LEGISLATIVE COUNCIL

Thursday 16 June 2011

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

The President read the Prayers.

BUSINESS OF THE HOUSE

Postponement of Business

Business of the House Notice of Motion No. 1 postponed on motion by Dr John Kaye, on behalf of Mr David Shoebridge.

ATTENDANCE OF SIR ALLAN KEMAKEZA, KBE, SPEAKER OF THE NATIONAL PARLIAMENT OF THE SOLOMON ISLANDS

Motion, by leave, by the Hon. Michael Gallacher agreed to:

That in the event of the attendance in this House today of Sir Allan Kemakeza, KBE, Speaker of the National Parliament of the Solomon Islands, he be invited to take a chair on the dais.

PAYROLL TAX REBATE SCHEME (JOBS ACTION PLAN) BILL 2011

Second Reading

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [11.10 a.m.]: I move:

That this bill be now read a second time.

The Payroll Tax Rebate Scheme (Jobs Action Plan) Bill 2011 delivers another commitment under the Government's 100 Day Action Plan to rebuild the economy of New South Wales. The bill provides for a new Act to implement the Jobs Action Plan to create 100,000 new jobs in New South Wales. The Jobs Action Plan will provide a payroll tax rebate to employers of up to $4,000 per full-time employee. In the case of a part-time employee, the amount of the rebate will be pro rata, based on the number of hours worked compared with the standard hours of the particular employer's full-time employees. Employers will receive the rebate in two equal parts, paid after the first and second anniversaries of the hiring of a new employee.

The rebate scheme will apply to new positions filled on or after 1 July 2011 and will continue until 100,000 new jobs are created. The plan provides that 40,000 of the new jobs will be created in non-metropolitan New South Wales and 60,000 in metropolitan areas. Metropolitan areas are defined as the local government areas in the Sydney Statistical Division, plus the local government areas of Newcastle and Wollongong. Non-metropolitan areas consist of the rest of New South Wales. In order to allow the targets for metropolitan and non-metropolitan jobs to be met but not exceeded, the bill allows the Minister to bring forward or extend the closing dates for each area, having regard to the targets.

To obtain the rebate, employers will initially register a new employee with the Office of State Revenue within 30 days after the employee commences work. An employer who satisfies the eligibility criteria will be able to apply for payment of the rebate after the first and second anniversaries of the date on which the employment commenced. The eligibility criteria for the rebate have been designed to ensure that employers increase the full-time equivalent number of employees for at least two years. An eligible position must be a genuine new position, and the employer must achieve a sustained increase in the number of full-time equivalent employees on the first and second anniversaries of the employment of the new employee.

Other requirements include that the wages of the new employee must be liable for payroll tax in New South Wales, and the work must be performed wholly or mainly in New South Wales. The rebates will not be

payable if the higher level of employment is not maintained at the first year and the second year anniversary dates. This will encourage firms to retain new employees, and avoid any potential abuse of the scheme. However, there may be instances when the employer's full-time equivalent number of employees on an anniversary date falls below the required level for reasons that are beyond the employer's control. In those situations, the chief commissioner must pay the rebate. An example might be unexpected resignations and delays in finding appropriately qualified staff to replace them.

If the number of employees falls below the required level for more than 30 days in each of the two years, the rebate will not be paid unless the fall occurred because of factors beyond the employer's control. In that case the rebate will be based on the length of time the position was actually filled, using the same formula that applies to the calculation of the rebate for part-time employees. The chief commissioner may pay the rebate on a proportionate basis if a position remains vacant for more than 30 days during the first or second year due to circumstances beyond the employer's control—for example, if the employer has difficulties in filling the position.

There are certain employment arrangements that will not be eligible for the rebate—for example, employing people under a labour hire arrangement where the liability for payroll tax applies to employment agents, engaging independent contractors who are not engaged as employees, and employing people for seasonal work where the position will not be filled for two years. Employment agents will be able to qualify for rebates in respect of their own employees provided they satisfy the criteria. In addition, employers will not be eligible for the rebate if their total annual wages is below the payroll tax threshold, which means they are not liable for payroll tax, if they are exempt from payroll tax such as charitable bodies who have no commercial undertakings, or if they receive other rebates such as the rebate for apprentices and trainees under the Payroll Tax Act 2007.

State government departments and non-business statutory authorities are excluded from the rebate scheme because they are largely funded from appropriations from the Consolidated Fund. To ensure the rebate is made available only to employers who have genuinely increased their workforce, new employees must not have worked for the employer or for a related business or for businesses acquired as a result of takeovers and mergers in the previous 12 months. Similarly, the chief commissioner may refuse to pay a rebate claim if the required increase in full-time equivalent employees was contrived—for example, by sacking existing employees prior to filling new positions. If the employer claims the rebate dishonestly, the chief commissioner can require the employer or a relevant third party to repay the rebate. This bill provides a modest but real incentive for businesses to employ new workers and encourages employers to expand their operations in New South Wales. I commend the bill to the House.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [11.17 a.m.]: We understand the Government has a mandate for the Payroll Tax Rebate Scheme (Jobs Action Plan) Bill 2011 so we will not oppose it. But we call on the Government to offer a better deal to small businesses and sole traders, not just to the big end of town. In our view, the Government's proposal will not reward companies for adding jobs. If anything, it will encourage big business to put downward pressure on wages so they can afford more staff and get the handouts that are provided for in the legislation. The Labor Party wants to see the correct incentives put in place to encourage jobs growth in the right places of the economy, not merely handouts to big business. The introduction of the bill in the other place was accompanied by the usual propaganda about the financial management under the past 16 years of Labor government. This was accompanied by the Government's attempt upon taking office to paint a picture of a black hole in the public finances of the State. But that blew up in the Government's face when it got Mr Lambert to review the figures.

I remind the House that the former Labor Government delivered 15 surplus budgets out of 16 budgets. The former Government also handed over the State's economy to the present Government with a triple-A credit rating and with surpluses two years into the forward estimates. The State has now had eight consecutive quarters of positive economic activity—a better record than any other State in the Commonwealth. New South Wales' seasonally adjusted unemployment rate for March 2011 was 4.8 per cent on a trend basis. Unemployment also fell for the seventh quarter in a row in March 2011, to reach 4.8 per cent, which is the lowest it has been since September 2008. The economy has grown by 4.9 per cent from September 2009 to September 2010. New South Wales' growth rate for State final demand, at 4.9 per cent, is higher than the national average of 4.4 per cent. In the September quarter last year the State final demand grew by 1.4 per cent, which is more than double the rate of growth of domestic final demand, which grew by only 0.6 per cent.

The State's 1.4 per cent growth rate is the highest of all the States and should be compared with the declines at the end of last year in Victoria, 0.1 per cent; in Queensland, 0.5 per cent; and in South Australia,

0.5 per cent. New South Wales has enjoyed eight consecutive quarters of growth, which is more than any other State. Members should compare the economy of this State with those of Western Australia and Queensland. This State has enjoyed steady economic growth based on the hospitality and finance sectors. Unlike Western Australia and Queensland, we do not rely principally upon digging materials out of the ground and exporting them; ours is a more mature and steady economy.

Over 16 years—and in particular over the past four years—the infrastructure spend in this State was the highest of any State in the federation. The Labor Government spent $12 billion on infrastructure in the past year, $11 billion the year before and $10.8 billion the year before that. It was the biggest infrastructure program ever undertaken in this country and it created 155,000 jobs a year. The former Government also reduced payroll tax for all businesses and delivered a double payroll tax cut in 2010-2011. A payroll tax reduction to 5.5 per cent was brought forward to 1 July 2010, and it was reduced again to 5.45 per cent from 1 January 2011. Those tax cuts were permanent, not temporary. Those changes to payroll tax rates and thresholds are estimated to save New South Wales businesses approximately $4 billion over the six years to 2013-14.

The former Government also committed more than $2 billion to vocational education and training and invested more than $200 million in youth programs in 2010-11. It also provided $27 million for the Learn or Earn program to boost training opportunities and to create apprenticeships for young people. Approximately $25 million has been spent to create 2,000 new public sector cadetships. The former Government grew the public sector and protected its workers—unlike the current Government. It nurtured them, fostered them, recruited them and retained them. In contrast, this Government is attacking the wages and conditions of public sector employees, which ultimately will make this State less competitive.

The Hon. Dr Peter Phelps: Losing our triple-A will make us less competitive.

The Hon. ADAM SEARLE: The former Labor Government retained the triple-A rating. Nurses and teachers, in particular, will flee to other States, and young people will not take up those professions when they see the way this Government treats them. That will be true also of other public sector jobs. The Labor Government spent $11.2 million over two years to support unemployed young people to return to education, training and employment. In addition, the State experienced good and steady jobs growth. The Australian Bureau of Statistics figures for October 2010 indicate that New South Wales' seasonally adjusted employment rate was 5.4 per cent, that 23,618 jobs were created in September last year alone, and that more than 150,000 jobs have been created since March 2010. In New South Wales in the past 12 months alone, 132,000 jobs were created.

The Government says that this bill will create 100,000 jobs. It will not do so. It might assist businesses that decide, because it suits them, to employ more people. The Government has not given any time frame for the creation of 100,000 jobs. Is it one year? Is it four years? We do not know. The bill may be of assistance to businesses, but it is not a panacea and it is not a replacement for proper jobs growth. It may well be an incentive to some businesses, but which businesses? The mechanism in the bill is the payment of a rebate in two equal parts that will be made after the first and second anniversaries of the hiring of a new employee. If a small business receives $2,000 from the Government on the first anniversary of the creation of a new position and the hiring of an employee and another $2,000 on the second anniversary, that may be an incentive. But it will not go to small business. Essentially, this is a $4,000 handout to big business.

Only 10 per cent of companies in New South Wales pay payroll tax. How does a payroll tax rebate help the 90 per cent of businesses in New South Wales that do not pay payroll tax? Almost every small business in the State, some 640,000 businesses, will not be eligible for the rebate. It is $400 million in subsidies for the big end of town. Companies such as Rio Tinto or Macquarie Bank will be eligible, but how many plumbers will receive it? None. How many sole traders will see it? None. Companies that do not pay payroll tax, which is 90 per cent of companies, will not be assisted by this legislation one jot, and that is precisely where jobs growth efforts need to be focused.

The way to assist business with payroll tax is either to reduce the rate and/or to increase the threshold, not to give a handout only to businesses that pay payroll tax. The Government's proposal will not reward companies for adding jobs. If anything, as I indicated at the outset, it will encourage big business to apply downward pressure to wages so that big business can afford more staff and become eligible for more handouts. We heard during the debate on public sector wages and conditions that the Government really has no regard for its own employees. So we ask rhetorically how the Government could care about other employees.

Reverend the Hon. FRED NILE [11.23 a.m.]: On behalf of the Christian Democratic Party I support the Payroll Tax Rebate Scheme (Jobs Action Plan) Bill 2011 and commend the Government for initiating a plan that aims to create new jobs by establishing a payroll tax rebate scheme to give employers an incentive to increase the number of employees until 100,000 new jobs are created. I am very much in favour of providing an incentive to create employment. However, the aim of the Christian Democratic Party is to reduce and ultimately abolish payroll tax. The greatest incentive to employers in New South Wales would be for the State Government to phase out payroll tax completely. I envisage this bill as being at least a step in the right direction. For those reasons, the Christian Democratic Party commends and supports the bill.

The bill will establish a rebate scheme that will assist in the creation of 100,000 new jobs. Sixty per cent of those jobs will be created in metropolitan areas and 40 per cent will be created in non-metropolitan areas. Metropolitan areas are defined as local government areas in the Sydney Statistical Division plus the local government areas of Newcastle and Wollongong. Non-metropolitan areas consist of the remainder of New South Wales. The Jobs Action Plan will provide a payroll tax rebate to employers of up to $4,000 for each full-time employee and a pro rata rebate for part-time employees based on the number of hours worked compared with the standard working hours of full-time employees. It is a very practical plan.

The bill also contains a number of revenue protection measures. For example, the rebate will be made available only to employers who genuinely increase their workforce. A new employee must not have worked for the employer or for a related business or for a business acquired as a result of takeover or merger in the previous 12 months. I reiterate that the Christian Democratic Party is pleased to support the bill which, as has been stated, accords with the Government's pre-election commitment to grow the New South Wales economy by enabling jobs growth.

The PRESIDENT: Order! I welcome to Parliament leaders from independent schools in New South Wales who are attending the secondary school leadership program, which is conducted by the parliamentary education section. I welcome participants in the program to the public gallery of the Legislative Council and hope they enjoy the program. I also hope they enjoy their visit to the New South Wales Parliament.

The Hon. NIALL BLAIR [11.26 a.m.]: I support the Payroll Tax Rebate Scheme (Jobs Action Plan) Bill 2011, which will implement an initiative from the Government's 100 Day Action Plan to rebuild the New South Wales economy. At the outset I will address at least one of the comments made by the Deputy Leader of the Opposition, who stated that the plan targets only the big end of town. As a representative of a political party that stands up for regional people, I suggest that jobs create jobs. Any job is fantastic because it has a flow-on effect. A job with a large employer that brings a new person into a community subsequently brings other people into the community, which results in school enrolments increasing and potentially keeps the school open.

It also creates flow-on effects for the local hairdresser, the local mechanic, the local builder and all other small business owners. Jobs will create jobs. This bill does not target just the big end of town. It targets an area in which the Government can stimulate jobs growth, and that will generate flow-on effects to a number of communities throughout the State. The bill will assist in the creation of new jobs by establishing a payroll tax rebate scheme that gives employers an initiative to increase the number of their employees until 100,000 new jobs are created. It is intended that the rebate scheme will assist in creating 100,000 new jobs.

The PRESIDENT: Order! There is too much audible conversation in the Chamber. I am having difficulty hearing the member with the call.

The Hon. NIALL BLAIR: Thank you, Mr President. This is a very important bill. Sixty per cent of jobs will be created in metropolitan areas and 40 per cent will be created in non-metropolitan areas—areas that I represent, as a proud member of The Nationals. Metropolitan areas are defined as the local government areas in the Sydney Statistical Division plus the local government areas of Newcastle and Wollongong. Non-metropolitan areas consist of the remainder of New South Wales. The Jobs Action Plan will provide a payroll tax rebate for employers of up to $4,000 for each full-time employee and a pro rata rebate for part-time employees based on the number of hours worked compared with the standard working hours of full-time employees. Employers will be paid the rebate in two equal parts. The rebate will be available after the first and second anniversaries of the hire of a new employee. To apply for the rebate employers initially will register a new employee with the Office of State Revenue within 30 days after the commencement of the employee's term of employment.

An employer who satisfies the eligibility criteria will be able to apply for payment of up to $2,000 after the first and second anniversaries of the date on which the employment commenced. Eligibility criteria for the

rebate includes the following: the position must be a genuinely new position; the employer must achieve a sustained increase in the number of full-time equivalent employees throughout the two years of the employment of the new employee, unless the reason for not achieving this requirement was beyond the employer's control; the wages of the new employee must be liable for payroll tax in New South Wales; and the work must be performed wholly or mainly in New South Wales.

As a general rule, rebates will not be payable if the higher level of employment is not maintained at the one-year and two-year anniversary dates. This will encourage firms to retain new employees and avoid any potential abuse of the scheme. However, there may be instances, for example, if the employee resigns, where the employer's full-time equivalent number of employees on an anniversary date falls below the required level for reasons beyond the employer's control. In these situations, the Chief Commissioner must pay the rebate.

If the number of employees falls below the required level for more than 30 days in each of the two years, the rebate will not be paid unless the fall occurred because of factors beyond the employer's control. In that case the rebate will be based on the length of time the position was actually filled, using the same formula that applies to the calculation of the rebate for part-time employees. Certain employment arrangements also will not be eligible for the rebate, for example, employing people under a labour hire arrangement where liability for payroll tax arises under payroll tax provisions applying to employment agents, engaging independent contractors who are not engaged as employees, or employing people for seasonal work where the position will not be filled for two years.

