory framework for the commercial cultivation of GM food crops in New South Wales until 1 July 2021.

It will provide certainty and confidence to industry to continue to invest in these valuable crops while also being cognisant of concerns held by certain members of the community.

Importantly, the bill will continue to offer growers a choice, meaning that our rural and regional communities will continue to benefit from being able to cultivate approved GM food crops.

I commend the bill to the House.

The Hon. MICK VEITCH [4.30 p.m.]: I lead for the Opposition in debate on the Gene Technology (GM Crop Moratorium) Amendment (Postponement of Expiry) Bill 2011 and indicate that the Opposition does not oppose the bill. The overview of the bill indicates that the Gene Technology (GM Crop Moratorium) Act 2003 is due to expire on 1 July 2011. The object of the bill is therefore to postpone the expiry of the Act until 1 July 2021. Put simply, the bill seeks to extend the operation of the Gene Technology (GM Crops Moratorium) Act 2003 for a further 10-year period. I have been advised that if the Act were to expire on 1 July 2011 it would

mean that genetically modified [GM] food crops approved by the Commonwealth Government would be able to be cultivated in New South Wales without needing approval by the current Government in this State. The Act provides a blanket prohibition on the cultivation of all genetically modified food crops in New South Wales except those that have been specifically approved by the Minister.

The Act was last reviewed and amended in July 2007, when the former Government established an independent panel to review the Act. The review panel was chaired by the Hon. Ian Armstrong, AM, OBE, and the review process included extensive public consultation. Amendments removed the moratorium orders on genetically modified canola but introduced a blanket moratorium on the commercial cultivation of all genetically modified food plants except those approved by the Minister. The amendments also extended the expiry date for the Act from 3 March 2008 to 1 July 2011. As stated previously, this bill will provide for the Act to operate for a further 10 years. The bill will maintain the current regulatory framework for the commercial cultivation of genetically modified food crops in New South Wales until 1 July 2021.

In the second reading speech delivered on the Gene Technology (GM Crop Moratorium) Amendment (Postponement of Expiry) Bill 2005 the then Minister for Primary Industries said the aim of the Act was to preserve the identity of genetically modified and non-genetically modified crops for marketing purposes. The Act currently does this by designating New South Wales as an area in which certain genetically modified food plants may not be cultivated. Genetically modified food plants that are subject to moratorium orders cannot be grown in New South Wales. The Act was introduced in response to a range of concerns. These included the possible impacts on market access and trade resulting from the cultivation of genetically modified crops in New South Wales, in particular at that time genetically modified canola. The Act was introduced to give government, industry and the community more time to consider the issues surrounding genetically modified food crop cultivation in New South Wales.

It is important to accept that there is concern about genetically modified crops in New South Wales as well as in sections of the agricultural fraternity. Some of the potential issues surrounding genetically modified food have been raised with me by Julia McFarlane of "Stump Jump" near Young. Julia is very concerned about the potential impacts of GM crops on non-GM crops as well as the potential for contamination issues surrounding segregation and negative impacts on available markets. Indeed, some of the concerns raised by others concerned about GM crops include a possible increase in the likelihood of people using genetically modified food developing allergies; increased use of agricultural chemicals on herbicide-tolerant crops; the transfer of genes to related species of conservation value; the impacts of genetically modified organisms on species further up the food chain; genetically modified animals escaping and becoming pests; plants with increased ability to withstand herbicides or extreme environmental conditions becoming weeds; and the contamination of traditional or organic foods by genetically modified crops. With genetically modified crops there is the inevitable fear of long-term or intergenerational consequences of technology that people might not be as relaxed about as they might be, and concerns are held about technological triumphalism as to these sorts of things. Hastening slowly is indeed a very sensible and desirable course, and a very good reason for supporting the extension contained in this bill.

The Commonwealth and New South Wales governments have distinct roles when it comes to the regulation of genetically modified crops in Australia. The Gene Technology Agreement, signed by the Commonwealth and all Australian States and Territories in 2001, defines those roles. The Commonwealth is responsible for ensuring that dealings with genetically modified organisms are safe for people and the environment. The role of the Commonwealth office is to determine any potential impact on human health and the environment that may result from dealings with genetically modified organisms. The role of New South Wales, as with the other States, is to manage market or trade issues affecting genetically modified crops together with industry. So some of the concerns and issues I highlighted a moment ago are probably more relevant for the Commonwealth jurisdiction than they are for that of New South Wales. Only after the Office of the Gene Technology Regulator has granted a licence for the commercial use of a genetically modified food crop does New South Wales have a role in the regulation of that crop.

In 2003 the Commonwealth granted licences for the commercial release of two types of genetically modified canola. In response to this decision New South Wales imposed moratorium orders under the legislation. As I have indicated, a review was conducted in 2007 by a significant and distinguished review panel, including Ian Armstrong. The panel was asked to provide advice on the best way forward for the regulation of genetically modified food crops in New South Wales and it assessed community views about this. I find interesting that the 2007 results indicated an increase in the perceived usefulness of gene technology and a

decrease in the perceived risks associated with the use of the technology. I doubt however that perceived risks with GM cropping and GM technology will ever be eliminated. There will always be some in the community who will have concerns. As I said at the outset, the Opposition does not oppose the bill.

The Hon. SARAH MITCHELL [4.36 p.m.]: I support the Gene Technology (GM Crop Moratorium) Amendment (Postponement of Expiry) Bill 2011. The bill seeks to extend the Gene Technology (GM Crop Moratorium) Act 2003 for a further 10-year period, until 1 July 2021. As previously mentioned, the current Act is due to expire, and if it does expire that will mean that genetically modified [GM] food crops approved by the Commonwealth will be able to be cultivated in New South Wales without needing this State's approval. Clearly, there is a need for GM crops to be strongly regulated by all levels of government, and this bill will ensure that happens. Before I turn to the current operation of the Act, it is useful to look at the development of the legislation since 2003.

The Gene Technology (GM Crop Moratorium) Act 2003 was passed to allow for moratorium orders to be placed on the cultivation of certain GM food plants in New South Wales while the possible impacts on markets and trade were assessed. At the time, Commonwealth approval for the commercial release of GM canola was pending. The Act was introduced to give government, industry and the community more time to consider the issues surrounding GM food crop cultivation in New South Wales. The issues included the possible impacts on market access and trade resulting from the cultivation of GM crops, particularly GM canola. Moratorium orders were subsequently placed on two types of GM canola. Those orders prevented the commercial cultivation of GM canola in New South Wales.

In July 2007 the former New South Wales Government established an independent panel to review the Act. I would like to note that the chair of that panel was a former member of the other place, the Hon. Ian Armstrong, a well respected man, a former Deputy Premier and Minister for Agriculture. The panel led by Mr Armstrong recommended that the Act be amended to remove the moratorium orders on the cultivation of GM canola to provide a clear "path to market" for GM food crops. The Act was then amended to remove the moratorium orders on GM canola. The 2007 amendments also introduced a blanket moratorium on the commercial cultivation of all GM food plants, and set out a scheme for approving the commercial cultivation of specific GM crops in New South Wales. This approach was considered to deliver the best outcome for all stakeholders.

I have spent my entire life in regional New South Wales and my home town of Gunnedah and the surrounding districts are renowned for their agricultural productivity. New South Wales has a proud agricultural tradition. In 2007 the review panel recognised this and found that a clearly defined path to market was needed to stimulate investment in research and development of new GM food crops in New South Wales. I believe the Act achieves the right balance between protecting New South Wales agriculture and providing industry with choice of production systems.