Employment agents will be able to qualify for rebates in respect of their own employees provided they satisfy the criteria. Employers will not be eligible for the rebate if their total annual wages are below the payroll tax threshold, which means they are not liable for payroll tax; if they are exempt from payroll tax, for example charitable bodies which have no commercial undertakings; or if they receive other rebates, such as the rebate for apprentices and trainees under the Payroll Tax Act 2007. State government departments and non-business statutory authorities are excluded from the rebate scheme because they are funded largely from appropriations from the Consolidated Fund. Local government authorities are exempt from payroll tax on non-business activities and also are excluded from the scheme. The bill contains a number of revenue protection measures. For example, to ensure the rebate is made available to employers who have genuinely increased their workforce, the new employee must not have worked for the employer or for a related business or for businesses acquired as a result of takeovers and mergers in the previous 12 months.

Similarly, the Chief Commissioner may refuse to pay a rebate claim if the required increase in the number of full-time equivalent employees was contrived, for example, by sacking existing employees prior to filling new positions. As I mentioned at the commencement of my contribution, jobs will create jobs. This is a fantastic initiative from the O'Farrell-Stoner Government and is part of our 100 Day Action Plan targeting jobs not only in metropolitan areas but also in our regional communities that will stimulate the New South Wales economy which, in turn, will drive other jobs in all other sectors, including government and small business. In conclusion, the bill accords with the Government's pre-election commitment to grow the New South Wales economy by enabling jobs growth. I commend the bill to the House.

The Hon. MICK VEITCH [11.33 a.m.]: I make a contribution to the debate on the Payroll Tax Scheme (Jobs Action Plan) Bill 2011. At the outset, in accordance with the statement of the Deputy Leader of the Opposition, I indicate that we will not oppose the bill. As someone who has worked in employment programs for some 15 years, I have a number of questions about the provisions of the bill. I hope the Parliamentary Secretary has his pen and paper ready. I apologise if some of the issues I raise are covered in the bill, but some clarification is required. Acknowledging that this bill is a pre-election commitment of the Coalition, it is important to get things right if the bill is to be passed. The first point I raise is that I am not quite sure that the bill addresses the potential impact of the goods and services tax [GST] on employment programs. I would appreciate it if the Parliamentary Secretary could clarify that.

The Hon. Matthew Mason-Cox: There is no GST on jobs.

The Hon. MICK VEITCH: That may be so, but funding for positions in employment-based programs attracts a process under the goods and services tax.

The Hon. Matthew Mason-Cox: As a provisional service, yes.

The Hon. MICK VEITCH: Yes, for the provision of service, as the Parliamentary Secretary states. It is important to have that issue clarified so no mistake is made at some future point about whether goods and

services tax applies. The second matter on which I seek clarification relates to the minimum number of hours of work per week. With most Commonwealth employment-based programs generally minimum hours per week are deemed to be eight hours. This bill talks about minimum hours per week and it is important that the record contain some statement about what constitutes minimum hours per week. If the minimum hours per week can be one hour, issues could arise in the long term as to how the tax rebate is applied.

I seek clarification also about the potential for double-dipping. The Hon. Niall Blair mentioned some potential for double-dipping and how it would be treated. This issue arises with Commonwealth employment programs being used by large employers not just in relation to apprentices and traineeships but, specifically, in regard to the employment of people with disabilities. Commonwealth employment-based programs encourage the employment of people with disabilities. The bill may address this important issue, but I ask the Parliamentary Secretary to address the matter so that *Hansard* reflects this particular issue with clarity when the bill is passed.

Seasonal employment is an issue for country regions. It may surprise some people to know that a full-time living can be achieved working as a shearer, as I have done for a number of years. However, shearing is deemed to be seasonal employment. The provisions of the bill also will affect rouseabouts and pressers in the shearing industry, particularly if they work for a contractor for a period that meets the requirements of the bill. In shearing terms a period of work is called a run. Usually I would shear for two or three contractors across a year, and then start the next year with the same shearing contractor. The run is worked with the same contractor and actually is a full-time job. I stand to be corrected after my quick reading of the bill, but from what I have read my understanding is that shearing work will fall outside the bill's provisions even though it is a full-time job.

This brings me to jobs in other agricultural contracting sectors, such as contract harvesters who follow a designated run. For instance, harvest contractors in Young work for one person but that work will cover from Queensland through to Victoria over an extended period. The meaning of "seasonal employment" needs to be clarified by the Parliamentary Secretary in his reply. My concerns with clause 12 particularly centre around a number of companies operating under a common board and employees work for more than one of those companies.

The bill's provisions may need further clarification because of the potential fuzziness of that matter. For example, a number of abattoirs will run several companies on the same site. Someone can work for one company in the boning room one day and when they turn up for work the next day they work in the skin room, which falls under a different company. Whilst the bill contains statements about boards of directors, it needs clarification as to how its exemption provisions will apply, particularly in rural areas where companies in most country towns are significant employers.

They are deemed to be one employer but they run a number of companies. Sometimes the companies do not pay payroll tax because of the way they are structured, but in some cases the companies pay payroll tax. I ask the Parliamentary Secretary to clarify that matter. Another concern relates to the employment of people with disabilities. The Supported Wage Scheme allows for people to be employed on productivity-based wages. Under this bill, the employer will employ a person for a specific number of hours—

The PRESIDENT: Order! There is too much audible conversation in the Chamber. I am enjoying the speech of the Hon. Mick Veitch.

The Hon. MICK VEITCH: Under the Supported Wage Scheme people work a specific number of hours legally. An independent supported wage assessor—I was a supported wage assessor for a number of years—will enter the workplace and assess the individual's productivity capacity, and the employer will legally pay a percentage of the award or enterprise wage. So the hours provision in this bill for payroll tax purposes will be met but legally the employer will be paying less than the award wage under the Supported Wage Scheme.

The Hon. Dr Peter Phelps: They'll get a windfall profit.

The Hon. MICK VEITCH: There is a windfall profit in the process, which would be an incentive to employ people with disabilities. By no means am I saying that that should not happen. As members know, I am a strong advocate for the employment of people with disabilities. But in the bill there is no mention or treatment of that employment arrangement in Australia. Clarification of that matter by the Parliamentary Secretary would benefit future employment arrangements under the scheme.

My final item relates to the reduction of outstanding liabilities for payroll tax. If an employer has outstanding liabilities it may still be entitled to a rebate under clause 26 of the bill. Does the employer have the opportunity to say up front and at the outset, "I'd like to use the rebate to offset my liability"? Under this bill, is the chief commissioner the only person who can make a decision about offsetting the liability? If that is the case, I would like the Parliamentary Secretary to explain the written notification procedure. In particular, employers would like to know up front that the chief commissioner will use the rebate to offset their liabilities.

If there is a written process, what is the time frame in which the chief commissioner will advise the employer that the rebate may be used to offset any outstanding payroll tax liabilities? I would like that matter clarified. In all seriousness, it is important to clarify these matters. If these questions are answered in the bill, I apologise. However, the Parliamentary Secretary must address these matters before the bill passes through this place. For a number of reasons, it is significant that those matters be addressed and clarified in *Hansard*.

Dr JOHN KAYE [11.43 a.m.]: On behalf of The Greens I address the Payroll Tax Scheme (Jobs Action Plan) Bill 2011. The beginning point for any discussion about employment must be that it is a public policy imperative to create more jobs, to ensure that the roughly speaking 5 per cent of the workforce in New South Wales that currently does not have a job have opportunities to get into full-time employment. Work is an ennobling activity. On the other hand, unemployment is a debilitating and enervating state, not for everybody but for many people. Forced unemployment, when people are frustrated by their inability to participate in the formal economy, has a devastating social, psychological and psychosocial impact on those people.

One of our fundamental jobs as a Parliament is to secure new employment opportunities, to grow meaningful employment—employment that addresses the number of people seeking jobs, particularly in rural and regional areas and among young people. People in the 18 to 25 age group are suffering from a lack of appropriate jobs. It is not simply unemployment but underemployment, when people find two, three or four hours of work a week but seek more than that, not only for economic reasons—although there are profound personal economic reasons why people seek additional employment—but also because of self-worth and a desire to be recognised as an important component of the community. There is no question that everyone in this Chamber wants to create more jobs, to ensure that young people in particular find an easy transition from education to employment and to do so in a way that is satisfying to them and of benefit to their community and to New South Wales.

The second starting point is that at first glance a tax on employment is not a good idea. Anything that suppresses the creation of new jobs should be looked at with a weather eye and examined carefully. That being said, there is a real question as to how we deliver new jobs. The legislation before us, which was part of the Coalition's jobs action plan when it was in Opposition, proposes to do so by delivering a $4,000 rebate for new jobs in companies that currently pay payroll tax. Bear in mind that only 10 per cent of employment occurs in companies that pay payroll tax; the remaining 90 per cent are small businesses or self-employed people, and those jobs do not attract payroll tax. The proposal is to deliver rebates of up to $4,000 for each of 100,000 jobs. On average, it is $3,300 because it is prorated across part-time jobs. Those 100,000 so-called new jobs include 40,000 jobs in rural and regional New South Wales and 60,000 jobs in Sydney—

The Hon. Dr Peter Phelps: Sydney metro.

Dr JOHN KAYE: I am sorry, I stand corrected. It is the metropolitan areas in the other NSW—Newcastle, Sydney and Wollongong. That is probably right because it incorporates the high youth unemployment areas of the Illawarra. It also needs to take into account large regional centres that have massive unemployment. One key public policy debate we should be engaging in beyond this legislation is how we address unemployment particularly among young males in rural and regional areas and in larger regional centres. How do we create not only short-term employment but ongoing employment?

Is spending $330 million on payroll tax rebates, as this legislation proposes, the most efficient expenditure of that money? During a crossbench briefing we asked directly: How many additional jobs will be created? We need to understand that there is a difference between "new" and "additional" jobs. Currently there are in the order of 3.6 million jobs in New South Wales—3.6 million separate employment opportunities in New South Wales. But those jobs churn quite dramatically. Many of them will disappear this year and many new ones will be created. Those 3.6 million jobs are an equilibrium figure between the number of jobs that will disappear and the number of new jobs that will be created. For example, many firms will grow even without the payroll tax rebate—many employers will increase the number of people they employ—and others will decrease. That is the nature of a dynamic, modern economy.

When I was a young new entrant into the job market I imagined that I would have a lifetime with a particular employer. That is, of course, no longer true and whether that is a good or bad thing is not the subject of this debate. In those 3.6 million jobs there is definite jobs growth but not additional jobs beyond the 3.6 million. It also needs to be said that if this policy is not implemented many employers will grow. Some sectors of the economy are growing quite dramatically—for example, hospitality, mining, renewable energy and services. New jobs are being created even with the existing rate of payroll tax and without the rebate on payroll tax.

The question is: How many additional jobs would there be that would not otherwise be created if this Parliament decides to keep the $330 million in general revenue? The answer provided to The Greens was, "It depends on the elasticity of employment"—that is, how elastic and willing are employers to employ new people when they are given additional money to do so? It is an unknown figure, but there are a variety of assumptions. This bill is a bit of a $330 million experiment; Treasury officials could not provide a hard and fast answer. If we make the median assumption on elasticity, and assume a certain rate of jobs creation for this project, we end up with dollars given to different types of sectors of the economy. According to what has been said to The Greens, it could be several thousand additional jobs, but not 100,000 additional jobs. When pushed, the Treasury official could not answer what the several thousand jobs were.

Yesterday The Greens asked the same question of the Minister for Finance and Services, who has joint carriage of the legislation. He was asked: Under the median assumption of jobs elasticity, what is the number of jobs created? Despite our best efforts, the Minister declined to answer and fell back on the argument, "This is what the Coalition took to the election and therefore it is good policy. We have a mandate and therefore we will implement it. Leave us alone." But if indeed "several" means two, as it commonly does, 2,000 new jobs for $330 million equates to $165,000 per job. So $165,000 will come out of general revenue for every new job created. If "several" means 5,000 jobs, which is a highly elastic vision of what it might mean, it is still $66,000 of general revenue to create each additional job.

The Hon. Dr Peter Phelps: You are making a weak argument.

Dr JOHN KAYE: I invite the Hon. Dr Peter Phelps to address the issue during the debate, but just to interject that it is a weak argument when I am only a quarter of the way through my contribution is, first, highly prescient—

The Hon. Dr Peter Phelps: You have seven hours to go.

Dr JOHN KAYE: No, six hours and 48 minutes.

The PRESIDENT: I acknowledge in the public gallery other leaders from independent schools in New South Wales attending the Secondary Schools Leadership Program conducted by the Parliamentary Education Section. They are getting a somewhat more lively interchange than the group that was in the gallery earlier today. I welcome you to the Legislative Council. I hope the program that has been organised for you today is very good and that you enjoy your visit to the New South Wales Parliament.

Dr JOHN KAYE: I point out that this is the benefit of having The Greens in Parliament, as you were alluding to, Mr President. I join with you, Mr President, on behalf of members and welcome the school leaders to the Chamber. As I was saying, if "several" means 5,000 additional jobs—jobs that would not otherwise be created—then we are spending $66,000 for each new job on a $330 million program. If "several" in its more usual meaning is 2,000 jobs then the State coffers are $165,000 poorer for each additional job created.

The Hon. Dr Peter Phelps: Eight thousand.

Dr JOHN KAYE: The Hon. Dr Peter Phelps interjects $8,000 per job. The Government Whip, who is on the record saying that he thinks all science is conspiracy, probably now thinks that all mathematics is conspiracy as well. However, I relied on Bill Gates and Microsoft Excel to get these figures, so they are probably reliable. This is a serious matter. That seems to be an awful lot of money to spend on each new job—up to $165,000. If instead that money were put into an infrastructure project, not only would the project generate more jobs in the short term and ongoing jobs in managing and maintaining that infrastructure in the long term, but also, and more significantly, it would be something of lasting public benefit. It would have ongoing additional growth in the economy.

I note that the Hon. Niall Blair said that jobs create jobs. His view was that those several thousand jobs would create economic activity, and that economic activity would have the usual multiplier effect and would generate more jobs. That is absolutely correct. It is inarguable that economic activity breeds economic activity. The question that Hon. Niall Blair did not address was: How effectively is that money being spent? What is the return on jobs for the $330 million? In his response the Parliamentary Secretary will provide a dissertation on jobs elasticity and how that works. He will provide a formal definition including using the logarithmic definition that is most commonly used.

The Hon. Matthew Mason-Cox: Is that what your PhD was on?

Dr JOHN KAYE: No, it was not actually, as it turns out. But that does not matter. To return to the topic, the issue is if that $330 million were spent elsewhere we would get a lasting public benefit and more jobs, which would create further jobs. It is quite correct that economic activity has a positive feed-back loop in it and so by spending the $330 million more efficiently, creating more jobs with it, would create yet more jobs in the rural and regional economy. If that money is not going into additional jobs but into jobs that would have been created anyway this legislation will deliver a $300 million gift to those corporations. Roughly speaking, of the total amount of money being spent, one can assume that about $30 million, 10 per cent, will go to additional jobs and that about $300 million, 90 per cent, will go to jobs that would have been created anyway. Even in the absence of this legislation and policy, those jobs would have been created anyway.

The employers I am talking about are from the big end of town and have large payrolls; I am not talking about the corner milk bar, the person setting up a small solar installation business, the person running a small rice farm in the Riverina and someone who seeks to create a new part of the service industry. I am talking about the large existing employers with large payrolls. Largely, they are those employers who are represented, for example, by the New South Wales Business Chamber. About a week ago I reminded the House that it is the same organisation that spent a large amount of money advertising in the lead-up to the last election and effectively sought votes for the Coalition.

One view of this—a view that is almost inescapable—is that this is a nice little reward, using taxpayers' money, for the big end of town, the supporters of the Coalition. This $300 million will disappear from the economy and go towards funding $4,000 rebates for each job that would have been created anyway, even without this legislation. No new jobs are created. This is a jobs creation program that has a 10 per cent strike rate, with the remaining 90 per cent ending up in the coffers of larger employers—who, I am sure, will be very grateful for the additional boost. The question is: Where does the money go from there? What economic benefit then occurs? It largely goes into profit. Maybe some of it goes into reinvestment to expand business activity which may have some secondary, tertiary or quaternary jobs growth impacts, but the remainder goes straight into shareholder profit, some of which disappears overseas, some of which disappears interstate.