Under the Act the Minister for Primary Industries may approve the commercial cultivation of specific GM food crops, but only if certain criteria are met by the relevant industry or industry sector and only if the food crop has been approved by the Commonwealth. This ensures there is the right amount of regulation from all levels of government. The Commonwealth manages the assessment and approval of all genetically modified organisms, including genetically modified crops, by assessing impacts on human health and safety and the environment. The Office of the Gene Technology Regulator is responsible for licensing GM crops, which include limited, controlled release and commercial release licences. It is important to note that the Commonwealth's assessment process is rigorous, taking at least 255 working days to assess the suitability of a GM crop for commercial release. In addition, GM food crops approved by the Commonwealth for commercial release are automatically subject to the moratorium on commercial cultivation under the New South Wales Act.

To obtain approval for commercial cultivation in New South Wales, the relevant industry, or industry sector, must establish that it meets certain criteria which address market requirements. After receiving an application from a representative of the relevant industry, the Minister will then consider whether the industry meets the criteria. These criteria deal with the industry's capacity to manage the commercial cultivation of the GM food crop in accordance with market requirements. The criteria are as follows: Firstly, the industry must establish that it has adequately identified the requirements demanded by key domestic and international markets, and it must do so to the Minister's satisfaction. Secondly, it must identify the threshold levels for the accidental or unintended presence of GM traits in food plants that are acceptable in the relevant key domestic and international markets. Thirdly, the Minister must be satisfied that the industry has, or is capable of having, supply chain management processes in place that adequately address the accidental or unintended presence

thresholds. This includes any market requirements to segregate GM food plants and non-GM food plants. Fourthly, industry must demonstrate that it has obtained or can obtain any relevant approvals or other authorisations regarding importation of the GM food plants.

As part of this process, the Minister for Primary Industries receives advice from an independent Gene Technology Expert Committee set up under the Act. The committee consists of industry and scientific experts and operates at arm's length from government. The expert committee's main role is to provide advice to the Minister on whether the application meets all the criteria. In developing this advice, the committee must consider whether another State or Territory has authorised the cultivation of the particular GM food plant. This is a practical move to ensure nationally consistent regulation of GM food crops.

Following the application process, the Minister can declare that a specified GM food plant, licensed by the Commonwealth, is approved for commercial cultivation in all or part of New South Wales. The order granting an approval is to be published in the *Government Gazette*. It is important to note that the Minister also has the power to revoke the approval for the commercial cultivation of a GM food crop. If the Minister is satisfied that the industry no longer meets the legal criteria the Minister has the power to revoke approval, either in whole or in part. Moreover, an approval is automatically revoked if the Commonwealth licence for the GM food plant is suspended or cancelled by the Office of the Gene Technology Regulator. The Minister's power to revoke an order is supported by enforcement powers. Departmental inspectors have the power to enter and inspect premises to determine whether the Act is being complied with. Penalties for breaching the Act are significant. It is an offence to knowingly cultivate a GM food plant in contravention of the Act. The financial penalty for corporations can be up to $137,500 and for individuals up to $55,000 or two years imprisonment.

The Gene Technology (GM Crop Moratorium) Amendment (Postponement of Expiry) Bill 2011 will maintain a considered and balanced approach to the management of GM crops in New South Wales. If passed, the Act will continue to operate for another decade. This approach is supported by the NSW Farmers Association as the bill provides certainty and confidence to industry to continue to invest in these valuable crops. Importantly, the bill will continue to offer growers a choice, meaning that our rural and regional communities will continue to benefit from being able to cultivate approved GM food crops. I commend the bill to the House.

The Hon. RICK COLLESS [4.44 p.m.]: I support the Gene Technology (GM Crop Moratorium) Amendment (Postponement of Expiry) Bill 2011. The Gene Technology (GM Crop Moratorium) Act 2003 expires on 1 July 2011, and if this were to be the case the production of genetically modified food crops in New South Wales would be allowed to proceed uninhibited. It is important that the bill pass this House today in order to restrict the production of genetically modified [GM] food crops to those crops which are included in the bill, specifically canola.

The NSW Farmers Association supports the bill for a further 10-year period. I am a little unsure whether it should be for 10 years; I would prefer to see the bill extended for a five-year period. The reason I say that is that there are a lot of other issues surrounding crop production that the genetic modification process attempts to achieve. People will tell us that they can achieve yield increases and oil content increases and so on. As a former consulting agronomist in the field I did a lot of work in relation to canola and maize and a number of other crops and I can say that in most cases a lot of the objectives of the GM industry can be achieved by improving the science in agriculture. That was one of the things that I focused on during my years as a consulting agronomist: I tried to get the science right. The science that is being promulgated by many organisations now is not necessarily the right way to be going when we look at the science in agriculture and the science of the soil.

I find the science of genetically modifying organisms absolutely fascinating. It is very high-tech science and the way it is done is very interesting. I am certainly not opposed to that part of the process as far as science goes. However, I think we should be exploring all the other aspects of the agronomic science before we rely on genetically modifying food crops to increase production and productivity. I can tell members quite confidently that by correcting some of the deficiencies in the soil, particularly in relation to the major nutrients of calcium, magnesium, potassium and sodium, it is possible to dramatically increase yields and dramatically increase the conversion of nitrates to proteins if one can get the nutrients in the correct balance.

To give members some idea, I did a lot of work with canola crops years ago and I was able to increase yields by 15 to 20 per cent simply by correcting soil deficiencies. I am not talking about the sorts of deficiencies that farmers normally deal with by using extra units of phosphate or nitrates; I am talking about correcting the

imbalances between those major nutrients. It is possible to increase canola yields by 15 to 20 per cent and concurrently to increase the oil content yield from 40 per cent to in excess of 50 per cent. It is very important for farmers to achieve high oil content because they get paid a premium for their crop if the oil content is over 50 per cent. That in itself is worth about $20 a tonne. A typical example would be to increase the yield from, say, 2 tonnes per hectare to 2.5 tonnes per hectare with an increase in the oil content to 50 per cent as well. The farmer would be getting an extra half tonne of grain as well as an extra $20 a tonne for the high oil content. So those sorts of things are certainly achievable. The results with maize were similar—about a 15 per cent to 20 per cent increase in yield, with protein content of the corn increasing from 6 per cent to around 8.5 per cent or 9 per cent. Of course, anybody who knows anything about lot feeding cattle, and stock feed generally, is aware that feedlots look for the oil content or the protein content of the grain.

I suggest that the industry needs to focus research on the agronomic science involved in the process, in addition to the GM-type science that has been promulgated. If we do that, it may well be that we can look at using GM science to increase yields quite dramatically. This would be preferable to the objective of the current GM canola crop, which is to allow companies such as Monsanto to apply their herbicides directly to the crop rather than look at increased yields. I support the bill but I would have preferred to see an extension of five years rather than 10 years. However, the bill must be passed so that there is still a restriction on GM crops in New South Wales, otherwise it will be a free-for-all. I commend the bill to the House.

The Hon. JEREMY BUCKINGHAM [4.51 p.m.]: I speak on behalf of The Greens in debate on the Gene Technology (GM Crop Moratorium) Amendment (Postponement of Expiry) Bill 2011. The Greens support the bill. As the Hon. Rick Colless said, if this bill is not passed it will be a free-for-all regarding genetically modified [GM] technology and GM crops in this State. It is a technology that requires consideration and regulation. The bill seeks to extend the operation of the Gene Technology (GM Crop Moratorium) Act 2003 for a further 10 years, to 1 July 2012, and we wholeheartedly support that. But I believe it is not appropriate that agriculture in this State be put at risk by allowing the current Act to lapse and thereby relying on the Federal rules in relation to GM crops to govern what is and is not grown in New South Wales. While The Greens support the bill, there remain problems with the current Act.

The Greens' policy on genetically engineered food and crops calls for the current Act to be extended to include fibre and animal feed products until it is proven that these crops can be contained and are safe for consumption by humans and animals. It is clear that neither of these benchmarks have been reached by the industry. The key point is that these crops have not been demonstrated to be containable and have not been proven safe for consumption. I will speak to both those concerns later. As my former colleague the Hon. Ian Cohen stated in 2003 when the legislation first came into this place:

> The Greens have serious concerns about the interpretation of the moratorium as proposed in the Gene Technology (GM Crop Moratorium) Bill 2003 and the loopholes that could permit the planting of genetically engineered food crops.

He was more scathing when the Act was amended in 2007, saying:

> We oppose a number of other measures in the bill, in particular the provision to establish a process for making exemptions to the moratorium. Licences for two types of GM canola have already been granted by the Commonwealth regulator which has jurisdiction over the human health and environmental aspects of GM products.

The honourable member was actually foreshadowing, in effect, the end of the moratorium on two particular GM canola crops. What transpired was that the previous Government approved an application by the canola industry only four months later to allow commercial cultivation of GM canola in the State. At that time I was campaigning on the issue in the Central West and my principal concern was the suggestion that there could be segregation—that the GM canola and the non-GM canola could remain distinct through production, the logistics supply chain and delivery to market. I was concerned about whether we could protect non-GM canola growers and their premium in the marketplace, and protect their right to be non-GM—

The Hon. Niall Blair: What's the record again?

The Hon. JEREMY BUCKINGHAM: Don't worry; don't panic. You will be out by about 10.30 p.m., I would say. It was key to ensure that farmers had the right not to be GM if they so chose. The Network for Concerned Farmers, comprising farmers such as Arthur Bowman in the Central West and other large farmers, foresaw that there would be a premium in the market. They raised their concerns then, and I think those concerns have been borne out.

The Hon. Mick Veitch: Contract harvesters.

The Hon. JEREMY BUCKINGHAM: Contract harvesters and other people involved have struggled, and we see now that their concerns were well founded. The key issues in the legislation that the new Government is asking Parliament to support include section 7A, which allows the Minister to declare that a specified licensed GM food plant or class of licensed GM food plant be approved for commercial cultivation in all parts of New South Wales. Under section 8, the Minister may provide an exemption order that allows for the cultivation of a licensed GM food plant for the principal purpose of conducting experiments. Section 11 prevents an order such as those just mentioned from being challenged, reviewed or called into question in proceedings before any court or tribunal.

The Minister responsible highlighted in the second reading speech that if this Act expired it would mean that GM food crops approved by the Commonwealth Government would be able to be cultivated in New South Wales without approval at the State level. This seems to have been suggested as justification for the entire bill. I suggest at the outset that the Government had many more options for amending the legislation as part of the renewal process. I have read some of the second reading debate speeches by members of this House from both 2003 and 2007, and it is clear that they were not the greatest supporters of the legislation when it was proposed by the Labor Government. Many members on the other side of the House raised their concerns.

While the Minister is quick to highlight the low level of GM commercialisation in New South Wales at the moment, it is important to take a broader look at what is happening with GM Australia wide to better understand why regulation will continue to be important into the future. The Federal Office of the Gene Technology Regulator maintains a register of field trials. There are two current trials in New South Wales: Monsanto Australia is conducting a trial of herbicide-resistant canola near Bland, and the Victorian Department of Primary Industries is conducting a trial of antibiotic and viral disease resistant white clover in Corowa, near the border. Previously a test was done on cotton near Narrabri, and there have been two tests on maize in the Australian Capital Territory. Looking Australia wide, there are no fewer than 10 current field trials across five different crops, including wheat, barley, sugarcane and canola. The Federal regulator has approved trials of pineapples and a limited and controlled release of wheat and barley.

The inherent failing in the current Act goes to the issue of regulation. The Act fails to adequately regulate GM crops, especially Roundup Ready canola—in particular in regard to the potential for contamination. In this regard, far from being a benefit to rural and regional communities, it represents a risk to the non-GM industry and the viability of all communities that rely on canola. A big issue in the Central West of New South Wales—and I assume in other areas where they grow canola—is the risk of GM canola becoming a weed. It can become hard for councils and other government departments to manage properly. One of the weapons of choice, one could say, in the management of canola is Roundup herbicide, but Roundup Ready canola requires a much greater level of herbicide application. Resistance to that herbicide by canola and other weeds means that councils will be less able to rely on it in the future and they may be forced to use far more costly physical control methods, such as slashing. The issues are not confined to the agricultural sector.

While the Minister carefully pointed out in her agreement in principle speech in the other place that GM canola accounted for only 7.6 per cent of the 380,000 hectares under cultivation in New South Wales in 2010, there was no discussion of the potential for contamination of the other 92.4 per cent of canola. In Western Australia a current legal case highlights the risk of contamination and the potential impact on the majority of non-GM growers. An organic grower from Kojonup, which is south of Perth, has taken the decision to sue his neighbour after GM canola was found to have contaminated parts of his property that grew spelt wheat and rye. That followed testing that showed there was GM canola in his paddocks, which resulted in his non-GM accreditation being removed.

Information provided to me on the circumstances surrounding the contamination issue in Western Australia is that the GM canola was separated by approximately 20 metres from the impacted property. It is believed the GM farmer complied with all guidelines from Monsanto and the Western Australian Government regarding separation. On legal advice, the organic farmer placed signs around his boundary stating that the property was a certified organic farm and wrote to all neighbours informing them of this. The GM farmer cut and windrowed his canola and when the common south-westerly wind next moved the debris from the GM canola crop, it was transported up to 1.5 kilometres and covered 250 hectares of the 400-hectare lot. Testing demonstrated the nature and extent of the contamination and resulted in the organic accreditation of the farmer being removed. The *Australian* reported in December last year that Monsanto would consider supporting the GM farmer in the case. The report cites a Monsanto spokesperson as having stated:

> The canola grower has met all his legal requirements ... We'd certainly be looking to support him in any way we could.
>
> Having a couple of canola plants blow into a farm should not be affecting its organic wheat status.

While it is not surprising that Monsanto has put its weight behind its growers and its crop, it is a concern that the Government is backing corporate interests over the interests of local non-GM growers. An audit conducted this year by the Western Australian Department of Agriculture and Food found that GM farmers in Western Australia are sticking to the rules aimed at helping to separate GM and non-GM canola. While the audit acknowledged the loss of organic accreditation in the incident I have described, instead of blaming the guidelines it blames the contamination on "the accidental presence of GM plant material". Whatever "accidental" means in that case, it clearly represents a failure of the guidelines. The response from the Western Australian Minister for Agriculture and Food was to call on the organic industry to bend its rules to permit some GM material, describing its zero tolerance "purity" approach as "unrealistic".