To a large extent, this legislation delivers a nice little benefit to the German dentists and doctors whose retirement funds invest in large corporations in Australia. In no way is this an efficient, well thought out policy for creating additional jobs, for growing the jobs market in a sustainable way in New South Wales. It sells well at elections to say, "We're going to reduce or pay back part of the tax on jobs." That has an intuitive appeal. But Treasury modelling just does not stack up. Clearly, members of the Coalition went to the election on this policy—and goody for them—but it is not a policy that has been tested properly against Treasury modelling or any other economic modelling. Not until the legislation hits the House are we told, "Oh, it's only several thousand jobs"—not the hundred thousand jobs that the Minister claimed in his second reading speech or that the Government continues to claim throughout the public debate on this issue. Just because something is a policy taken to an election by a political party does not mean it stacks up in the sense of being of great public benefit. Jobs growth efficiency does not attract to a jobs program simply because a government was elected with that policy.

The Hon. Trevor Khan: With that mandate.

Dr JOHN KAYE: Unfortunately, the Hon. Trevor Khan missed the mandate discussion that we had in a previous debate in this Chamber. I choose not to go back and cover that issue again. Our job as members of a House of review is to subject legislation to scrutiny, and we are now subjecting the legislation to scrutiny. Frankly, it does not measure up under that scrutiny.

The Hon. Trevor Khan: It measures up against the mandate.

Dr JOHN KAYE: The Minister was given the opportunity yesterday to explain to the House what Treasury modelling said. During the crossbench briefing we asked for a copy of the Treasury modelling. We have been denied access to it. The only information we have is that the $330 million will create several thousand new jobs. That is the only information we have. On that information, this legislation stands condemned as an exceptionally inefficient way of creating jobs. We think $330 million is a sensible amount of money to spend on creating new jobs, particularly if it is targeted at geographic areas with high levels of unemployment, and particularly with high levels of youth unemployment. That is a good thing to do. But to spend the money inefficiently, to squander it, to hand over what appears to be $300 million to large corporations purely to go into their profits—

The Hon. Charlie Lynn: Who earned the $300 million?

Dr JOHN KAYE: The last time I looked at the receipts of this State, the overwhelming majority of receipts come from three areas. One is income tax receipts from the Commonwealth. The second is GST receipts from the Commonwealth. The third largest source—

The Hon. Charlie Lynn: Who pays that?

Dr JOHN KAYE: Income tax is paid by working people which is something that the Hon. Charlie. Lynn might not know. The overwhelming majority of tax receipts to both the Commonwealth and the State come from working people, not from corporations. Property transfers are dominated by small residential properties, and tax on income is dominated by personal income tax. Members of the Coalition may wish to ignore the facts in order to prop up a piece of legislation that basically is a gift to their mates at the big end of town. That may be what they choose to do. But the people of New South Wales understand what is happening with this $300 million. It is the great tradition of this State Government, and it was with its predecessors, to hand over money to the wealthy end of town to prop up profits and to claim that that is being done in the name of economic efficiency. If the Government were serious about solving the almost 5 per cent unemployment rate, and if it were serious about addressing the tragedy of high levels of youth unemployment, particularly in the Illawarra, this $330 million would be spent effectively and efficiently, and in a way that would generate 50,000 or 60,000 new—that is, additional—and ongoing jobs.

The Hon. Charlie Lynn: How would you do that?

Dr JOHN KAYE: The member did not hear what was said. One possibility is to spend this money on new infrastructure—infrastructure which creates—

The Hon. Rick Colless: New roads.

Dr JOHN KAYE: —new rail.

The Hon. Rick Colless: Dams.

Dr JOHN KAYE: Roads are—

The PRESIDENT: Order! I remind all members that interjections are disorderly at all times. The level of interjections is far too high. I am unable to hear the member.

Dr JOHN KAYE: If it were serious about generating new jobs, the first thing the Government would have done is look at the alternatives. It would have looked at new rail infrastructure.

The Hon. Rick Colless: New dams.

Dr JOHN KAYE: It would have looked at new water efficiency infrastructure in New South Wales, in the agricultural, residential and commercial sectors, and would have asked the question: How many jobs will be created by spending on that infrastructure? How much ongoing wealth will this create? But no, it did not do that. The excuse that the Government gives is that it took this issue to the election. It is saying: We won the election, and therefore it must be good policy. The problem is that that does not follow. Taking a policy to a general election is not a plebiscite on a jobs action plan. I conclude by saying that nobody likes taxes on jobs. The idea of taxing jobs intrinsically is not a good idea. The position of The Greens remains: If we are going to spend money on new employment, on additional employment, we should do so effectively and efficiently.

The Hon. Dr PETER PHELPS [12.07 p.m.]: Today is a glorious day. While outside the wind blows, the rain comes down and the sky is cloudy, a small gleam of economic sunshine beams upon this House because while this bill does not remove a tax, nonetheless it provides for a rebate on a tax. Let us remind ourselves that all taxation is an expropriation; that all taxation comes from a productive sector and goes to the government. What the government then does with it largely determines whether it is legitimate or illegitimate. Unlike the Federal Government, businesses do not print money and nor does this State print money. Businesses have to earn their money; they have to make their money through productive effort. It is not just what we do with tax revenues afterwards that determines the legitimacy of a tax but what the tax itself does. If a tax promotes favouritism or unjustified preference, or distortions of a market, then we can say that that is an unjust tax. Let us just say that this payroll tax is a bad tax. A payroll tax is a bad tax.

Dr John Kaye: Then why not repeal it? You are the Government; why not do that?

The Hon. Dr PETER PHELPS: I live for the day when we can repeal a payroll tax—but that will only be done when we are in a fiscally responsible position. I live for the day when we can get rid of all job-destroying taxes. Dr John Kaye said that nobody likes a tax on jobs. How ironic is that? Which party so assiduously promotes carbon taxes? Is there a bigger job-destroying tax on the table in Australia today than the carbon tax—a carbon tax which will reach into the pockets of every person in Australia and which will put hobbles on every business in Australia? This carbon tax, which the Greens so assiduously pursue—and the Labor Party for that matter—will extend its claws and clutches across every sector of the economy, dragging it down. It is all right for the Greens to say, "There will be job creation anyway." Apparently this hypothetical job creation will happen just by magic. Jobs are not created by magic. Jobs are created because there is a marginal propensity to employ more people when wages are subsidised by measures such as this. That is the fact of the matter.

Dr John Kaye: Oh, you believe in subsidies?

The Hon. Dr PETER PHELPS: No, what I am saying is that this rebate is an effective measure to subsidise jobs.

Dr John Kaye: Ah, so you do believe in subsidies.

The Hon. Dr PETER PHELPS: No. If the honourable member pays attention he will learn something. Everyone from Marx to von Mises accepts that the marginal propensity to employ is a function of the wage cost to the employer. Everyone from Marx to von Mises accepts this and I am glad that Dr John Kaye does too; I thank him for that. This hypothetical job creation that will occur by magic in "Greentopia" does not really exist. It cannot be said that there will be set, fixed job creation some time into the future, more especially when the threat of a carbon tax hangs over every business in Australia—a carbon tax that effectively will hobble every business in Australia.

The Hon. Adam Searle: Point of order: We are not debating the carbon tax, we are debating this bill and, with great respect, the honourable member is straying well beyond the bounds of the legislation that is before us.

The Hon. Dr PETER PHELPS: To the point of order: I am saying in my speech that job creation is a function of the costs which accrue to businesses. If we cannot look at the costs which accrue to businesses or are likely to accrue to businesses in the future there cannot be a reasonable discussion on whether employment will take place in that context.

The Hon. Lynda Voltz: To the point of order: I refer the member to the long title of the bill and to the fact that the carbon tax has not been raised in this debate at all. If the member wishes to have a debate on carbon tax I am sure other colleagues in the Chamber would be only too happy to oblige members opposite.

The PRESIDENT: Order! A series of Presidents have ruled that, by tradition, a degree of latitude is permitted during the second reading stage. I refer to a ruling of Deputy-President Kelly—recently departed from amongst us—who said that a great degree of latitude is permitted in comments during the second reading stage. However, he also said that the majority of a member's speech should address the bill being debated. While it would be in order for a member to discuss taxation arrangements in Australia during this debate, obviously the majority of the member's speech should be directed to the bill.

The Hon. Dr PETER PHELPS: I am subsidising my argument with comments on the carbon tax. The real problem here is that there is no guarantee that any jobs will be created, especially given the changing composition of the Senate, where not only will the carbon tax presumably come in at some extortionate rate but under the leadership of the new Greens leader, Senator-elect Lee Rhiannon, heaven knows what other unique furphies from the Marxist mindset will be imposed upon the poor Gillard Government.

The Hon. Trevor Khan: Marxist?

The Hon. Dr PETER PHELPS: Did I say Marxist? Should that be Stalinist? I think Stalinist is probably a more appropriate term, given the history there. Senate control by The Greens is likely to produce an even less conducive environment for employment in Australia and, as a consequence, in New South Wales. All I can say to Dr John Kaye is that, yes, nobody likes a tax on jobs and nobody likes a Senate that is likely to make it even harder for businesses to find the money to employ people in Australia today. As I said, I do not like payroll tax. I believe its continued existence is a blight, but it is a blight occasioned by numerous High Court decisions over the last century and effectively the cowardice of the States in failing to act like grown-ups when it comes to taxation, as I said in my inaugural speech.

This bill, however, implements a Government initiative from its 100 Day Action Plan to rebuild the economy of New South Wales. One of those initiatives is the Jobs Action Plan to create 100,000 new jobs in New South Wales. The bill implements the New South Wales Government initiative to restore economic growth to communities by strengthening, developing and providing opportunities for growth. The Jobs Action Plan will provide a payroll tax rebate of $4,000 per full-time employee, and a pro-rata rebate for part-time employees, for the first 100,000 new payroll tax paying jobs created in New South Wales. To apply for the rebate employers will simply submit a declaration along with evidence of employee numbers and eligibility for the rebate to the New South Wales Office of State Revenue.

To qualify for the rebate—and this is important—the job must genuinely be a new position. This will be defined as an increase in the full-time equivalent number of employees on the first and second anniversary of the hire of a new employee. The wages for the new position must be liable for payroll tax in New South Wales and the work must be performed mainly in New South Wales. For part-time employees, the rebate will be pro-rata based on full-time equivalent hours of employment. Rebates will not be payable if the higher level of employment is not maintained at the first and second year anniversary points. This encourages firms not only to take on new employees but also to retain them, and it provides a safeguard against potential abuse.

Importantly, as far as I am concerned, 40,000 of the 100,000 jobs created will be in New South Wales regional areas. This will provide regional areas such as my home town of Queanbeyan—the birthplace of great political minds—with a much-needed boost and create long-term employment in these areas. The scheme has been designed to meet the Government's commitment to reduce unnecessary red tape on businesses and will make New South Wales more competitive and a more attractive destination for employers. I commend the bill to the House.

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [12.17 p.m.], in reply: I thank honourable members for their contributions to debate on the Payroll Tax Rebate Scheme (Jobs Action Plan) Bill 2011—an important bill which, as members have acknowledged, delivers on another commitment under the Government's 100 Day Action Plan. It is gratifying to be a member of the Government and to stand in this Chamber and acknowledge once more that another commitment we gave in our 100 Day Action Plan has been met. It is one of many, some of which have been met over the past sitting weeks, and the remainder of which will be met over the remaining sitting days in order to fulfil our commitments in that regard.

It is interesting to note that an alternative universe seems to have been created in this debate. We heard from the Hon. Adam Searle in relation to the economic record of the Labor Party over the past 16 years and we heard Dr John Kaye's mathematical contortions in respect of what I think he calls his economic policy or view of the world. In both cases they are obviously in good company. The reality is somewhat different to the arguments both have put forward in this place.

I remind the House that under Labor New South Wales had a dismal employment performance relative to the other States. According to statistics from the Australian Bureau of Statistics and Research, over the past 15 years New South Wales had a lower employment growth rate than Victoria, Western Australia and Queensland. The Australian Bureau of Statistics found also that for 54 of the last 60 months under Labor—90 per cent of the time—the New South Wales unemployment rate was higher than the national rate and that if

under 16 years of Labor New South Wales job growth had matched the growth rate of Victoria there would have been at least 193,000 additional jobs in New South Wales. That is 193,000 jobs if the New South Wales economy matched the smaller economies of Victoria and Queensland.

It is easy to come into this place and to quote statistics that have no relativity to other important matters in this debate. I believe that this bill has bipartisan support. I do not know how The Greens will vote on this bill but, despite their earlier comments, I welcome the fact that they support the legislation. I found extraordinary the comments of Dr John Kaye that the Government had no mandate for this bill. Even the Deputy Leader of the Opposition acknowledged that this Government has a mandate.

Dr John Kaye: Point of order: The Parliamentary Secretary is misrepresenting me. I did not say at any stage that the Government had no mandate for this bill. What I said was very clear. I said that even if the Government took this proposal to the election it was not a good policy.

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

The Hon. MATTHEW MASON-COX: This bill is an important part of the Government's agenda to restore growth in the New South Wales economy, as New South Wales has not performed very well in this important area compared to other States. I note for the benefit of members that the New South Wales threshold is $658,000 per annum and the rate is 5.45 per cent. In that regard I recall the comments of Opposition members relating to two reductions under Labor in its 16-year term of office. Whilst that might seem like a commendable performance, in reality we face competition from Queensland and Victoria in particular. For the edification of members, the threshold in Victoria is $550,000 per annum and the rate is 4.9 per cent, which is 0.5 per cent lower than the rate and $100,000 less than the threshold in New South Wales. We have a lot of work to do if we are to be competitive with Victoria. The threshold in Queensland is $1 million and the rate is 4.75 per cent.

These figures reveal that we have a lot more to do to attract and retain larger businesses that pay the bulk of payroll tax in this State—an issue that is addressed by this bill. We must create a business environment that is conducive to growing businesses, jobs and this State's economic base. Wealth is not a given; wealth is something that must be created. Businesses create jobs and growth in this State. Despite what Dr John Kaye might think if businesses do not create jobs and growth in this State, over time our economic health and wealth will decline. Under the last 16 years of Labor this State lagged behind its interstate competitors and did not compete globally for major business enterprises. Businesses in jurisdictions such as Singapore and Hong Kong pay next to nothing in taxes, whereas businesses in New South Wales face a large tax burden.

It is tremendous to be part of a Government that is implementing a Jobs Action Plan. Over a period of two years that plan will result in increased businesses and 100,000 new jobs in this State. I note in particular that 40,000 of those jobs will be in regional New South Wales, the most neglected part of this State. On 26 March people responded to that neglect by annihilating Country Labor in the other place. I note that the Hon. Mick Veitch, a proud Country Labor member, is in the Chamber. It is good to see that somebody is still waving the flag. People in regional New South Wales, who have been ignored in the past, have spoken. Infrastructure and services in regional areas have reduced over time. This important initiative will restore confidence and growth in those areas. Together with other programs foreshadowed by this Government, such as a decade of decentralisation, this bill will ensure that regional New South Wales is promoted rather than denigrated as it has been over the past 16 years.

It is clear that Labor and The Greens do not understand that payroll tax is a tax on jobs—a fundamental issue relating to taxation. This insidious tax is a direct tax on jobs. The Government's initiative will go some way towards easing the load on business, restoring business confidence and restoring the potential for New South Wales to be the key driver of the Australian economy. It will put New South Wales back where it should be rather than lagging behind Victoria and Queensland, as happened over the past 16 years. The relativity between our States has demolished any economic argument put forward by Opposition members relating to their mandate for the past 16 years.

The Hon. Duncan Gay: Point of order: I am having trouble hearing the Hon. Matthew Mason-Cox. The wall of noise and the gibberish coming from the Opposition benches is making it difficult to hear the Parliamentary Secretary.

The PRESIDENT: Order! The debate on this legislation has certainly been robust. A number of members asked that the Parliamentary Secretary clarify matters in his reply. If the Parliamentary Secretary

cannot be heard during his reply, members may not receive the full benefit of his speech before they vote on the bill. I would be grateful if members ensured that there was no audible conversation during the Parliamentary Secretary's reply.