The reality is that purity is worth a lot, particularly to canola farmers and especially in the growing European market, as concern mounts in the community about GM food crops. Add to that the increasing demands of compulsory GM labelling, and Australia will find itself cut out of important future markets if it allows contamination by GM crops to continue unabated as a result of poor regulation. That is the very point I am trying to make. That is why The Greens principle, a precautionary one, is the right approach to genetically modified crops. The Minister mentioned feedback from the NSW Farmers Association in relation to the bill and highlighted the association's belief that after a 10-year extension it may be appropriate to reconsider this legislation continuing. That is a matter of extreme concern to The Greens. Interestingly, this position seems to run counter to a subsequent comment by the NSW Farmers Association that its priority will always be to provide choice for growers to produce whichever crop they desire.

The Greens also support growers being given a choice but, as we have seen, allowing cultivation of GM crops potentially removes that choice for non-GM farmers. I look forward to introducing a bill in the future that surely will seek to protect the economic development of regional and rural New South Wales. The Greens legislation will ensure that non-GM farmers' rights are protected so that they can continue to have the choice espoused by the NSW Farmers Association and will be able to continue to access sophisticated niche markets, which recognise that there is no future in GM food crops. Some will accuse The Greens and anti-GM campaigners as having an ideological position on genetic modification. But increasingly for farmers, the decision to stay non-GM has become one of pure economics. The Hon. Duncan Gay was quick to point out during a debate in 2007 that his concern about allowing an exemption for GM canola was that, "If a decision is made to allow the commercial cultivation of GM crops ... who will buy the crops?" It is a good question. Of course there are buyers, but the economics do not seem to stack up. Recent reports indicate that buyers are paying between $30 and $45 a tonne less for GM canola than they pay for non-GM canola.

The Hon. Duncan Gay: It was a wise approach to canola.

The Hon. JEREMY BUCKINGHAM: I acknowledge the interjection. It was a wise position to adopt. I commend the position taken by the Hon. Duncan Gay previously, and I hope he maintains it. Last month the *West Australian* newspaper reported:

> Two of Australia's biggest grain traders say they have no plans to take genetically modified canola this season.
>
> [A spokesperson for] Elders-Toepfer Grain ... said the company was not currently taking GM canola and that was unlikely to change as the season progressed.

The report shows that the European market is paying up to $50 a tonne premium for GM-free crops. Reports such as those I have cited show why GM canola still has a relatively small take-up in New South Wales. That makes a mockery of the Government's selective statistics in the agreement in principle speech of 70 per cent of the global trade in canola being genetically modified. The reality is that the bulk of GM canola comes from North and South America, with genetic modification being rejected by countries and consumers in large parts of Europe, Asia, Australia and even in the United States of America. Those consumers are prepared to pay a premium price for non-GM crops. In 2007, when the Act was amended to allow the GM canola exemption to be introduced, the Hon. Duncan Gay stated, again quite wisely—I am making up for earlier—

The Hon. Amanda Fazio: Not kiss and make up.

The Hon. JEREMY BUCKINGHAM: No. The Hon. Duncan Gay said on behalf of the then Opposition:

> The first and most important reason for the moratorium to continue is the reason it was originally put in place: so New South Wales could trial whether there could be proper segregation of genetically modified crops, to provide a protocol for the harvesters and to find out whether genetically modified crops could be grown safely and there was a market for them.

They are wise words. I do not think that has been borne out. The concerns expressed by the Hon. Duncan Gay at that time were well founded. I suggest that in the case of GM canola, in particular, experience has shown that segregation is not possible and that the market is shaky. It shows how far we have come since the debate in 2007 that, instead of making changes of substance to the Act, the Government is seeking to extend the provisions that allowed the GM canola experiment to proceed.

The Hon. AMANDA FAZIO [5.07 p.m.]: I support the Gene Technology (GM Crop Moratorium) Amendment (Postponement of Expiry) Bill 2011. The bill will provide a 10-year extension to the GM crop moratorium and follows a five-year extension that was granted in 2005. This legislation will provide assurance for farmers that they can have some distinction between GM and non-GM crops. The Act is due to expire on 1 July this year. If it expires genetically modified food crops that have been approved by the Commonwealth Government will be able to be cultivated in New South Wales without approval by the State Government.

The types of crops that will be cultivated will include herbicide-tolerant Indian mustard, wheat with altered starch content with potential benefit to human nutrition, and salt-tolerant wheat. They also include sugarcane with altered sugar content, virus-resistant white clover, pineapples with reduced occurrence of blackheart and delayed flowering, and virus-resistant papaya. We must ensure that New South Wales farmers can say confidently whether their crops are GM-free. That is why the extension is needed. Rather than having the legislation return to Parliament every five years, we should agree to the 10-year extension the bill proposes as it provides greater certainty to growers.

We must examine the background to this legislation. The Act was introduced in response to particular concerns, including the possible impacts on market access and trade resulting from the cultivation of GM crops in New South Wales. At that time the focus was on GM canola. The aim of the Act was to preserve the identity of genetically modified—GM—crops and non-GM crops for marketing purposes. Currently this is achieved by designating New South Wales as an area in which certain GM food plants may not be cultivated. GM food plants that are subject to moratorium orders cannot be grown in New South Wales. One of the worthwhile components of this Act—which was, of course, introduced by a Labor Government—was to give government, industry and the community more time to consider the issues surrounding GM crop food cultivation in New South Wales. Occasionally we hear about Frankenfood—although not as much as we used to. There was a terrible fear campaign about what would happen if genetically modified crops or foods got into the human food chain.

Reverend the Hon. Fred Nile: The Greens fear campaign.

The Hon. AMANDA FAZIO: That fear factor has well and truly outlived its usefulness. We should recognise that GM crops are here to stay but this moratorium is needed to ensure that producers can say with certainty whether their crops are GM free. We hear all sorts of horrible stories about the wind blowing pollen from miles away—further than the exclusion and buffer zones. Those sorts of allegations will always be made about these types of issues, but efficiency advances in crop gene technology and the high nutritional value of GM food cannot be ignored, because too many people around the world do not have access to adequate nutrition. If we can improve the efficiency of crops and goods by using genetic modification we should do so. That goal is far more important than worrying about the fear campaigns and the Frankenfood stories that were hurled around in the past. I support the bill, and note that it builds on the good work of the Hon. Ian Macdonald, who introduced the original legislation. Good on Ian Macdonald and the House for agreeing to a 10-year extension to the Gene Technology (GM Crop Moratorium) Act.

Reverend the Hon. FRED NILE [5.12 p.m.]: On behalf of the Christian Democratic Party I support the Gene Technology (GM Crop Moratorium) Amendment (Postponement of Expiry) Bill 2011. I remember the heated debates in this House when the original bill was introduced in 2003. I agree that the Hon. Ian Macdonald deserves a pat on the back for pursuing this approach, in spite of a tremendous amount of criticism directed against the policy and against him personally. This amending bill will remove the expiry date of the Act of 1 July 2011 and extend it for a further 10 years, to 1 July 2021.

As other members have said, GM crops need to be subject to careful regulation, which is enforced by the Commonwealth. Careful regulation is needed to ensure that buffer zones are maintained and non-GM crops on organic farms are protected. This regulation must be dealt with calmly and scientifically, with no fear campaigns. Hopefully, the various trials that are underway will provide further evidence of where GM crops can be grown and their benefit to the community. If the expiry date in this Act were not extended, GM food plants

would be cultivated in New South Wales without requiring approval by the State Government. That would be the worst possible outcome. Extending the Act for 10 years imposes a blanket prohibition on the commercial cultivation of GM food plants in New South Wales.