The Hon. MATTHEW MASON-COX: Let me reflect for a moment on Labor's record over the past 16 years and in particular the record of the former Minister for Small Business, Steve Whan—another member from Queanbeyan, that fountain of political hope in this State—who I understand will be appearing on the other side in the near future.

The Hon. Lynda Voltz: Point of order: I have not heard the member answering any of the questions that we raised because of the wall of noise and the gibberish coming from the other side of the Chamber.

The PRESIDENT: Order! There has been far too much interjection from Government members, Opposition members and crossbench members during the Parliamentary Secretary's reply. I refer members to my earlier ruling in this regard.

The Hon. MATTHEW MASON-COX: The irony of that last contribution is intoxicating to say the least. Under the previous regime in this State—and I use the word "regime" advisedly, given the way in which the former Government operated—the former Minister for Small Business, Steve Whan, saw his title as an accoutrement; something he could use when he strode around the State and said, "Yes, I am the Minister for Small Business, but I don't know what it is or what it means." Coalition members waited for 30 days for a press release from the former Minister relating to his duties. When one finally arrived it was incredibly underwhelming and it reflected the ideological view on the other side of the Chamber that business was there to be milked for as much revenue as possible, thus foisting on the people of New South Wales the policies of a failed regime. May they remain in Opposition and on the opposite side of the Chamber for a very long time, reflecting on mistakes of the past.

The reality is that the Government has a program for change that will go directly to the heart of economic problems of the State, and one of the changes is the creation of jobs over the longer term. The Government will create jobs that will build wealth in this State, drive competitiveness and ensure that New South Wales no longer is the laggard of all the Australian States. Eventually New South Wales will regain its position of leading the Australian economy so that the nation can prosper under a Coalition Government. I turn now to address specific questions raised by members during the debate, particularly questions asked by the Hon. Mick Veitch, who is the flag-waver of Country Labor. He asked whether GST had been considered, and I inform him that GST is not relevant to the bill. I indicated that directly to him during his speech. In relation to employment programs, he commented that essentially the bill will apply only to common law employees and not independent contractors. As I mentioned, the threshold is $653,000 and, based on an average salary of $70,000, a business that pays payroll tax would employ up to 15 employees.

Dr John Kaye: With a threshold level of $653,000, that is how many employees?

The Hon. MATTHEW MASON-COX: I advise the good doctor to follow the debate. The reality is that the threshold criterion will eliminate problems for small companies and independent contractors as far as payroll tax is concerned. It is common law employees and not independent contractors who are taken into account when determining eligibility for payroll tax. In response to the issue raised about minimum hours per week, there are no minimum hours specified in the bill. The benefit is pro rata.

The Hon. Mick Veitch: It could be one hour?

The Hon. MATTHEW MASON-COX: It could be one hour pro rata, depending on the average hours worked by a full-time employee in a week. If that is 35 hours, it might be one in 35 times the benefit, but the position must be held for more than two years for the benefit to accrue fully.

The Hon. Walt Secord: It could be one hour.

The Hon. MATTHEW MASON-COX: It could be one hour. The flexibility is built into the bill to encourage either part-time or full-time employment. Over the period of two years, there may be situations that cause employment to fluctuate. There is flexibility in the bill to deal with that and some discretion may be applied by relevant authorities. I understand that seasonal employment is very close to the heart of our former shearer, the Hon. Mick Veitch. Clearly the bill does not deal with seasonal employment but, rather, is intended

to encourage the creation of new permanent jobs. That is why seasonal employment does not qualify. The member cited the example of contract harvesters who move from contract to contract or a shearer who moves from employer to employer.

The reality is that there is no aggregation. It is simply a case of who the employer is and the nature of the employment relationship. Independent contractors do not qualify. Only common law employees qualify. That is the way the scheme has been set up. Similar observations may be made in relation to boards of directors and group companies, which is always a tricky issue. One always has to examine the rationale for setting up companies in different parts of the State. For example, abattoirs or other businesses may be discrete from parent companies. I note there are provisions relating to evasion and overarching legislation that involves deeming and other circumstances.

A very important point raised by the Hon. Mick Veitch—and I acknowledge his very passionate commitment to this area of government—relates to disability employment programs. The rebate treats all employees the same, which is the way it should be. The legislation provides an incentive for disability employees to be given a job just as it offers an incentive for able-bodied employees to be given a job. That is the way it should be. The legislation will be a boost for disability employment programs. A number of issues were raised by Dr John Kaye, but I will not dignify all the mathematical contortions and colourful conspiracy theories other than to say, "Good try, John." I again thank members for their contributions to the debate. I strongly 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. Matthew Mason-Cox agreed to:

That this bill be now read a third time.

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

ATTENDANCE OF SIR ALLAN KEMAKEZA, KBE, SPEAKER OF THE NATIONAL PARLIAMENT OF THE SOLOMON ISLANDS

The PRESIDENT: Order! With regret I advise the House that I have received a message from the Honorary Consul-General in Sydney for the Solomon Islands, Sir Trevor Garland, that unfortunately Sir Allan Kemakeza, KBE, Speaker of the National Parliament of Solomon Islands, will be unable to join us today as originally planned, owing to illness.

EVIDENCE AMENDMENT (JOURNALIST PRIVILEGE) BILL 2011

Second Reading

The Hon. DAVID CLARKE (Parliamentary Secretary) [12.37 p.m.]: I move:

That this bill be now read a second time.

The Evidence Amendment (Journalist Privilege) Bill 2011 amends the Evidence Act 1995 to strengthen protections that are available to journalists and their sources in New South Wales. The bill implements the Government's election commitment to introduce shield laws to protect journalists from being compelled to name their sources. Freedom of information, which includes freedom of the press, is vital to the proper functioning of an open and transparent democracy. Where government matters are concerned, the dissemination of information by the news media encourages political debate and scrutiny of the political process and supports the capacity of citizens to make informed choices. In the non-government sector, journalists also play an important role in investigating and disseminating information and opinions about matters of public interest.

Consequently, an important public interest is served in supporting journalists to carry out their work. In their work, journalists often depend on assistance from sources who may wish to remain anonymous. In many instances sources may be willing to provide important information only on the condition that their identity remains confidential. Journalists' ethical standards recognise that it is preferable, when possible, to attribute published information to the source, except when information is provided on the basis of anonymity. In that instance, good faith requires a journalist to withhold the identity of the source. Laws that allow journalists to preserve the anonymity of their sources when journalists have promised to do so are essential to support the work of journalists.

This bill strengthens the capacity of journalists to maintain the anonymity of their sources by creating a presumption that they may withhold the identity of their sources in proceedings in New South Wales courts. Of course, any law that permits otherwise relevant information to be withheld from a court must be weighed against the general principle that, to the greatest extent possible, all relevant evidence should be placed before the court. The public interest in this principle is self evident: Justice requires that courts making decisions that significantly impact on the rights and interests of the parties should be properly informed of all relevant matters that could legitimately influence their decisions. Consequently, it is important that the law establish an appropriate balance between these two competing public interests—I will say more about this when discussing the detail of the bill.

The bill establishes, in the context of part 3.10 of the Evidence Act 1995, a new qualified privilege specifically for journalists. The new privilege takes the form of a presumption that when a journalist has promised not to disclose an informant's identity, the journalist is not compelled in a civil or criminal proceeding to give evidence that would disclose the identity of the informant. The bill does not, however, establish an absolute prohibition on disclosure. A court may order that that presumption does not apply if satisfied that the public interest in disclosure of the identity of the informant outweighs, first, any likely adverse effect on the informant or any other person; and, secondly, the public interest in the communication of facts and opinion to the public by the news media and the public interest in the ability of the news media to access sources of fact.

The nature of the journalists' privilege established by this bill has a precedent in a similar provision enacted by section 68 of the New Zealand Evidence Act 2006. That was also the precedent for a private members' bill introduced into the Commonwealth Parliament last year by Senator George Brandis, as well as an alternative version of that provision subsequently enacted by the Commonwealth in the Evidence Amendment (Journalists' Privilege) Act 2011 in March of this year. It is also the basis of a bill recently introduced into the New South Wales Legislative Council by Mr David Shoebridge, MLC, for the New South Wales Greens. There are, however, important differences in the nature of the journalists' privilege proposed by this bill and those enacted by the Commonwealth Government and proposed in Mr Shoebridge's bill.

The primary difference is the scope of the application of the privilege, which is determined by the definitions of "journalist" and "informant". Journalist is defined in this bill as "a person engaged in the profession or occupation of journalism in connection with the publication of information in a news medium". Informant is defined as "a person who gives information to a journalist in the normal course of the journalist's work in the expectation that the information may be published in a news medium". The definitions adopted in this bill are not intended to unnecessarily restrict the application of the journalists' privilege or the persons by whom it may be claimed. It is intended that the privilege may be claimed by journalists who, in the course of their work, are broadly involved in investigating and/or disseminating to the public information and opinion about matters that are, or may be, of public interest.

The definition of "journalist" in the bill relies on the ordinary plain English meanings of the words "profession", "occupation" and "journalism". This will allow the bill to reflect contemporary journalistic practices in determining by whom the privilege may be claimed, but ensures that the privilege applies only to persons who are recognisably engaged in working as a journalist, and their employers. Consequently, the privilege would not apply, for example, to amateur bloggers or users of social networking media who happen to obtain and publish information or opinion that may be of some public interest. The requirement that the information be given to a journalist in the normal course of the journalist's work further clarifies that, for the privilege to apply, an informant must have given information to a journalist for a reason connected with their work as a journalist. It would not be open to journalists to claim the privilege when they obtain the information in some way that is not connected to their work as a journalist. This is consistent with the public interest that the creation of the privilege is intended to serve—that is, to support the capacity of journalists to investigate and report on matters of public interest.

The new journalists' privilege will apply to giving or adducing evidence in civil and criminal proceedings in New South Wales courts, as defined in the Evidence Act 1995. Like other privileges established by part 3.10 of the Evidence Act 1995, the new journalists' privilege will apply to processes or orders of a New South Wales court that require the disclosure of information or production of documents, such as a subpoena, and including those set out at section 131A of the Evidence Act 1995. Consequently, if a journalist is required by a process or order of a New South Wales court to give information or to produce a document that would result in the disclosure of the identity of an informant, the journalist may rely upon the privilege to resist the requirement. If a party to a proceeding wishes the court to determine that the privilege does not apply, it will be incumbent upon that party to make that application to the court.

In addition to establishing a new journalists' privilege, the bill also reforms the existing professional confidential relationships privilege [PCRP]. The professional confidential relationships privilege applies to confidential communications with professionals, including journalists, in the context of their work. It gives courts discretion to direct that evidence of a communication made by a person in confidence to a professional or information about the identity of a person who made a protected confidence may be withheld from the court. The professional confidential relationships privilege clearly applies to journalists, but as it does not apply automatically it provides only limited protection. To obtain the protection of the professional confidential relationships privilege a journalist must first convince a court that it is likely that disclosure of the identity of an informant, or the content of the communication, would cause harm to the informant and that the harm outweighs the desirability of evidence being given.

As members of this Chamber would be aware, New South Wales is one of a number of jurisdictions—including the Commonwealth, Victoria, Tasmania, the Australian Capital Territory and Norfolk Island—that has established a substantially uniform statutory code for evidence law. Like evidence laws in the other jurisdictions, the New South Wales Evidence Act is modelled on and substantially uniform with the Model Uniform Evidence Bill. The professional confidential relationships privilege in the New South Wales Evidence Act mirrors the professional confidential relationships privilege in the Model Uniform Evidence Bill. In 2010 the Standing Committee of Attorneys-General considered options for journalist shield laws for potential inclusion in the Model Uniform Evidence Bill.

The Standing Committee of Attorneys-General decided to amend the professional confidential relationships privilege provisions in the Model Uniform Evidence Bill to strengthen the protection for journalists under those provisions. As a consequence, the Standing Committee of Attorneys-General amended the Model Uniform Evidence Bill to require that when called upon to determine whether the professional confidential relationships privilege should apply a court consider the following public interest matters: the public interest in preserving the confidentiality of protected confidences, and the public interest in preserving the confidentiality of protected identity information.

The Evidence Amendment (Journalists' Privilege) Bill 2011 implements the recent amendments to the Model Uniform Evidence Bill in New South Wales. The amendments will strengthen the protection available to journalists, and other professionals, under the existing professional confidential relationships privilege by changing the balance of matters that are required to be considered by a court and, in particular, by requiring the court to consider public interest factors in support of applying the privilege. In most instances, journalists will seek to rely on the new qualified journalists' privilege rather than the professional confidential relationships privilege.

However, there are some circumstances in which the professional confidential relationships privilege may provide protections for journalists that the specific journalists' privilege will not. For example, the specific journalists' privilege will not apply unless there is an expectation that the information will be published. Nor will the specific journalists' privilege apply where a journalist seeks to protect the content of a confidential communication from a source rather than, or in addition to, the identity of the source. In each of these cases a journalist could seek to protect the content of the communication under the professional confidential relationships privilege.

The two reforms of the Evidence Amendment (Journalist Privilege) Bill 2011 I have described significantly improve the protection of journalists and their sources in court proceedings. They do this in a way that appropriately balances two important public interests: the public interest in supporting the capacity of journalists to investigate and to disseminate information about matters of public concern, and the public interest in ensuring that courts dispensing justice are properly informed of matters that might legitimately influence their decisions. I commend the bill to the House.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [12.50 p.m.]: I lead for the Opposition in debate on the Evidence Amendment (Journalist Privilege) Bill 2011. We support the bill in principle. The bill proposes, by way of amending the Evidence Act, to prevent a journalist from having to disclose an informant's identity if the journalist has promised that he or she will not do so. This is done by establishing a rebuttal presumption that can only be overturned by a court if the public interest in disclosure of the informant's identity outweighs any likely adverse effect. There are also other minor amendments to the public interest considerations in determining professional confidential relationships privilege in the Model Uniform Evidence Bill regime.

The model of a rebuttal presumption is a significant change to the existing law. The current Evidence Act provisions allow a court to prevent evidence from being adduced in a hearing if doing so would disclose a protected confidence or protected identity information and if the disclosure is likely to harm a protected confider. This involves the balancing and consideration of various factors and the competing public interest. This is often referred to as the discretionary approach. A professional confidential relationships privilege has operated in this State since 1998. It is not restricted to journalists and their sources but applies to a much broader range of professional relationships.

The presumptive approach is often said to have its origins in subsection 60 of New Zealand's Evidence Act. In short, that provides a presumption that journalists will not be required to give evidence unless the party requesting the evidence can convince the judge that certain criteria have been satisfied. This rebuttal presumption effectively reverses the onus of proof. The previous Labor Government in Victoria expressed support for a similar scheme, and I understand that the new Victorian Government is of the same view. It has also been Federal Labor policy since 2007. There have been a number of attempts to legislate federally, which came to ultimate fruition earlier this year, in March.

Amendments went through the Federal Parliament in 2007 under the previous Coalition Government, although I think there is a broad view that they did not solve the issue they were designed to address. The 2009 bill was introduced by the then Federal Government but it lapsed. On 29 September last year Senator Brandis, the Federal Coalition's legal affairs spokesman, introduced legislation into the Commonwealth Parliament seeking, among other things, to enshrine the New Zealand model. A similar bill was also introduced by the Federal Independent member for Denison, Mr Wilkie, on 18 October. The Federal Government supported the Wilkie bill, which also supported the New Zealand model of a rebuttable presumption, which eventually passed the Parliament, although with subsequent amendments.

This history is important not only to trace the development of the legislation but because national consistency is an important issue in this area, and indeed has been broadly supported for some time in relation to the Evidence Act. The policy and philosophical basis behind the approach is to increase the flow of information to the public. Journalists make information available to the public. This legislation will help provide confidence that this can be done without journalists being held in contempt. It will encourage full disclosure of information in the public interest. Therefore, it will provide greater support for whistleblowers. Of course, it is not a blank cheque. The presumption is not absolute but rebuttable. So there is no absolute guarantee that a source will always be protected.

In recent years there have been a number of instances where there has been a collision between investigative journalists and the courts. Most recently there was the case of two *Sydney Morning Herald* journalists and subpoenas issued by the New South Wales Crime Commission. That was resolved when the Crime Commission decided not to pursue the production of the information it had previously sought. The instance most frequently referred to, however, in debates on this subject is from 2004. Michael Harvey and Gerard McManus were journalists on Melbourne's *Herald Sun* newspaper. They pursued and wrote a story about the then Federal Coalition Government rejecting a $500 million increase in war veterans' entitlements. They refused to identify their sources, which led to their being held in contempt of court. They were convicted of that and fined $7,000 each.

Of course, that is not the only case. Tony Barras from the *Sunday Times* was fined and imprisoned for 10 days in Western Australia; Gerard Budd was imprisoned for 14 days after writing for the *Courier Mail*; Deborah Cornwall from the *Sydney Morning Herald* received a suspended jail sentence; Chris Nicholls from the ABC received a prison sentence in South Australia; and three journalists from the *Herald* and Australian Associated Press faced jail in proceedings with the NRMA, although they were not subsequently pursued by the NRMA. That is the history behind this bill, and for some time there has been a substantial convergence of support for the presumptive model.

The Opposition has two criticisms of the bill. Although neither criticism would justify opposing the bill, one of them will justify the moving of amendments, which I have circulated. Both criticisms relate to the scope of the bill. In essence, it does not go far enough. The first criticism is that the bill picks out the situation of only one profession—that of journalists—and provides additional protection for their confidential relationships and sources. There are many other relationships in which confidentiality could legitimately arise in the public interest, including the relationships of counsellor and client, doctor and patient, social worker and client, psychologist and patient, therapist and client, and nurse and patient. No doubt there are other categories.

Interestingly, the preference for a broad-based privilege not being restricted to journalists was expressed by Liberal senators in a recent Senate Standing Committee on Legal and Constitutional Affairs report. It was also reflected in the bill proposed in 2010 in the Commonwealth Parliament by Senator Brandis. One curious consequence of the approach of this bill is that one might have the interesting position of an informant, client or patient giving exactly the same piece of information to various professionals, with a widely divergent type of protection being available depending not on the identity of the informant or the nature of the information but on the type of professional to whom the information is provided. That stems from selecting only one type of relationship to benefit from this additional protection.

I remember that a number of years ago there was discussion in this place—and no doubt in the other place—about protections for, and confidentiality of, records of sexual assault counsellors arising from particular litigation. A more thorough and thoughtful consideration of professional confidentiality might have included thinking about that category of case and whether the current scheme, which was designed to meet circumstances arising out of a particular case, is adequate, whether it should be reinforced, and whether it is still meeting the circumstances that led to its creation. These are reasons not to oppose the bill but to indicate that an opportunity may have been lost if there is more detailed consideration of these matters. The second aspect on which the bill does not go far enough—this is the subject matter of the amendment I will move in Committee—is the definition of "journalist". The bill's definition of "journalist" is:

> … a person engaged in the profession or occupation of journalism in connection with the publication of information in a news medium.

This accords with the definition originally contained in both the Wilkie and Brandis bills in the Commonwealth Parliament. However, it is different in material ways from the definition eventually adopted by the Federal Parliament. This bill does not go as far as the Commonwealth provision. The Commonwealth Evidence Amendment (Journalist Privilege) Act 2011 defines "journalist" as:

> … a person who is engaged and active in the publication of news and who may be given information by an informant in the expectation that the information may be published in a news medium.

This is clearly different from and broader than the formulation in the bill currently before us, although it is not as broad as some commentators may have suggested. There are two serious issues here. First is that the Government, in putting forward the bill, is rejecting national consistency and uniformity in evidence law. National consistency is not essential in every area but there is a powerful argument for it in relation to evidence laws and the confidentiality protections. I also note the irony of the current Government having insisted upon the harmonisation of occupational health and safety laws so recently in this place but not being able to do so in relation to the evidence law.

The Hon. Dr Peter Phelps: Is there a pecuniary benefit that flows from having national consistency?

The Hon. ADAM SEARLE: It has been a long-term aim to standardise the rules of evidence in Australian jurisdictions. Indeed, it has been a standing item of the Standing Committee of Attorneys-General for some time. A previous speaker noted that New South Wales was the first partner with the Commonwealth in passing uniform evidence law. However, this bill rejects that approach. Indeed, the most dramatic thing about this bill is its rejection of uniform national rules of evidence. I note that the Government, in this bill, is doing something for which it criticised the previous Labor Government. On 6 October last year the then shadow Attorney General—the current Attorney General—and the architect of this bill criticised the then Government for not having the Federal position on shield laws. Specifically the now Attorney General said:

> Desirably, all States and Territories should adopt shield laws in order to ensure consistency in what is a national problem.

The passage of a few short months obviously changes things quite considerably for the Attorney General. The Government is now doing the opposite of what was said at that time. By way of this bill the Government is rejecting national consistency in this important area. The second serious issue is what the provision in the

current bill means. Presumably, the narrower definition in the present bill is about precluding protection for what is pejoratively called the blogs sphere and restricting them to what is often termed mainstream media. There are some problems with this. Certainly the bill does not exclude web-based journalism. It applies to any medium and is not restricted to print, radio or television.

Moreover the definition of "journalism" in the bill is not quite as narrow as anti-blogger advocates might hope. In a sense, there is circularity in the definition in the bill. A "journalist" is someone engaged in the profession of journalism, which is perhaps not the most helpful definition I have ever seen. However, journalists are not as easily identified as, say, doctors or lawyers. The regulation of the latter two groups of professionals makes their identification much easier and, of course, they are subject to quite detailed regulatory apparatuses. That cannot be said about journalists, so there is already a degree of ambiguity as to how wide is the definition because of the lack of precision in what the term means in the bill. I believe that there is an arguable case, even under the current provisions, of whether someone who merely does a semi-regular blog for token payment comes within the definition and thus has the benefit of the protections. So in that sense refusing to adopt the Commonwealth definition is closing the statute doors after the horse has bolted.

But even worse, those arguing for a narrower definition presumably do so because they think protection should extend only to serious professional investigative journalists. However, that is not the case in this bill. Clearly, this bill would extend protections to, for example, gossip columnists. Lighter, less serious journalism gets the same protection as more serious investigative journalism. One suspects that the greater use of the protections in this bill may well be by a journalist working in the media and pursuing celebrities, which is where some of the major emphasis lies in contemporary media. That is not to argue against the bill but to argue that the rationale for the narrow definition in the bill over the Federal model does not exist.

If it already includes gossip columnists, how can one exclude people on the web? If one relies upon the principles behind the legislation to protect whistleblowers when it is in the public interest to do so, the argument for the Commonwealth provisions are very powerful. The focus should not be on who makes what comment in public but whether it is in the public interest that the source be revealed. As I indicated earlier, I foreshadow that I will move amendments during the Committee stage to address the concerns on this side of the House.

[*The President left the chair at 1.03 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: In directing my question to the Minister for Finance and Services, I refer to an answer he gave yesterday in which he said:

> Everything we are doing is to support public servants in their role in delivering services to the public of New South Wales.

How does removing public servants' right to an independent industrial umpire support them?

The Hon. Penny Sharpe: Point of order: I am sorry to interrupt the Leader of the Opposition, but Government members are making so much noise that I cannot hear the question.

The PRESIDENT: Order! Does the Minister request the question to be repeated?

The Hon. GREG PEARCE: No, thank you. I had no trouble hearing it.

The PRESIDENT: Order! While I appreciate there was a lot of noise in the Chamber, rather than taking up the time for questions, as the Minister heard the question and so did I the Minister may proceed.

The Hon. GREG PEARCE: The New South Wales Liberals and Nationals wages policy is comparable to the wages policies of most State governments throughout the country. Indeed, I am advised by Treasury that the Federal Labor Government funds wage increases of approximately 2 per cent per annum. In

Victoria wage increases are limited to a target of 2.5 per cent and additional increases will be funded only by real productivity cost offsets. The Labor Government of South Australia has a target of limiting general government public sector wage increases to 2.5 per cent.

The Hon. Luke Foley: Yes, but they can go to an industrial commission.

The Hon. GREG PEARCE: I am coming to that. The Queensland Labor Government also has a target of limiting public sector wage increases—

Government members: To 2.5 per cent.

The Hon. GREG PEARCE: In Queensland government-owned corporations are able to provide additional increases only if they are funded by productivity savings. The Tasmanian Labor Government has a target of limiting public sector wage increases—

Government members: To 2.5 per cent.

The Hon. GREG PEARCE: Any additional amounts are funded from existing budgets. It is very disappointing to hear the hypocritical and misleading comments made by members opposite and their union friends. It should be noted that of the so-called 12,000 people who were supposed to have been assembled in front of Parliament House yesterday, apparently 7,500 were missing. They could not make it. Perhaps they were with Steve Whan, the shadow Minister for Resources and Primary Industries, Minister for Tourism, Major Events, Hospitality and Racing, and Special Minister of State. Where was he? Where was Whan?

The Hon. Luke Foley: Point of order: My point of order relates to relevance. The question was specifically about the right of public servants to an independent industrial umpire. The Minister is yet to address that question.

The PRESIDENT: Order! I remind all Ministers of the need for their answers to be generally relevant to the question asked.

The Hon. GREG PEARCE: The shadow Minister for Industrial Relations is here. She came to work. But where is Steve Whan? Do members recall that when Parliament commenced in May, Labor members had lots of worries about seniority. On this list in the upper House we have Luke Foley, Steve Whan, Penny Sharpe, and then Adam Searle is No. 4—and he is the Deputy Leader of the Opposition.

The Hon. Luke Foley: Point of order: Mr President, you reminded the Minister of the need to be generally relevant. I submit that he has ignored your ruling. He continually fails to answer the question that has been put to him.

The PRESIDENT: Order! I again remind the Minister of the need for him to give a relevant answer to the question asked.

The Hon. GREG PEARCE: I have concluded my answer.

MID NORTH COAST FLOODS

The Hon. DAVID CLARKE: My question is directed to the Minister for Police and Emergency Services. What is the Government doing to ensure that the State is able to recover quickly from the impact of natural disasters? What is being done to assist families who are affected by disasters?

The Hon. MICHAEL GALLACHER: I thank the Hon. David Clarke for his excellent and timely question. Events unfolding and that have unfolded on the North Coast highlight the need for the New South Wales Government to be vigilant in its preparations to respond to and manage the impacts from all disasters, whether natural or man-made. Today I have declared a further five districts to be natural disaster zones. They are greater Taree, Dungog, Port Stephens, Port Macquarie-Hastings and the Nambucca shire. They are additional to the four I announced yesterday, which were Kempsey shire, Upper Hunter, Clarence Valley and Bellingen.

Overnight the Manning River peaked. However, current evacuation orders still exist for parts of Wingham and Taree. The communities of Harrington, Crowdy Head and Manning Point currently are isolated

and will remain so for another three to four days. I am advised by Commissioner Kear from the State Emergency Service that all of the areas I have mentioned have incurred significant inundation, tree uprooting, flash flooding and road closures. Currently there are 14 river systems with flood warnings. Of those, the Hunter and the Manning rivers remain the current focus of operations today for the State Emergency Service.

As a result of those flooded river systems, the State Emergency Service has continued to issue evacuation warnings. Yesterday evacuation orders were issued in relation to Wingham Peninsula inclusive of Combine, Guilding, Queen Mortimer, Primrose, Isabella and Flett streets. An evacuation order also was issued for Taree west, Taree north, Chatham, Browns Creek and Dawson River caravan park yesterday. The evacuation order that was issued on Tuesday for the Kempsey central business district, Smithtown, Jerseyville, Kinchela, parts of Gladstone, Rawdon Island and Settlement Point are still in place.

More than 3,350 people have been asked to leave their homes and businesses. The State Emergency Service continues to assist affected communities. I understand that the Department of Family and Community Services opened seven evacuation centres in the affected areas to assist those who were evacuated. I am pleased to say that fewer than 100 people required assistance at those evacuation centres. I am advised by Commissioner Kear that the situation will continue to ease during today. To date the State Emergency Service has received over 1,400 separate requests for assistance from the community and businesses, and has successfully completed 52 separate flood rescues. The State Emergency Service has more than 300 volunteers currently in the field, supported by Fire and Rescue NSW and Rural Fire Service firefighters. Affected regions anticipate that all outstanding requests for assistance will be completed today. That is outstanding work.

The State department disaster plan and the New South Wales recovery plan sets out the role of the welfare services functional area in supporting individuals, families and communities to recover from disaster events. Regardless of the size of the disaster event, the New South Wales Government ensures that disaster welfare assistance helps people to get their lives back in order through the provision of emergency food, accommodation, clothing, personal support and financial assistance, including household contents and structural repair grants. These services are provided mostly in evacuation and recovery centres as well as door-to-door outreach centres in affected areas. We will continue to keep the House updated over the next week as further recovery developments roll out.

RENEWABLE ENERGY

The Hon. ROBERT BORSAK: My question without notice is directed to the Minister for Roads and Ports, representing the Minister for Resources and Energy. Is it a fact that the Productivity Commission has found that demands for renewable energy subsidies by The Greens have raised the cost of emissions reductions for little gain? What information does the Minister have about the impact of renewable energy subsidies on the cost effectiveness of complementary abatement measures, including wind and solar power, and a shift to biofuels?

The Hon. DUNCAN GAY: What an outstanding question. It is the question on the lips of just about every member in this Chamber. This is one of the most important issues that affect how people will pay their power bills across New South Wales. Who is contributing to the cost and what are we getting for that increased cost? What is it doing to save the planet? What is it doing to save our pensioners, small businessmen and farmers on a daily basis? Are we getting anything substantial from all of this? That is the crux of the Productivity Commission report. As tempted as I am to pin my ears back and weigh into this matter—

The Hon. Mick Veitch: You have on a green tie, so you might as well.

The Hon. DUNCAN GAY: It is my green tie. It is the only thing mitigating my comments. I could be well and truly termed a sceptic about wind power. As I have indicated on many occasions to my community, government intervention has caused a division amongst good people on both sides of the debate. On one side are farmers accepting the incentives to make money out of wind farms—money that is more secure than world commodity markets—and on the other side are other farmers and people whose lifestyles are impinged upon by this scheme. We remember the great report and recommendations from the Legislative Council committee chaired by the Hon. Ian Cohen. The committee pretty much supported my scepticism. I am wandering into areas that are well outside my portfolio, so before I am tempted to talk about rock crystal, chook entrails and similar matters, it is time that I refer the matter to the appropriate Minister for a detailed response.

INDUSTRIAL RELATIONS LEGISLATION

The Hon. ADAM SEARLE: My question is directed to the Minister for Finance and Services. Will the Minister table any advice received from the Crown Solicitor or the Solicitor General on the Industrial Relations Amendment (Public Sector Conditions of Employment) Bill?

The Hon. GREG PEARCE: If the Deputy Leader of the Opposition would like to identify the advice he seeks, I will consider it.

The Hon. ADAM SEARLE: I ask a supplementary question. The question asked for any advice the Minister received.

The PRESIDENT: Order! That is not a supplementary question. It was a restatement of the original question.

ROAD FLOOD DAMAGE

The Hon. MELINDA PAVEY: My question is directed to the Minister for Roads and Ports. Will the Minister provide a further update on the effect of recent heavy rain and flooding on the State's roads, particularly affecting the mid North Coast?

The Hon. Mick Veitch: John was going to ask the question.

The Hon. DUNCAN GAY: I have been asked a question not by my favourite Parliamentary Secretary but by someone who lives on the mid North Coast and who is affected by the current weather conditions. It is important for the local people to understand that. Extreme weather conditions in northern New South Wales have resulted in significant road closures, notably on parts of the Pacific Highway.

[*Interruption*]

This really is a matter of importance and the pettiness of Opposition members should not be counselled during my answer. 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 floodwaters. The Pacific Highway remains closed this morning between Port Macquarie and Clybucca, a town just north of Kempsey on the State's mid North Coast. The highway is expected to remain closed at this location for several days.

In some developing news, today the highway has been reopened between Macksville and Nambucca Heads as well as in Corindi, a town north of Coffs Harbour. Motorists are being advised to avoid all non-essential travel in these areas and, where possible, to use the New England Highway as an alternative route. The following roads also remain closed by flooding: Hastings River Drive at Port Macquarie, Thunderbolts Way at Nowendoc, and Failford Road between the Pacific Highway and Tuncurry Road, Tuncurry. Meanwhile, north of Grafton the Bluff Point Ferry at Lawrence is out of service due to high water levels, as is the ferry at Ulmarra. Pleasingly, a number of major roads have been reopened in the past 24 hours, albeit they remain affected by water on the road, and drivers should take caution.