The Minister for Primary Industries has the power to approve the commercial cultivation of specific GM food crops only if certain criteria are met by the applicant. For that reason we need careful regulation of GM crops. In March 2008 GM canola was approved for commercial cultivation in New South Wales. The moratorium on all other GM food plants remains in place. GM cotton is the only other GM crop grown in New South Wales but as it is not a food plant it is not subject to this legislation. As we always take note of the views of the NSW Farmers Association, I am pleased that it has confirmed its support for GM crops—although some members of The Nationals in this place have some reservations. The NSW Farmers Association has also confirmed its support to extend the Act for a further 10 years. Reducing the time frame to a period of less than 10 years poses an unnecessary administrative burden and offers less certainty for the industry and the community. We are pleased to support the bill.

The Hon. WALT SECORD [5.16 p.m.]: I support the Gene Technology (GM Crop Moratorium) Amendment (Postponement of Expiry) Bill 2011 and shall make a brief contribution to the debate. I have followed this issue closely for a number of years. I have a particular interest in the cultivation of potential drought- and salt-resistant crops for developing nations. As the shadow Minister in the other place indicated, the Opposition will support the amendment. This bill has bipartisan support. It aims to amend the Gene Technology (GM Crop Moratorium) Act 2003, which is due to expire on 1 July, and extend the expiry date for a period of 10 years, until 1 July 2021.

In New South Wales the approval process for a genetically modified food crop happens at two levels. The Commonwealth must grant a licence for commercial release and then the GM food crop must be approved for commercial cultivation by the New South Wales Minister for Primary Industries. The New South Wales Gene Technology (GM Crop Moratorium) Act provides a blanket ban on the cultivation of all GM food crops in New South Wales except for those specifically approved. The Act ensures a balanced approach to the management of GM food crop cultivation in this State. I believe it strikes the right balance. I note that the NSW Farmers Association supports the 10-year extension.

The blanket ban on the commercial cultivation of GM food plants affords substantial protection to New South Wales growers, the industry and the community. To get approval for a specific GM food crop the Act requires a detailed assessment of the industry's capacity to manage cultivation in accordance with market requirements. The Act affords the added protection of an expert committee on gene technology to provide advice on whether an applicant meets the criteria and is ready to cultivate a GM crop. I also note that GM canola is the only genetically modified food crop grown commercially in New South Wales, as pointed out by Reverend the Hon. Fred Nile. I will not oppose the bill, but I agree with the Hon. Rick Colless that a five-year extension probably is more responsible due to the rapid changes in science. I commend the bill to the House.

The Hon. SCOT MacDONALD [5.18 p.m.]: I have pleasure in supporting the Gene Technology (GM Crop Moratorium) Amendment (Postponement of Expiry) Bill 2011. I worked in the cotton industry for numerous years in Warren, Trangie and Moree, and witnessed the introduction of GM cotton. Even though cotton is not a food crop, I appreciated the benefits of GM crops through reduced herbicide and insecticide applications. The objective of the Gene Technology (GM Crop Moratorium) Act 2003 is to establish a regime to regulate the commercial cultivation of licensed GM food crops in New South Wales.

The legislation was introduced in 2003 in response to concerns that the cultivation of GM canola in New South Wales might have some effect on international market acceptance of New South Wales non-GM canola. More than eight years later, these concerns have been largely overcome through the experience of growers and the industry. We now have a significantly better understanding of the potential impacts of genetically modified crops on market access and trade. The independent panel that conducted a review of the Act in 2007 considered that there was sufficient evidence to demonstrate that industry was ready to manage genetically modified canola.

The New South Wales canola industry has shown that co-existence—the ability to grow and manage both genetically modified and non-genetically modified crops in the supply chain—is possible. The canola industry in New South Wales is meeting the standards required for segregation, and across the board the Australian grains industry meets segregation thresholds for conventional commodity crops based on specific market specifications. As we know, it is virtually impossible to maintain 100 per cent purity along any supply chain. As a result, domestic and export markets tolerate a threshold level of genetically modified material in

non-genetically modified grains. In Australia the Primary Industries Ministerial Council has set the level for the unintended presence of genetically modified grain in conventional canola grain at 0.9 per cent. This level meets the strictest standard set by any of Australia's international trading partners for canola. It is in line with what is set by the European Union, which is the most sensitive market for canola.

In 2007 the Australian grains industry issued a statement, supported by 29 agricultural organisations, noting that the industry has protocols and processes in place to manage genetically modified canola and meet market requirements. The organisations included the New South Wales Farmers Associations and the National Farmers Federation. This means that New South Wales is able to continue to export agricultural products to sensitive markets, such as the European Union, while giving growers the choice to produce genetically modified canola. The Gene Technology (GM Crop Moratorium) Act 2003 established the framework to ensure appropriate segregation of genetically modified and non-genetically modified food crops. Under the Act the Minister cannot approve the commercial cultivation of a genetically modified food crop unless they are satisfied that the industry has supply chain processes in place that address market requirements.

If segregation is a market requirement for that genetically modified food crop the Minister must be satisfied that the industry has processes in place to segregate genetically modified food plants and non-genetically modified food plants. If industry no longer satisfies the established criteria the Minister has the power to revoke that approval, either in whole or in part. The Act also addressed the issue of liability for contamination. In the event that a non-genetically modified crop is contaminated by a genetically modified crop, both non-GM and GM farmers have access to legal remedy under common law. However, in the event that the crop of a non-GM farmer is unknowingly contaminated by a neighbouring genetically modified food crop, that non-GM farmer is provided special protection from liability under the Act by being protected from litigation from other non-GM farmers, GM farmers, GM manufacturers or other organisations in the supply chain.

Growing genetically modified canola in New South Wales does not threaten access to our international canola markets. All of Australia's major canola markets accept genetically modified canola. Production of genetically modified canola has increased significantly in Australia. The first planting occurred in 2008, and by 2010 more than 110,000 hectares of genetically modified canola was grown across New South Wales, Victoria and Western Australia. Genetically modified and non-genetically modified crops can co-exist. The United States of America, Canada, Brazil and Argentina are some of the biggest genetically modified crop adopters in the world. Figures from 2009 show that Canada grew 8.2 million hectares of genetically modified crops, Brazil grew 21.4 million hectares and Argentina grew 21.3 million hectares. At the same time, these countries grew considerable conventional and organic crops. A 2007 report by Nielsen titled "Organics Insights Report" noted:

> The market for organic food in Canada is growing at fifteen to twenty per cent per year.

The international experience shows that genetically modified and non-genetically modified crops can both be grown. The bill provides certainty to industry and a solid basis for research and development investment decisions. I commend the bill to the House.

The Hon. DUNCAN GAY (Minister for Roads and Ports) [5.24 p.m.], in reply: I thank members for their contributions to the debate. In particular, I thank The Greens, whose widespread quoting of my past speeches was a high point in contributions from The Greens. Their speeches can only get better if they continue to use that great source of common sense for their contributions. However, it is disappointing that they are not in the House to hear my acknowledgement of their discovery of this fabulous source. Frankly, that has lifted the standard of their contributions exponentially. I commend the bill to the House.

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

Motion agreed to.

Bill read a second time.

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

Third Reading

Motion by the Hon. Duncan Gay agreed to:

> That this bill be now read a third time.

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

ADJOURNMENT

The Hon. DUNCAN GAY (Minister for Roads and Ports) [5.26 p.m.]: I move:

That this House do now adjourn.

GREEN BANS FORTIETH ANNIVERSARY

The Hon. LYNDA VOLTZ [5.26 p.m.]: Tomorrow, 16 June 2011, will mark the fortieth anniversary of the first green ban placed by the then Builders Labourers Federation [BLF] secretary, Jack Mundey, at Hunters Hill. This green ban in 1971 was a world first and was the seed that sowed the green movement around the world. During the 1960s and 1970s the environment emerged as a key political issue. The building boom of this era was changing the face of Australian cities, in particular the city of Sydney. In 1971 a group of women from Hunters Hill were trying to save Kelly's Bush, the last remaining open space in that area. Construction firm A. V. Jennings planned to build luxury houses over the bushland. The women approached the local council, the mayor, the local State member and the then Premier, Robert Askin, all to no avail. They then sought the help of the New South Wales branch of the Builders Labourers Federation.

At the time the Builders Labourers Federation was forming the view that the labour movement should involve itself in all struggles affecting the community, not just struggles over wages and working conditions. The union asked the Hunters Hill women to call a public meeting at Hunters Hill to show that there was community support for the request for a union ban against the destruction of Kelly's Bush. Over 600 people attended that meeting. The meeting formally requested a ban, known as a green ban to distinguish it from a black ban—a union action to protect the economic interests of its own members. In this case the union was going against the immediate economic interests of its members for the sake of a wider community and environmental interest. Interestingly, this green ban was the trigger for Petra Kelly, the founder of the first Greens Party in Germany after a visit to Australia in the early 1970s.

Despite the protestations of some, it is perhaps a point of historical pride that the labour movement in Australia has been the inspiration of the oldest continuous Labor Party in the world and a worldwide movement of green parties. The first green ban was a complete success, and Kelly's Bush is still there as an open public reserve, complete with a monument to the world's first green ban. The building workers' direct action, with the support of residents, which defeated the developers led to a movement. By 1974, 42 green bans had been imposed and stopped billions of dollars worth of development harmful to local communities and the environment.

More than 100 buildings considered by the National Trust to be worthy of preservation were saved by the green bans. And the green bans led to the Government bringing in tighter demolition laws. Some of the areas saved by the green ban movement include The Rocks, the birthplace of European Australia, where more than three million tourists go each year; Centennial Park, which was saved from being turned into a concrete sports stadium; the Botanic Gardens, which was saved from becoming a car park at the Opera House; and Woolloomooloo, which was saved from $400 million worth of high-rise commercial buildings.

The green ban movement was thwarted in 1974 when the Federal branch leadership of the Builders Labourers Federation under Norm Gallagher removed the New South Wales branch leadership. The green bans had constituted a genuine threat to the developers and State politicians alike and Norm Gallagher was their man of the hour. That the green ban campaign was broken from within the ranks of trade unionism was an especially bitter blow. Gallagher was later jailed for taking bribes from developers. One of the last bans, to prevent development in the suburb of Kings Cross, had resulted in forced evictions of residents by New South Wales Police, and the tragic disappearance of journalist Juanita Nielsen, a crime still unsolved and one which the people of New South Wales should not forget.

Although the political circumstances have changed since the heady days of the 1970s the spirit of the 1970s green ban lives on. In recent years green bans by the Construction, Forestry, Mining and Energy Union have contributed to maintaining a number of important sites: the Woolloomooloo Finger Wharf in the 1990s after a ban was placed on its demolition; in 2000 a green ban was imposed to save the Maritime Service Building at the request of the National Trust; and in 2004 the old Water Police site was saved by an interim ban that allowed the City of Sydney to negotiate with the former Labor Government for it to be saved as open space. Unfortunately, these days the Labor movement is largely inhibited in its ability to operate, particularly on issues

of social conscious, and particularly by organisations such as the Australian Building and Construction Commission [ABCC], but Australia and Sydney in particular would be a lesser place if the Builders Labourers Federation had not undertaken the green bans that protected so many important historical and cultural sites.

DISABILITY SERVICES

The Hon. JAN BARHAM [5.31 p.m.]: Most institutions and government bodies loathe complaints. Many interpret complaints as a personal affront and attack on their integrity. We do not have a strong government culture of managing complaints. Departments and government agencies perceive complaints as a political wrecking ball leveraged to bring into question the competence of departments. Complaints and compliance regimes are not perceived as opportunities to discover deficiencies in services and avenues to continually improve government services.

Disability service is an area where the response to complaints can make or break a person's human rights in a most profound way. Deficiencies in service provision transform into barriers that prevent social inclusion and community participation. It denies the right of people with disabilities to achieve their full potential and live fulfilling lives. With the stakes so high we cannot afford to have anything less than a world-class complaints and compliance framework to drive service improvements in the disability sector. It is evident from the Legislative Council Standing Committee on Social Issues inquiry that there is a noticeable level of dissatisfaction with Ageing, Disability and Home Care [ADHC] services.

The causes of dissatisfaction are complex and varied. Deficiency in funding causing unmet and undermet need, poor management and governance systems in Ageing, Disability and Home Care and inflexibility in service programs to deliver person-centred service are some of the root causes of dissatisfaction with the organisation. In other instances there are systemic issues in compliance with disability service standards. The Legislative Council Standing Committee on Social Issues considered the issue of complaints and compliance mechanisms in the inquiry into services funded and provided by Ageing, Disability and Home Care. The committee made three key recommendations relating to complaints, complaints monitoring and advocacy services: recommendation 46, Review of Ageing, Disability and Home Care complaints process; recommendation 47, establishment of an independent organisation to review complaints and compliance; and recommendation 48, funding of advocacy services outside of Ageing, Disability and Home Care services.

When one looks at the framework for complaints and compliance monitoring for disability services one sees that we have a fractured and inconsistent system without sufficient transparency and accountability measures. Improving and resolving breaches of policies in disability services based upon user feedback and complaints becomes fraught without a consistent complaints mechanism. Our current system of complaints and compliance in the disability sector is a maze that leaves those trying to navigate it disempowered and disheartened. The different complaint processes, reporting regimes and management obligations for Ageing, Disability and Home Care service providers and non-government service creates confusion that will only intensify with more flexible service provision. Isolation in data collection arising from the different complaint mechanisms means obtaining a full picture of deficiencies in service delivery is not attainable.

Understanding the broader picture of grievances and compliance in the disability sector is further complicated by the reporting of complaints by the Ombudsman and issues picked up by the Official Community Visitor Programs. Ability to seek judicial review of the provision of disability services in the Administrative Decisions Tribunal is far too constrained by section 20 of the Disability Services Act, leaving people with disabilities, their families and carers, and disability advocates without appropriate recourse to challenge decisions about disability services. There are some really simple options for improving complaints management. The first thing we need is to centralise complaint data.

The Disability Services Act and the Community Services (Complaints, Reviews and Monitoring) Act can be easily amended to require all non-government organisation providers and Ageing, Disability and Home Care services to forward all complaint data, excluding personal information, to the New South Wales Ombudsman. This way we can get the whole sector-wide picture of potential service deficiencies. I understand the Victorian Ombudsman operates in this way. Seeing the big picture in complaints will help address systemic problems. In terms of actual complaints management bodies it is clear that some complaints cannot be left up to the service provider. Some complaints are serious enough to warrant independent assessment and investigation. Maybe we need to investigate whether a model similar to the New Zealand Health and Disability Commissioner would be appropriate to manage complaints about disability services. It is clear we need to explore these options through a consultative process.