These roads include the Waterfall Way between Bellingen and the Pacific Highway, the New England Highway at Muswellbrook, the Oxley Highway and the Golden Highway at Whittingham near Singleton. A comprehensive communications strategy has been put in place to warn motorists to stay away from areas that are currently closed. The Transport Management Centre's Live Traffic website *www.livetrafficnsw.com.au* provides regular updates as well as regular media alerts. The Transport Management Centre Live Traffic website is the best for road information, not the Roads and Traffic Authority website. 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 travelling from the north use the New England Highway.

Traffic commanders are in place in flood-affected areas, as are strategically placed variable messaging signs to keep people updated on traffic conditions. I thank all those people within the emergency services, the Roads and Traffic Authority and the Transport Management Centre for their continuing hard work as we deal with these floods. I thank members from all sides of the House for their support. The New South Wales

Government has committed to ensuring that communities affected by natural disasters can get on with their lives and businesses as quickly as possible. Last year and earlier this year New South Wales was afflicted by severe flooding and natural disasters. [*Time expired*.]

CARBON TAX

The Hon. ROBERT BROWN: My question without notice is addressed to the Minister for Roads and Ports, representing the Minister for Resources and Energy. Is the Minister aware of a survey commissioned by the Australian Coal Association, which found that a carbon tax would raise the cost of production in some mines to the point that a number of those mines would become unprofitable and at risk of premature closure? Has the Minister's department undertaken any modelling in New South Wales coalmines to determine which mines are most at risk of premature closure? What impact would such closures have on jobs and regional communities statewide?

The Hon. DUNCAN GAY: I thank the member for another good question. It is the sort of question one expects an earnest and excitable member such as the Hon. Jeremy Buckingham to ask, but it never happens.

The Hon. Michael Gallacher: Why doesn't he go and see the Shooters and Fishers Party?

The Hon. DUNCAN GAY: Exactly. We have to rely on the Shooters and Fishers Party to care for the workers in the resource industries. The survey is important. I apologise for not having the information. I will refer the question to the Minister for Resources and Energy because the concerns raised are real for communities across New South Wales. People working in the resource industries will be concerned about the real situation and which mines are affected by the Labor-Greens coalition in Canberra.

POLICE RESOURCES

The Hon. MICK VEITCH: My question is addressed to the Minister for Police and Emergency Services. Is the Minister aware that the latest Bureau of Crime Statistics and Research figures show an increase in animal stock thefts, with 4,000 thefts in the past eight months? Will the Minister guarantee that there will be no decrease in personnel and resources for rural policing, particularly the stock squad, as a result of the Government's industrial laws?

The Hon. Duncan Gay: This is like a question the Shooters and Fishers Party asked a couple of weeks ago.

The Hon. MICHAEL GALLACHER: It is very much so. We are undertaking something that the previous Government refused to look at. The previous Government failed to acknowledge that for far too long it had neglected country and regional areas of New South Wales in relation to factors determining the allocation of police resources in New South Wales. Many country towns were victims of the previous Government's neglect, incompetence and sheer lack of preparedness. The previous Government failed to admit that it got it wrong for many country towns because of the issues raised by the Hon. Mick Veitch relating to livestock theft. Many police stations in country towns were closed because the previous Government refused to admit that its model of policing for country and regional New South Wales was not working in the best interests of country and regional communities.

The previous Government failed to recognise that despite the then Opposition's repeated claims that it got it wrong. We continued to be aware that in many country areas police were moved to larger centres and local towns that previously had police and a fully operational police station did not have the police who were needed to ensure some level of safety but, more importantly, a level of continuity between the local community and police investigation relating to livestock theft. That is why we are conducting an audit of police resources in the State. The audit is being conducted not by politicians putting pins on maps; I have asked a former Assistant Commissioner of Police to look at what is happening in country and regional New South Wales, as well as metropolitan areas, including the stock squad. The Hon. Mick Veitch knows and I have said before that the stock squad is crucial.

The point is that the Government will enable police to use its expertise and knowledge. The former assistant commissioner has worked in the Western Division of New South Wales and in many of the towns we are talking about in connection with stock theft. I have asked him to look at the resource allocation model to establish whether we can do better for country and regional areas of New South Wales. I have asked him to look

at that proposition. That will address the issue raised by the Hon. Mick Veitch about livestock theft in New South Wales. I stand by the commitment I gave during my answer to a question from the Shooters and Fishers Party some weeks ago. It is crucial that this area of policing not be ignored. I have asked former Assistant Commissioner Peter Parson to address the unique nature of policing in country and regional areas of New South Wales in the audit, and to direct his mind and understanding of country and regional New South Wales to ensure that is the case. The Hon. Mick Veitch wants a guarantee. I will come back to the member once the audit is completed and we can start to look at—

The Hon. Mick Veitch: Where's the audit?

The Hon. MICHAEL GALLACHER: That will be done at the time the former assistant commissioner completes it, but it will be thorough and extensive. I continue to have dialogue, as does the former assistant commissioner, with the Police Association on this issue.

NORTHERN BEACHES SEWERAGE SERVICES

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 what the Government and Sydney Water are doing to ensure that residents on the northern beaches are adequately served by water and sewerage services?

The Hon. GREG PEARCE: I thank the member for his interest in this matter. I can report that today I have announced that John Holland Group has been awarded the contract to build a $34.5 million upgrade to Sydney Water's sewage treatment plant at Warriewood on Sydney's northern beaches. This work is vital to meet the long-term population growth of the northern beaches. Warriewood sewage treatment plant serves an area of 25 square kilometres from Palm Beach to the north, Terrey Hills and Duffys Forest to the west and North Narrabeen to the south. The local population is expected to grow by about 11,000 or 17 per cent over the next two decades, from about 63,000 today to 74,000.

The Hon. Michael Gallacher: Can you name it after Eric?

The Hon. GREG PEARCE: It will be the Eric Roozendaal Memorial Sewage Treatment Plant. I will take that on board and see whether anyone is interested.

The Hon. Michael Gallacher: It will be one plaque that he never forgets.

The Hon. GREG PEARCE: No. We must ensure that services are available to meet the growth in the region and Sydney Water is a critical part of that. The capacity of Warriewood Sewage Treatment Plant needs to increase to reduce the likelihood of wet weather overflows to the environment and maintain the quality of Sydney Water services in the area over the coming decades. Construction is due to commence in September 2011 and is expected to be completed in 2012. In addition to this new investment, Sydney Water recently spent $14 million at the Warriewood plant to reduce odour impacts. Work included containment and treatment of odours from the treatment processes, and the construction of a vent stack for release of the treated air.

Sydney Water has also installed a co-generation plant at Warriewood Wastewater Treatment Plant. The co-generation plant uses state-of-the-art technology to utilise the biogas, a product of the wastewater treatment process, to produce electricity. Capturing some of the potential energy within our water and wastewater supply system is a cost-effective way of reducing the amount of power Sydney Water sources from the grid, potentially saving Sydney Water up to $2.5 million a year. This is also a win for electricity consumers who are under intense price pressure. The Warriewood sewage treatment plant upgrade is part of Sydney Water's commitment to spending $560 million over four years to reduce the incidence to sewer overflows in its 23,000 kilometre sewer pipeline network.

This upgrade will ensure the best possible services for local residents for the future. The success to date of these and other projects to support the health of Sydney's beaches is shown in the State of the Beaches report issued by the Department of Environment, Climate Change and Water. This can be found on the department's website. The report found that 19 of 21 northern Sydney beaches had 100 per cent compliance with beach water water-quality criteria, including Warriewood and north Narrabeen beaches. I also congratulate Rob Stokes, the member for Pittwater in the Legislative Assembly, and local residents who have long campaigned for improvements to water quality. Increasing development in the Warriewood valley and long-standing concerns about wastewater overflows into Warriewood beach mean that the upgrade of Warriewood Sewage Treatment Plant is fantastic news for local residents, beachgoers and all of us.

ARMIDALE PUBLIC HOUSING

The Hon. JAN BARHAM: My question is directed to the Minister for Finance and Services, representing the Minister for Family and Community Services. Will the Minister confirm whether Housing NSW has more than 100 empty houses in Armidale? If so, what is planned for those houses? Will the Minister also confirm whether Housing NSW has built more than 100 new one- and two-bedroom units in Armidale?

The Hon. GREG PEARCE: In the interests of everyone, I will take that question on notice.

PUBLIC SECTOR WAGES POLICY

The Hon. PENNY SHARPE: My question is directed to the Minister for Roads and Ports. How will the Minister justify not exempting emergency road workers from his punitive industrial relations legislation, especially given the essential work done in emergency situations, such as the current floods? Why are those workers different and less deserving of the exemption than police?

The Hon. DUNCAN GAY: This is an interesting question. Some people in this State have been wondering who the shadow Minister for Transport is. A lot of people are not aware but I will find out who it is.

The Hon. Melinda Pavey: Isn't it Greg?

The Hon. DUNCAN GAY: Earlier, by way of interjection, someone asked who the shadow Minister for Transport is. On Monday, John Stanley on radio 2UE—

The Hon. Eric Roozendaal: Point of order: While I appreciate that the Minister is a bit under the weather today, I still think he should stick to the very specific question that was put to him. Why is he not exempting hardworking emergency road workers in the Roads and Traffic Authority to respond to emergencies, in particular, at this time? Why is he going off on a folly, which is not within a bull's roar of what was asked of him?

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

The Hon. DUNCAN GAY: Everyone now knows who the shadow Minister for Transport is, but when John Stanley asked that question on Monday—

The Hon. Eric Roozendaal: Point of order: I am happy to take points of order all day. I appreciate that the Minister clearly does not know the answer but he is not answering the question that was asked, which was why emergency workers in the Roads and Traffic Authority were not exempt in the same way as police are exempt. I ask you to bring him back to the question and to be relevant.

The PRESIDENT: Order! I remind the Minister of the need for him to be generally relevant in his answer. However, I point out to the Hon. Eric Roozendaal that if he takes a point of order after a brief interval from the previous point of order it is almost impossible for me to determine whether the Minister was straying beyond the amount of generality that is permitted.

The Hon. Peter Primrose: Don't accuse us of paying disrespect when you give what should be a ministerial statement and he comes out with this. It is disrespectful answer to workers.

The PRESIDENT: Order! The Minister has the call.

The Hon. DUNCAN GAY: Clearly I have offended the member. He might be one of the few people in this State who knows who the shadow Minister for Roads and Ports and the shadow Minister for Transport are, although no-one on John Stanley's program knew. I refer now to the question that was asked about exempting emergency road workers in the Roads and Traffic Authority. Our preference was to apply the wages policy to all public servants including police, members of Parliament and senior bureaucrats. As we have always said, the numbers in the upper House mean that sometimes we will have to make changes to our policies. That is the case in relation to our wages policy and that is why they have been exempted. Our policy is clear: we will allow 2.5 per cent wage rises across the public service and rises above that level will need to be offset by productivity gains. This is the same policy that Labor had in place for the past four years. The only difference between our policy and Labor's policy is that we will deliver it. [*Time expired.*]

KIAMA POLICE STATION

The Hon. WALT SECORD: My question is directed to the Minister for Police and Emergency Services. Given that the member for Kiama states on the Liberal Party website that he is determined to deliver a 24-hour police station at Kiama, when will it be delivered? How many police will be taken off the street to staff that station or how many additional police will be provided for that service?

The Hon. MICHAEL GALLACHER: What I like about the member for Kiama is that he, unlike the previous—

[*Interruption*]

I would not say that. The member for Kiama is fighting hard for his constituency. He has an outstanding relationship with his local police. It is fair to say that our local members have a preparedness to stand up for priority issues, unlike members opposite who refuse to stand up for anything. Obviously, Opposition members, in particular, the Hon. Walt Secord, have failed to listen to what I have already said, that is, that an audit of police resources is occurring in New South Wales. If he spends time with the Hon. Mick Veitch, who raised issues relating to stock, he will recognise that this audit applies not only to areas in western New South Wales but also to regional areas such as Kiama. The audit is designed to obtain a better understanding of the needs of communities such as Kiama and other parts of New South Wales to ensure consistency.

The member for Kiama is making clear his priorities in relation to police in his electorate, something from which he has never shirked away. It would be good if the Hon. Walt Secord took time to meet with the member for Kiama to get a better understanding of his community's needs instead of asking questions about an area that I suspect he has never visited. It is shame that the former Government did not realise that outside of Newtown or Marrickville, important though they are, there is a whole State called New South Wales. New South Wales has long suffering country and regional areas that were neglected in the allocation of police resources.

Former Ministers, including the former member for Kiama who was the Minister for Police for about three days, never took the time to go outside the inner west—Newtown, Marrickville and areas such as that. For them country New South Wales was Centennial Park. That was as close as they got to the bush. They were not prepared to travel to those areas and speak to the communities. I encourage the member for Kiama to keep fighting for his community, as he has been doing. There will be a transparent approach to the allocation of police resources. When the audit is completed, people will have an opportunity to participate in the discussion as a result of that much-needed and overdue audit.

The Hon. WALT SECORD: I ask a supplementary question. Will the electorate of Kiama get a 24-hour police station? Yes or no?

The PRESIDENT: Order! That is not a supplementary question. It is a restatement of the original question.

POLICE OPERATION STAY ALERT

The Hon. RICK COLLESS: I direct a question to the Minister for Police and Emergency Services. Can the Minister inform the House of the June long weekend road toll and police operations to encourage safe driving over the long weekend?

The Hon. MICHAEL GALLACHER: The long weekend operation was important, particularly in relation to the Opposition, as it was called Operation Stay Alert. The former Labor Government should have been alert regarding policing resources in New South Wales over its 16 years of neglect. The Opposition is continuing to acknowledge that there needs to be a better way of providing police resources in this State. On the Queen's Birthday weekend there was, as there will be on all holidays now, an approach that is different from that taken by Labor, which ignored the expertise that exists with the New South Wales Police Force on how to deploy resources in the suburbs, highways and roads of this State, not just for those with holiday destinations but right around the State. This will drive down the risk of motoring accidents and road trauma.

Last weekend's risks were greatly increased by heavy rainfall throughout much of the State and bad driving conditions on many roads. We know that police are extra diligent in enforcing safe driving during

holidays when risks increase with bad weather and drivers are travelling long distances. This June long weekend police conducted their yearly road safety blitz, Operation Stay Alert, running from Thursday night through to Monday night. Double demerit points applied for all speeding, seatbelt and helmet offences during that period. Police designed Operation Stay Alert to deter road users heading for a weekend break from engaging in dangerous, reckless or callous driving activities, especially when the rain was heavy and visibility was poor.

Despite the appalling conditions in many areas, I am pleased to say that the number of accidents and injuries were down on last year's total for the weekend, although still appallingly high. There were 643 major crashes with 197 persons injured, a reduction of 20 crashes and 43 injuries on last year's figures. But, tragically, there were two deaths over the weekend. My sympathies go out to the families of those two people. One accident occurred in Tahmoor and the other in Balmoral, in the Southern Highlands. Both are being investigated. Members might be questioning that figure and thinking, "We thought there were three deaths." There was the death of a young man, whose body was pulled from a submerged car after it crashed into a pond at Kogarah. I understand that death was not included in the long weekend road toll because it did not occur on a public road.

While any death on the road is indeed a tragedy, I am pleased that this year there were four fewer deaths on the long weekend than there were on last year's long weekend. I know that police were out in force trying to ensure that drivers slowed down, did not drink and drive and kept their seat belts on. Police conducted 152,955 breath tests during Operation Stay Alert, charging 309 motorists with drink-driving. This is 211 fewer than last year. Police also issued 4,460 traffic infringement notices for speeding—not including those from fixed speed cameras—and a total of 7,719 infringement notices in all. The total number of infringements was up from last year, but it was pleasing that speeding infringements were down by 1,435. That is partly due to the different approach to deployment of highway patrols in New South Wales. We will continue to see that over time, as motorists become more aware of the high visibility of highway patrols.