As The Greens spokesperson for disability services I believe we need a better compliance and complaint system. Without appropriate mechanisms we deny people with disabilities a voice in shaping the services that enable participation in society, personal development and social inclusion. We all remain in the dark about where our service system is failing without a coherent and robust system. Over the coming months I am meeting with people with disabilities, carers, disability advocates, service providers and people with experience in complaint systems. I am committed to working with stakeholders to find a better way to manage complaints and compliance in the disability sector so New South Wales can learn from its mistakes and start building innovative and compassionate disability services.

TRIBUTE TO BILL FORD, OBE

The Hon. JENNIFER GARDINER [5.36 p.m.]: I pay tribute to a great mentor and friend, the former General Secretary of the Australian Country Party, New South Wales, Colonel Bill Ford, OBE, who passed away at the age of 97. Born in Seymour in 1913, Bill Ford grew up in Ballarat, where he had a hard childhood: his father died when he was only four. He gained his teaching qualification at the University of Melbourne and joined the Citizen Military Forces. He went to the Royal Military College, Duntroon, topping his year academically and graduating second overall. In World War II he served in Palestine, Greece, Cyprus and helped a party of wounded to escape Crete on the last boat. He returned to Australia and in March 1942 served in Western Australia as part of the armoured division. He married Florence that year. In 1945 he served in Borneo and was mentioned in despatches.

After the war he continued to serve in the Australian Regular Army until 1963. He was renowned for his thorough and innovative training methods, which he demonstrated as an instructor in the School of Artillery, as a Brigade Major and in a range of Lieutenant-Colonel appointments in the Southern Command, the Eastern Command and Army headquarters. As Commanding Officer at the Artillery School at North Head he came to know the Leader of the Country Party, Sir Charles Cutler, who as Deputy Premier would sometimes attend conferences and events held at the school. When the inimitable Country Party General Secretary John Dredge was preparing to retire it was Charles Cutler who suggested Bill Ford might be a suitable replacement.

Bill Ford was a Victorian. He came from Ballarat, which was not Country Party territory. Being of Liberal disposition, he had a low opinion of the Victorian Country Party, which Henry Bolte had successfully labelled as political prostitutes after the Country Party had supported Albert Dunstan's minority Labor Government. A delegation of party office bearers, who I think included Ralph Hunt, was despatched to check him out. One of their tasks was to convince Colonel Ford that the Australian Country Party, New South Wales, was a different beast from its southern counterpart. Here in New South Wales the party could get along with the Liberals, form Coalition governments and definitely did not support Labor governments.

Bill went home to his wife, Florence, and said, "I think I could work with those people." She said, "That's interesting what you just said." He said, "What do you mean?" And she replied, "You said you thought you could 'work with them'." And therein lies Colonel Ford's approach to leadership and management: He understood the power of taking his troops with him; not simply commanding them to do this or that. As a result, he generated total loyalty from his band of party workers across New South Wales. They would walk over hot coals for the man.

Colonel Ford spent a couple of years in the field, including time in Dubbo, and managing the Oxley by-election which saw Bruce Dowan bring the electorate back to the Country Party. In 1967 he was appointed general secretary of the party. He also served as its secretary to the Federal council and the Federal executive. He worked as part of a team of giants—John McEwen and Doug Anthony were the Federal parliamentary leaders—Ian Sinclair, Sir Charles Cutler, Davis Hughes and Sir Ralph Hunt. Sir Adrian Solomons was State chairman, Sir Asher Joel was treasurer, Doug Moppett was the young brilliant vice-chairman, and Sir John Fuller was leader of both the party and the Government in this House. Another State chairman was Leo Conlon, who served with him.

Colonel Ford, as general secretary, was the glue that bound the various party leaders and units together into a highly efficient, communicative and activist political party focused on its rural and regional constituency. Under his leadership, the party produced centralised statewide television and radio election campaigns, employed a large statewide network of full-time field representatives who recruited members and candidates, provided political intelligence and gave support to local branches and electorate councils and their election campaigns. He appreciated the significance of the advent of the digital age and paved the way for the computerisation of the party's massive membership database. He published a monthly newspaper, *The Countryman*.

Colonel Ford was ahead of his time in respect of the role of women in the party. Although the membership ranks comprised an unusually high proportion of women, that did not translate into their presence in numbers on the party's governing bodies, so he authored an amendment to the party's constitution enabling positive discrimination for women. He was a great supporter of the Young Australian Country Party and appointed a woman to be the first full-time field officer for the Young Australian Country Party. No other political party in Australia was making decisions of that ilk at that time. He was awarded life membership of the party.

He retired to the Sunshine Coast, where he was immersed immediately in community life. He maintained a lifelong commitment to the Masons, and at the ripe old age of 96 was again the master of the local lodge at Gympie. At the age of 95 he was sacked, for the first time, namely from Meals on Wheels. They had not realised that he was 95, and their insurance policy only covered those up to 90 years of age. His family threw a party to celebrate his dismissal. Bill Ford leaves a devoted family centred on John, Tim and Sally. He was a talented teacher, a distinguished soldier, a community contributor wherever he lived, a leader and manager par excellence, a friend and mentor beyond compare, and a distributor of kind acts which made the lives of others easier to bear. This was a man—a man who acted with integrity his whole, long life and whose kindness to others was unbounded.

INDUSTRIAL RELATIONS LEGISLATION

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [5.41 p.m.]: We in this House debated at some length the passage of some new industrial relations laws. Tonight I want to discuss some of the potential impacts that laws of that kind may have in a locality that I know something about, the local area of the Blue Mountains, in which I live. I wish to start by saying that the legislation reflects a fairly radical change in the philosophy of industrial relations legislation from the kind normally seen in this State. Even in America the Labour Act—known as the Clayton Act—states:

> The labour of a human being is not a commodity or article of commerce.

Yet, for the first time I think anywhere in any Australian jurisdiction, there seems to be a reduction of the value of labour to a mere economic transaction, without perhaps a proper appreciation of the social dimension to that. In order to get pay rises of more than 2½ per cent per year under the Government's policy there must be matching savings in what is termed employer-related cost savings. This is more than productivity or efficiency; it sounds like dollar-for-dollar cost savings to exactly match pay rises, and savings which must be paid for in advance. An area such as the Blue Mountains presumably is not atypical, but I have looked at some of the categories of labour force statistics recently published by the Parliamentary Library. Nearly 2,000 people work in the category of government administration and defence; some 4,500 people work in the health and community services sector; and more than 4,000 people work in education, the vast majority in schools funded by the taxpayers of this State, the publicly funded schools. Those categories total some 10,500 people.

If we drill down through those figures to the sub-categories who fall within the definition of "public sector employees" as defined in the legislation recently passed by this place, and now being debated in the other place, by my calculations the total in the sub-categories is more than 7,500 people. While some of those people may live in households populated by other public sector employees, many of them do not. By any rational calculation, we are talking well in excess of 10,000 or 12,000 people in that set of communities alone.