It is also fair to say that because of bad weather many drivers would have reduced speed. This operation was an encouraging result for what can best be described as a wet and miserable long weekend. The O'Farrell Government is committed to assisting police in this important task. Road safety is the responsibility of every motorist, and the Government will continue to drive that message in New South Wales. [*Time expired.*]

PERSONAL LOCATOR BEACONS

The Hon. PAUL GREEN: My question without notice is addressed to the Minister for Police and Emergency Services. Is the Minister aware that the Blue Mountains National Park covers a quarter of a million hectares and, like the Shoalhaven, has some of Australia's largest networks of walking tracks? Is the Minister also aware that between 2004 and 2007 nearly 400 people were reported missing in the Blue Mountains and surrounding areas, and that this led to 200 search and rescue operations, placing a massive burden on resources? Is the Minister further aware that, at a cost of approximately $500 each, a personal locator beacon can offer the advantage of precise location information so that rescue authorities can deploy appropriate resources more quickly? Is the Minister also aware that only 25 personal locator beacons are offered around the Blue Mountains and surrounding areas, on a first come first serve basis, and that these devices often run out during school holidays and long weekends? Given those findings, are there any provisions in the Minister's budget to purchase more personal locator beacons for police stations around the Blue Mountains and other national park areas, or can the Minister inform the House whether initiatives exist to encourage bushwalkers to purchase their own personal locator beacons?

The Hon. MICHAEL GALLACHER: During the election campaign I had the good fortune to be taken by the current member for Blue Mountains, Rosa Sage, to Springwood police station. That gave us an opportunity to speak to police there about the devices to which the member referred. There is an issue related to the number of these devices that those police had. I have not had a submission made to me from the police about the need for additional resources in that regard. I would be happy to look at it if police were to make a submission. I learned from that visit that these devices are provided free of charge for weekend bushwalkers. Bushwalkers need only go into the police station to be issued with the device that they can take with them when bushwalking over the weekend. This is a great resource that police provide free of charge. The bigger question is to educate those who go bushwalking in the Blue Mountains.

The Hon. Duncan Gay: My son is a fly fisherman, and he and his mates have their own personal locator beacons.

The Hon. MICHAEL GALLACHER: That is a case of an experienced bushwalker or fisher who understands the need to purchase these devices as essential equipment to use in pursuit of their pastimes. Right around the State people involved in pastimes that take them into isolated areas that potentially have a degree of risk—and shooters are such people—understand the need for these devices. People involved in such activities act reasonably and sensibly because they recognise the element of risk associated with their activities. They also recognise the need to ensure that emergency services response time to an emergency is not wasted. Honourable members opposite do not want to recognise that those who participate in sports, pastimes or activities in isolated areas are prepared to undertake these important measures at their own cost.

It is also important to recognise that there are those who, for whatever reason, will decide that they want to go fishing or go walking in an isolated area. Quite simply, they need to be better educated and know that these devices are available to them. This is a very sensible approach taken by police. I am sorry that members opposite do not regard this as such a serious matter. I thank the member for raising it. If he has any advice or any submission from the Police Force related to additional police resources, I am happy to look at it and to report back to the member.

BOATING SAFETY

The Hon. CATHERINE CUSACK: My question is directed to the Minister for Roads and Ports. Will the Minister update the House on boating safety?

The Hon. DUNCAN GAY: This is an important question following the events at the weekend. It was a tragic weekend on our waterways. Following dangerous surf conditions and gale-force winds, plus cold and wet weather, three people are missing, presumed drowned. A teenage girl is missing after the boat she was in capsized on Lake Macquarie on Saturday 11 June and two men are missing after their boat was swamped on Sunday 12 June on the Hawkesbury near Wisemans Ferry. On Thursday 9 June, a NSW Maritime boating safety officer found the body of a man washed ashore in Middle Harbour not far from an abandoned 10-metre yacht that was aground at Sugarloaf Bay. In each instance, bad weather created a situation of heightened risk. New South Wales police are investigating these matters to determine just what happened. However, in each case, I understand that, sadly, none of the people wore a lifejacket. On behalf of the House I would like to extend our sympathy to the families of all those involved in these tragic incidents.

Boating is a popular pastime and a passion for many people. Prior to this past week's series of tragic incidents, New South Wales was well on its way to recording the best results in boating safety on record. Last week NSW Maritime issued warnings about dangerous boating conditions and launched the enforcement and education campaign Operation Cold Water. This campaign was a statewide effort over the long weekend to raise awareness of hypothermia and to remind boat users of new lifejacket laws. It is now law in New South Wales to wear a lifejacket in a variety of situations of heightened risk—for example, children under the age of 12 and anyone boating alone or at night when in a boat less than 4.8 metres must wear a lifejacket. It is also a skipper's responsibility to ensure that everyone is wearing a lifejacket at times of heightened risk, including when crossing bars.

A lifejacket cannot save your life unless you are wearing it. I urge all boaters to put their lifejackets on, especially when the conditions are less than ideal. We will continue to work to get this important message through to everyone who is planning to use our waterways. Dangerous seas, adverse winds and wet conditions may continue along the New South Wales coast into this weekend. Swimmers, surfers, skippers and especially rock fishers need to take care and to check the conditions before heading out by keeping an eye on the media, as well as by checking the NSW Maritime website for live webcam footage, maritime alerts and weather forecasts. Boating is a fantastic recreational activity but it does have its dangers, which is why I implore everyone to take note of weather warnings and conditions before going out on the water and, as honourable members know, please wear a lifejacket.

SHENHUA WATERMARK COALMINE

The Hon. JEREMY BUCKINGHAM: My question is directed to the Minister for Roads and Ports. Has the Minister or his department been involved in any meetings with Shenhua or its representatives in relation to exporting coal from the Shenhua Watermark project from Port Kembla?

The Hon. DUNCAN GAY: I thank the honourable member for his question and I acknowledge that the anger management counselling is working.

The Hon. Sophie Cotsis: Are you running it?

The Hon. DUNCAN GAY: I could run it any time. I am always calm and on top of things. The direct answer to the question is no.

SANCTUARY POINT POLICE STATION

The Hon. LYNDA VOLTZ: My question is directed to the Minister for Police. I refer to calls by the member for South Coast for a new police station at Sanctuary Point. Will this new police station be built and, if so, when?

The Hon. MICHAEL GALLACHER: I had the great pleasure of going to Sanctuary Point some time ago and meeting with local residents. They are fantastic people. They want to see a police presence in their town. Mr President, I am sure you are very familiar with Sanctuary Point. It is about time members opposite recognised that the days of Labor are gone—the days when politicians put pins in maps and based decisions upon their electoral requirements and their factional interests rather than the interests of long-suffering communities. That is why we have commissioned former Assistant Commissioner Peter Parsons to conduct an audit of the resource allocation throughout New South Wales so that communities such as Sanctuary Point and Kiama and police in regional and country areas who are concerned about stock theft can finally have confidence that the Labor Party's grubby approach to the politics of policing is well and truly dead, once and for all.

I have indicated to police that we are going to ensure that in future communities and police will know what factors determine where their resources are located and what additional resources will be needed in growth areas. I would be surprised if the Hon. Lynda Voltz has been to Sanctuary Point, but that community used to have a police presence working in the Shoalhaven. If you went there you would occasionally see police addressing problems of antisocial behaviour, in particular, and especially crime committed by young people. Of course, when you visit that community now people say they do not see police as they did in the past and that the model of policing has failed communities such as the Shoalhaven and other areas in country and regional New South Wales. This side of politics has listened to them and this side of politics is now prepared to work with police experts to ensure we find a better way so that a significant police presence in communities such as Sanctuary Point and others is a normal and permanent feature.

Elderly people in communities like Sanctuary Point get quite emotional about the fact that they are scared to leave their homes at night. They were scared to turn up at meetings. People approached me in the car park and told me that they were scared to go to meetings because they had to walk home in the dark. This is a community that the previous Government, now the Opposition, continued to ignore. Yet they want us, in the few short weeks we have been in government, to somehow wipe the slate clean of 16 years of neglect. They say, "Put police here, put police there." If we did that we would return to the days when Ministers appointed police based on the Ministers' electoral needs, not the needs of their communities.

[*Interruption*]

Members opposite are trying to drown me out because they do not want to be reminded of their neglect, their incompetence and their inability to look after the people of New South Wales. They can continue to interject because Hansard is acknowledging every word I say and my words will be the test of it—not the garbage members opposite continue to churn out. [*Time expired.*]

PUBLIC SECTOR WAGES POLICY

The Hon. JENNIFER GARDINER: My question is directed to the Minister for Finance and Services. Will the Minister outline to the House how the Government's public sector wages policy compares with the previous Labor Government's policy and that of other State governments around Australia?

The Hon. GREG PEARCE: I thank the honourable member for her question and commend her for interest in this area. The answer to the first part of the question is that the policy is the same as the policy of the previous Labor Government, with the exception that we will actually require the Industrial Relations Commission to apply the policy and savings will need to be achieved before they can be passed on in the form of higher wages. I would have thought the Labor Party would fully support this measure. After all, it initiated

the policy when it was in government. Let us recap how enthusiastic Labor was in government. Let us hear what the Hon. Eric Roozendaal said about Labor's wages policy. On 11 November 2008 in his mini-budget speech he said:

> I also confirm the Government's wages policy to require public sector wage increases over 2.5 per cent be met through productivity improvements that deliver cost savings. This will produce a smaller, leaner but more efficient public sector.

Thank you, Eric. On 12 November 2008 during question time in the Legislative Council the Hon. Eric Roozendaal said:

> We have a wages policy of 2.5 per cent and anything above 2.5 per cent needs to be found through appropriate cost saving measures in departments.

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

The Hon. GREG PEARCE: And the Hon. Eric Roozendaal's annual budgets afterwards repeated and confirmed the policy.

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

The Hon. GREG PEARCE: Of course, the Hon. Eric Roozendaal was enthusiastically backed by other members of the Government.

The Hon. Eric Roozendaal: Point of order: The honourable member is misleading the House. He has failed to mention that we support an independent industrial relations umpire.

The PRESIDENT: Order! That is not a point of order. The member will resume his seat.

The Hon. GREG PEARCE: Then in the Legislative Assembly on 3 June 2008 Morris Iemma—remember him—said:

> Whilst members opposite were sleeping there were 11 wage settlements under the Government's 2.5 per cent wages policy. Those settlements ranged between 4 and 5 per cent. They have all been consistent with the 2.5 per cent wages policy; that is, the agencies were funded by 2.5 per cent and those settlements of between 4 and 5 per cent were all funded via offsets.

If only that were true, but only about half the offsets were achieved. On 27 June 2007 Michael Costa kicked it off when he said on Channel 9 news:

> Certainly the Government will be holding its position which we believe is a very fair position.

That is the 2.5 per cent. So I wonder why Labor no longer thinks its previous position is fair. Our wages policy is also comparable with other wage approaches of other governments around the country.

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

The Hon. GREG PEARCE: I have mentioned that Victoria is 2.5 per cent. South Australia, Queensland and Tasmania are also 2.5 per cent.

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

The Hon. GREG PEARCE: It is astonishing that this mob have now changed their minds about the policy that they initiated, which was designed to ensure the economic wellbeing of this State. It is astonishing that they have now turned— [*Time expired.*]

GOVERNMENT DEPARTMENT RELOCATION

The Hon. MICHAEL GALLACHER: On 12 May 2011 the Hon. Robert Brown asked me a question without notice on behalf of the Premier in relation to Government department relocation. I am advised that the New South Wales Government is strongly committed to supporting economic growth and increased employment opportunities in regional New South Wales. Employment in regional areas is essential for sustaining viable and vibrant communities, and in this regard the Government's Jobs Action Plan prioritises 40,000, or 40 per cent, of the new jobs targeted for New South Wales for regional areas.

The Jobs Action Plan will work by providing a payroll tax rebate of $4,000 per full-time employee for the first 100,000 new payroll tax paying jobs created in New South Wales. Further, paying the rebate in two equal parts on the first and second anniversaries of the hire of a new full-time employee will encourage long-term, sustainable jobs. The New South Wales Government is also delivering on its commitment to establish a standalone Department of Primary Industries in Orange, and the Government will continue to pursue further opportunities for decentralisation in due course.

SHENHUA WATERMARK COALMINE

The Hon. DUNCAN GAY: I have a supplementary answer to a question from the Hon. Jeremy Buckingham earlier in question time. I hope the member was not confused by my answer. I was not refusing to answer the question. My department and I have had no negotiations with Shenhua over coal into Port Kembla. However, I am aware that Port Kembla, which is a separate authority, conducted negotiations during the term of the last Government.

Questions without notice concluded.

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

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

EVIDENCE AMENDMENT (JOURNALIST PRIVILEGE) BILL 2011

Second Reading

Debate resumed from an earlier hour.

The Hon. TREVOR KHAN [3.37 p.m.]: The object of the Evidence Amendment (Journalist Privilege) Bill 2011 is to amend the Evidence Act 1995 with respect to the disclosure of identities of persons who give information to journalists. If a journalist has promised not to reveal an informant's identity the bill provides that the journalist and his or her employer will not be compelled to disclose the informant's identity in any proceedings in a New South Wales court, unless the court determines otherwise in accordance with a specified public interest test. The bill also makes an amendment to the general provisions relating to professional confidential relationships privilege that was agreed to by the Standing Committee of Attorneys-General as part of the Model Uniform Evidence Bill.

It is notable that when one looks to this bill one sees that the need for reform was highlighted relatively recently by the decision of *The Crown v Gerard Thomas McManus & Michael Harvey*, which is but one in a long line of cases dealing with the issue of journalist privilege. The matter has also been dealt with at some length in various reports, including by the Australian Law Reform Commission in report 26, volume 1. It is worthwhile considering what the Law Reform Commission had to say. Commencing at paragraph 949 of the report, it states:

> It is frequently 'the people's right to be informed' that advocates of newsperson's privilege legislation have championed ... It is undeniable that the role of the press is a crucial one within our community. It acts as a watchdog on the executive, the judiciary and the bureaucracy as well as on private enterprise. Without its free functioning, Watergate scandals might well not come to light and new ideas and criticisms would be more readily suppressed ... Free speech invites dispute. A free press plays a central role in providing a vehicle for free expression of personal opinion and as a local defender of free speech. It is argued that the refusal of a privilege arrogates to the government and to powerful organisations greater scope for malfeasance. It is argued that so long as a privilege protecting disclosure of a source exists, those in important positions can with a reasonable degree of immunity give information to the media about the iniquities and corruption of the organisation responsible for them. Supporters of a newsperson-informant privilege frequently draw attention to the role of reporters and their informants in uncovering political scandals, abuses of governmental and multi-national corporate power and even the revelation of the attitudes and practices of subversive organisations.
>
> The question must be asked, however, whether the absence of a privilege would be likely to have a significant effect upon the performance of the role of the press. For example, is it likely that public debate is at present significantly inhibited and that abuses of government are notably left exposed in the absence of the privilege? How important is it to preserve the confidentiality of the information?
>
> • The Significance of Confidentiality.
>
> The newsperson, and most particularly the investigative journalist, uses information obtained in confidence in the process of assembling data for media stories ...

> The impact of the absence of a privilege, however, whether as to the information obtained or the identity of the informant, is difficult to assess. The absence of a privilege, and even for that matter enforcement of contempt proceedings against newspeople, need not discourage or prevent the provision of secret information for use by newspeople. The relationship between a newsperson and informant would necessarily, however, have to be less intimate and conducted through less personal channels. If an informant has information which he believes it is vital for him to pass on, he can do so in such a way that his identity is not revealed. Arguments which declare that the flow of confidential information would cease, were it to be absolutely clear that no privilege exists and that no promise by a journalist of confidentiality could be relied upon, are of very dubious worth. The problem with the informant concealing his identity is that a newsperson would have difficulty in substantiating the information given to him by an unidentifiable source. Thus, it may be said that the absence of a privilege might affect the quality of the information that a journalist is able to assemble.