I would reflect now on the most recent election figures. I note that the Premier says he likes to take his advice from the electorate. The two-party preferred figures for the electorate of Blue Mountains show a gap between the two final candidates of less than 1,800 votes—1,797 to be exact. Compare and contrast that figure with the number of public sector employees who will be affected by the law and it well and truly dwarfs the margin of the current sitting member. That is but one example of the position in one of 93 electorates in this State where one can, by even the most casual examination, see the wide-ranging and far-reaching nature of this legislation and the impacts that it could have across our communities.

I draw the attention of members to that as just one snapshot because, although the legislation has left this place and may well pass the other place, I do not think, given that a total of some 400,000 people across this State will be affected, that this is the last that we will hear of this matter. Although the exact tally of how many people attended the rally outside this Parliament is not known—estimates are in the order of about 12,000—that really is just the tip of the iceberg. I am sure that, as with the WorkChoices campaign, it did not end with the passage or enactment of the legislation; that was merely the beginning of the campaign.

TIMBER INDUSTRY

The Hon. ROBERT BROWN [5.46 p.m.]: Tonight I wish to speak about logging and the forest industry. My contribution will not be tempered—perhaps fuelled is a better word—by my visit on the weekend to a decimated timber community in the river red gum area. I was bemused to see in the Climate Commission's first report that:

> Stopping logging in old-growth forests, particularly in southern Australia, is one of the best ways of making timely cuts to Australia's greenhouse gas emissions.

Supposedly because:

> Established forests store much more carbon dioxide than plantations, so cutting them down releases more heat-trapping gases.

And in line with the mantra that The Greens keep trumpeting, the report then goes on to say:

> If Australia is to stabilise and reduce its emissions in time to make a contribution to global efforts to slow climate change, storing more carbon in the landscape is classified as a useful interim measure while the nation weaned itself of fossil fuel-based electricity production ...

Ending logging, it says:

> ... yields some quick gains while the slower process of transforming energy and transport systems unfolds.

Well, pardon me, while I go and tell those hard-working foresters who have yet to be sent broke, or driven out of the industry by The Greens, that they and their families will very shortly be out of work and probably out of hope—all in the name of ideology. At the risk of incurring the ire of said Greens, I would like to put the proposition tonight that we need more forests in New South Wales—and not just to have more trees, but to be able to maintain a viable working timber industry. I am aware that forests are considered a carbon positive energy source. Indeed, the Australian forest industry claims to be the only carbon positive industry in the country; and, further, that timber is the only carbon positive building product in the world. Why then, for heaven's sake, are our forest industries on the hit list of the extremists, who want to crush not only our coal industry communities but our timber communities as well?

Healthy and sustainable forests come from economically viable harvesting, with foresters and farmers being encouraged to plant more trees than they remove. That is the nature of the industry. Indeed, key factors in charting a direction for New South Wales forests are sustainability of jobs and regional economies. One does not grow forests in the middle of the eastern suburbs. I understand forests currently cover 26.5 million hectares, or 33 per cent, of New South Wales and come under three categories: State forests under forests agreements set out in State legislation; private native forestry; and private plantations.

If we ponder why we need more trees in commercial forests the answer is illuminating. We know that the timber market, amongst other things, underpins production for the building industry and infrastructure. But despite this the State needs to import timber worth about $177 million each year. Where do we get that from? The rainforests of Malaysia, no doubt. In terms of value, the New South Wales timber industry as a whole generates $2 billion a year and employs 21,000 people. The hardwood forest industry alone generates $600 million a year and employs 3,500 people in country regions. That is where The Greens flawed ideology comes unstuck. The Greens want trees but no timber industry. While they hold court here in Sydney and decide which industries are good for us and which ones are bad, they shut down rural and regional communities without a second thought. I saw that last weekend.

On behalf of the rural and regional communities in this State the Shooters and Fishers Party will do what it can in this place to protect them from that extreme ideology. Hopefully our votes, when combined with those of the like-minded Christian Democrats, will block any destructive legislation The Greens might seek to impose on rural and regional people of this State, particularly those in the logging industry. For much of the past 16 years the Greens have pretty much got their way with compliant left-leaning Labor governments, particularly in so far as the timber industry is concerned. Let us all hope those days are gone.

CARBON TAX

The Hon. SCOT MacDONALD [5.51 p.m.]: I am grateful for the opportunity to alert the House to recent research on the probable alarming impact of a carbon tax on the New South Wales grains industry. Late

last month the Australian Farm Institute released a report entitled "The impact of a carbon price on Australian farm businesses: grain production". As the Federal Government moves closer to releasing the details of a carbon tax, the likely flow-on effects are coming under greater scrutiny. This is the same carbon tax that the current leader of the Australian Labor Party promised not to introduce in last August's Federal election campaign.

The Australian Farm Institute is a highly reputable, non-partisan research organisation focused on producing reports that will assist agriculture to understand its opportunities and threats. Clearly, its latest report sounds a loud warning about the likely negative impact on our productive New South Wales grain farmers. I will not read the report in full but I bring to the Council's attention some of the more alarming forecasts. Using a carbon tax rate of $20 a tonne, the report calculates a reduction in farm income of between 8.6 per cent and 29.7 per cent relative to a business-as-usual scenario five years after the introduction of the tax. I emphasise those figures—an 8.6 per cent to 29.7 per cent reduction.

I cannot conceive of any public policy that has the potential to cause so much destruction to the crucial grains industry in New South Wales. The New South Wales Liberal-Nationals Coalition recognised this in opposition and Premier Barry O'Farrell reinforced this position in government as recently as Friday 3 June in a very succinct media statement. The report goes on to present a range of scenarios—different tax rates, fuel exempted and non-exempted. The report models the impact of a carbon tax on downstream processing and its subsequent impact on the grains industry. I will read out some of the specific monetary impacts shortly, but they are best summed up early in the report where it states:

> ... the results highlight that the proposed carbon policy represents a major challenge for Australian grain-growing businesses, irrespective of any future decision to also include direct farm emissions under the carbon policy.

Table 3 of the report projects annual costs to increase on a New South Wales grains farm in five years by $12,044 under a low carbon tax scenario to over $26,000 per annum with a high tax outlook. As the report notes, it is unlikely that a low tax rate would prevail. The Australian Government has a target of reducing emissions by at least 5 per cent and this is not achievable without a high carbon tax. It is interesting to note that New South Wales grain farms will be amongst the hardest hit in the country, mainly because of smaller farm sizes relative to the larger scale Western Australian farms.

Our grain farmers should be further alarmed because the report acknowledges the brake on their income is probably understated because it assumes the industry will continue to yield 1.5 per cent annual productivity gains. It states that the Australian Bureau of Agricultural and Resource Economics [ABARE] has already identified a slowdown in productivity improvements, mainly because of a reduction in research and development under the Federal Labor Government. This report uses sound modelling and is based on authoritative sources such as the Australian Bureau of Agricultural and Resource Economics. It identifies the weakness of the proposed carbon tax. It is almost impossible to identify and quarantine downstream impacts. There will be widespread and unforeseen negative costs to our economy, not least to the very important agricultural sector. Almost certainly, jobs will be lost from our farming sector. New South Wales farmers should be under no misapprehension. The New South Wales Liberal-Nationals Government will fight this tax to the end. I seek leave to table this very valuable report for the information of members.

Leave granted.

Document tabled.

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

Motion agreed to.

The House adjourned at 5.56 p.m. until Thursday 16 June at 11.00 a.m.