Subsequently at paragraph 952, the Australian Law Reform Commission report notes:

> Many journalist associations have ethical mandates which compel confidentiality ... the absence of a privilege or other mechanism places the newsperson in an invidious position when confronted with the choice of obeying the mandates of the courts or the ethical dictates of his or her profession. The law is seen to require a breach of the code of ethics whatever the need for the evidence may be. There is also evidence that a considerable number of journalists would be prepared to go to jail in order to protect important source relationships which they believed ought to have been privileged but under existing law are not. Thus the contempt sanction possessed by the court will on occasions be seen as ineffective as well as harsh ... Under such circumstances, an unhealthy situation exists. Where a profession is prepared to disobey the mandates of the legal system and to suffer the consequences, rather than breach its own ethical rulings, at the least it must be said that law has not satisfactorily addressed the problem.

One must congratulate members of the journalist profession who have been prepared to maintain their ethical standards. Indeed, a code of conduct lies at the very core of the professions of journalism, law and many others, and members of those professions are prepared to honour the code, despite personal consequences. When a group such as journalists perceive they are achieving a common good and are prepared to maintain their ethical standard, it is incumbent upon members of Parliament to recognise the need to accommodate that higher good. That clearly is demonstrated in the decision of *The Crown v Gerard Thomas McManus and Michael Harvey*. In that case two journalists were prepared to maintain an ethical position despite the consequences. I note that the Deputy Leader of the Opposition has referred to a number of other cases in which journalists have been prepared to put their own physical and financial wellbeing at considerable risk in order to maintain and protect sources. My friends opposite will find, as they become more accustomed to being in opposition, that some statements by the Australian Law Reform Commission ring particularly true.

The Hon. Greg Donnelly: We will not get used to that.

The Hon. TREVOR KHAN: I do not say that with any hubris. The capacity of a journalist to rely upon information depends upon being able to know the identity of the source, verify it and crosscheck it in a variety of ways. That is fundamental not only to their ethical requirements but also to simply ensuring that the stories they present are credible and trustworthy. I must say that from time to time it has been my personal experience with a journalist or two that it has been fairly important to them to be able to crosscheck their stories. The tactical reality of a journalist ensuring that the information they receive is kosher, to use that colloquial term, is very important to ensuring that the information in some cases is disseminated in the public arena.

While I could quote at length various authorities referred to in the decision of McManus and Harvey, they have been admirably dealt with by the Deputy Leader of the Opposition so I will not repeat the arguments ad nauseam. However, I will deal with the practical reality of the scope of this legislation and the potential problem of expanding it too much. At this very moment, litigation before the Supreme Court involves apparently credible sources of information. If the definition of journalist, for example, is extended too far, we will see privilege that protects a journalist's source achieving a great wrong.

Clearly there are circumstances in court proceedings when there is an absolute necessity to be able to trace a line of information from source through to publication. Particularly in this age of the blog, a variety of material can be disclosed of a highly dubious and, in some cases, forged nature. If that type of material is allowed to be disseminated in the public domain and one of the sources in the chain feels they are protected, potentially information of a very dubious nature indeed would achieve far wider circulation than would otherwise be the case. In the Supreme Court case, dissemination of that style of dubious information achieves far greater credence than otherwise would be the case.

Despite some of the things that have been said about this legislation, it seems to me that this amending bill is interesting in some ways. Division 1A of the Act deals with professional confidential relationships privilege. As I understand it, that privilege will continue to exist and the new journalist privilege will be added

as division 1C. Essentially, this amending bill expands on a variety of privileges that already exist in the Act, which includes division 1B. Division 1B deals with a very important specific area of privilege relating to sexual assault cases. This other area of privilege has been added clearly in light of many years of litigation relating to the sacrifices journalists are able to and prepared to make for their profession. In that respect, this amendment is credible and worthwhile.

The bill is consistent with so much else that this Government is prepared to do to ensure an open and transparent approach to government. Whether it is whistleblower legislation or further legislation in respect to the Independent Commission Against Corruption, the implementation of this plan of action sees government in New South Wales more accountable to the people of New South Wales. That is a credible approach for this Government and again sets the standard for all States in their approach to openness and transparency, which is consistent with what occurred under the previous Coalition Government led by Nick Greiner. This is a pattern of consistent behaviour of opening up government, ensuring transparency and ensuring that people have the opportunity of knowing what is going on in government.

Compare that approach to that taken by the previous Government, which so often was slow and tardy. In only approximately the last six months of that 16 years of government was much-needed reform to whistleblower legislation introduced by the former Government. It has taken us only a matter of weeks to progress these matters further. This bill is a clear demonstration of the way this Government will behave throughout this term. Openness and transparency are the name of the game. I am sure we will see many pieces of credible and reformist legislation introduced into this place.

The Hon. JOHN AJAKA (Parliamentary Secretary) [3.51 p.m.]: I make a contribution to the Evidence Amendment (Journalist Privilege) Bill 2011. Schedule 1 to the bill provides, in effect, that a journalist and, in this case, an employer of the journalist, will not be compelled to give evidence in any court proceeding that would disclose an informant's identity if the journalist has promised not to disclose the informant's identity. Of course, the protection will not apply if the court is satisfied that the public interest in having the informant's identity disclosed outweighs both any likely adverse effect of the disclosure on the informant, or any other person, and the public interest in the communication of facts and opinion to the public by the news media. This journalist privilege is limited to persons who are engaged in the profession or occupation of journalism. The proposed provisions extend to information given by an informant before the commencement of the proposed Act, but will not apply in relation to a proceeding the hearing of which has already commenced. In other words, the bill contains no retrospective provision in relation to any current court proceedings.

Schedule 1 [4] amends section 131A of the Evidence Act to extend its provisions to include journalist privilege. The Act generally applies to the giving or adducing of evidence in court proceedings, including evidence of the contents of documents. Section 131A extends privileges in relation to the giving or adducing of evidence in court proceedings to the disclosure requirements made by subpoenas, pre-trial discovery and other pre-trial court processes. Schedule 1 [2] amends the general provisions relating to professional confidential relationship privilege, which also apply to journalists, in accordance with the agreement of the Standing Committee of Attorneys-General. A court will be required to take into account the public interest in preserving the confidentiality of protected confidences and protected identity information when it is deciding whether to make a direction that evidence may not be adduced because of professional confidential relationship privilege.

The definition of "journalist" in the bill appropriately limits the scope of the new journalists' privilege while at the same time remains sufficiently open to reflect contemporary journalistic practices. By contrast, the definition of "journalist" and "informant" adopted by the New South Wales Greens' bill would inappropriately expand the scope of the privilege to cover activities beyond the reach of what a journalist does. Senator George Brandis stated that the same definition of "journalist" that was moved also by the Australian Greens in relation to the recent Commonwealth bill:

> ... could mean any person who, for example, publishes material on the internet or contributes to a blog—any citizen who by any medium publishes something that might be considered newsworthy.

Senator Brandis concluded that the proposed amendments to the Commonwealth bill would expand the whole purpose of the bill massively beyond its original conception, which is to protect journalists' sources in defined circumstances. Senator Brandis said:

> It would not merely protect journalists and it would not merely protect news media; it would be carte blanche to anyone who wanted to publish anything anywhere that might be considered news.

It is important to remember that the creation of a privilege is about withdrawing information from a court. Senator Brandis further said:

> The basic proposition on which courts of justice work is that all of the relevant evidence should be placed before them so that they can arrive at an adjudication of a dispute ... fully informed of every relevant fact. That is integral to our notions of justice. Nevertheless, in certain circumstances we withdraw information from courts because there are other values served which are regarded as being more important in the scheme of things than the principle that courts should have access to all relevant information.

He goes on further:

> What this bill does is create a new category ... of information which may be withdrawn from the court ... We agree ... that in certain limited circumstances there is a case to be made for the protection of a journalists' source which acts as a qualification on the general principle ... that courts should have access to all relevant information. However, this Bill, like the commonwealth bill would inhibit far beyond the extent to which it is necessary the capacity of a court to be fully informed of every relevant material or material fact.

The new journalists' privilege to be inserted by the New South Wales bill complements the existing professional confidential relationships privilege in the New South Wales Evidence Act. That privilege applies to confidential communications with professionals, including journalists, in the context of their work. Senator Brandis said:

> We see this reform as an extension of the law that protects professional confidences and we accept that, because reliance on sources in the bona fide investigation and subsequent publication of news is integral to a journalist's work, the relationship between a journalist and a source ought, at least presumptively, be a privileged relationship.

I commend the bill to the House.

Mr DAVID SHOEBRIDGE [3.58 p.m.]: On behalf of The Greens I support the Evidence Amendment (Journalist Privilege) Bill 2011, but in doing so I shall note some reservations about some of the bill's shortcomings. As members in this Chamber will recall, some Supreme Court proceedings this year have really shown that New South Wales law is in need of substantial reform. Those proceedings involved the New South Wales Crime Commission, which had been seeking orders to prevent the Police Integrity Commission from holding public hearings into the goings on of the New South Wales Crime Commission.

It is apparent from the material that is now on the public record, through some fairly courageous work from investigative journalists, that the New South Wales Crime Commission has over a number of years effectively cut deals with organised crime figures on proceeds of crime proceedings. In effect, the State Treasury gets a proportion of funds that are suspected to have arisen from criminal proceedings and the criminal figures who have been acquiring those funds, allegedly through criminal activities, get another cut. A deal is done between the New South Wales Crime Commission and these criminal figures. Basically, the proceeds are cut in half or some proportion of half.

The Hon. Dr Peter Phelps: Point of order: I do not want to interrupt Mr David Shoebridge and I do not profess a great deal of experience in this place. However, I wonder whether he is straying a little close to the sub judice conventions traditionally recognised by the House.

Mr DAVID SHOEBRIDGE: I will be clear for the Hon. Dr Peter Phelps—

TEMPORARY CHAIR (The Hon. Natasha Maclaren-Jones): Order! Is the member speaking to the point of order?

Mr DAVID SHOEBRIDGE: I do not think it was a point of order, but I note the interjection and I will speak to it. The proceedings are now finished and no appeal has been lodged in relation to them, so it is not sub judice—that is, it is not the subject of the courts and the law.

The Hon. Michael Gallacher: Which matter are you talking about?

Mr DAVID SHOEBRIDGE: The proceedings between the New South Wales Crime Commission and the Police Integrity Commission.

The Hon. Michael Gallacher: The Standen trial is currently underway.

Mr DAVID SHOEBRIDGE: That is not what I am talking about. Let us be clear: I am talking about the proceedings brought by the New South Wales Crime Commission against the Police Integrity Commission

seeking to stop the Police Integrity Commission from holding public inquiries into the kinds of deals I referred to. I am not talking about a trial that is currently underway in relation to a particular officer of the New South Wales Crime Commission.

TEMPORARY CHAIR (The Hon. Natasha Maclaren-Jones): Order! I ask Mr David Shoebridge to be mindful and careful of the sub judice rule as he makes his contribution to the debate.

Mr DAVID SHOEBRIDGE: The practice had been implemented through consent orders made by registrars of the Supreme Court. The deals arrived at between the Crime Commission and various alleged criminal figures and the like had not been subjected to any public scrutiny and had not been brought before a court. The deals, whereby in large part criminal proceeds were effectively given the imprimatur of the Supreme Court and cleansed of any connection with criminal wrongdoing, should have been brought to public attention.

Two journalists had access to some material about what had allegedly been undertaken by the New South Wales Crime Commission and they published a number of detailed investigative pieces on it. The New South Wales Crime Commission took offence at this. It wanted to find out who had given the information to the two journalists, and in the course of the proceedings between the New South Wales Crime Commission and the Police Integrity Commission the Crime Commission issued a series of subpoenas to the journalists seeking their SIM cards, mobile phones, mobile phone bills and any notes they had of the information that had been published in their articles.

Clearly, the New South Wales Crime Commission was hunting to find out who had given the material to the journalists. Clearly, the commission suspected that someone in the Police Integrity Commission had handed over the material. The commission's intention seemed to be to uncover a whistleblower in the Police Integrity Commission who had effectively blown the whistle on a practice that should have had the whistle blown on it, a practice that should have been open to public scrutiny. I think many people in New South Wales would find it offensive that effectively criminal proceeds had been cleansed in a process whereby Treasury got a cut of those proceeds. That was the nub of the investigation.

The New South Wales Crime Commission issued subpoenas seeking to get the journalists' sources. That led to a public outcry, concern and eventually, due to public pressure—not due to any legal limitation or capacity at law to stop these kinds of subpoenas—the New South Wales Crime Commission determined not to press on with the subpoenas. But the case showed a complete lack of protection for journalists' sources under New South Wales law. The Deputy Leader of the Opposition, in his contribution, spoke about a number of other instances where journalists had been subject to directions and orders from courts to produce their sources.

Many journalists have courageously refused to produce their sources and have faced jail and other penalties from the courts for contempt because they are doing what journalists should do—that is, protect the confidentiality of their sources, protect the basic agreement they have with members of the public, people in corporations and people in public administration who provide material on the assumption that their confidentiality and identity will be protected. Journalists have repeatedly faced the wrath of the law in protecting their sources, but they should not be put in that position.

The law should protect journalists so that they can protect their sources. For journalists, bloggers and online writers to do their job and give the public information about the workings of government and other powerful interests in our society, they must have people willing to give them information on a confidential basis. Unless people can be sure that journalists will not be compelled to divulge the source of their information, the information sources will dry up and secrecy will prevail. A core function of news outlets—whether it is online or in print—is to hold the government of the day to account.

However, that function is severely limited if a government, through subpoenas such as those issued by the New South Wales Crime Commission or some other compulsory productive powers, is able to muzzle news reporters by demanding that they reveal their sources. Journalists' sources need to be able to speak freely without fear of retribution from their employers or governments. Without this freedom, people will not be willing to come forward and speak the truth in the face of government or, indeed, well-heeled private pressure. When a journalist faces the threat of court orders which, if disobeyed, include the potential—and we heard in earlier contributions the absolute fact—of jail for contempt for the simple act of standing up to a government agency to protect a confidential source, clearly the law is in need of reform.

This bill goes some modest way towards that reform. I am glad that the Government is moving promptly after I introduced a bill which effectively mirrored the Commonwealth provisions. A number of weeks

ago The Greens introduced a bill that provided for the protection of journalists' sources, the Evidence Amendment (Protection of Journalists' Sources) Bill 2011. The provisions of that bill effectively mirrored the Commonwealth legislation to protect journalists' sources that came into effect only this year. The Commonwealth Act provided a broad definition of "journalist":

> ***journalist*** means a person who is engaged and active in the publication of news and who may be given information by an informant in the expectation that the information may be published in a news medium.

Rather unfortunately, the definition of "journalist" in this bill is significantly narrower. Indeed, the definition is:

> ***journalist*** means a person engaged in the profession or occupation of journalism in connection with the publication of information in a news medium.

The relatively narrow definition of "journalist" in this bill is a person engaged in the profession or occupation of journalism. It is unfortunate that the State and the Commonwealth have adopted two starkly different definitions of "journalist" in the State's Evidence Act and the Commonwealth Evidence Act. Since 1995 New South Wales has been fairly consistent in having uniform evidence law with the Commonwealth. As someone who has practiced in New South Wales courts, I can say that it is a pleasure to practice in New South Wales courts, to move from State to Federal courts and to have an almost entirely consistent evidence Act between the Commonwealth and the State.

The degree of consistency between State and Federal courts in New South Wales is starkly contrasted when we move into Victoria, which has quite a distinct Evidence Act. In large parts its evidence law is governed by the common law, which is an untidy and often opaque way to govern evidence law. The same applies to other States, such as Queensland and the like. Since 1995 New South Wales has been well advanced in having parallel evidence laws between the State and the Commonwealth. It provides a real benefit to litigants in New South Wales and means that New South Wales litigants do not get a benefit from forum shopping between State and Federal courts because they may be able to get in some of their evidence in a Federal court as opposed to a State court, as happens in other States of Australia.

Uniformity between the evidence laws is a worthwhile ideal in litigation in New South Wales. It is a meaningful ideal and it is unfortunate that this bill deviates from that ideal. It does so for reasons that are, at best, modest. The reasons given by the Government for not providing the Commonwealth definition of "journalist" appears to be its concern that it might encourage law-breaking bloggers to engage in blogging and not be exposed to criminal prosecution because they may have protection under this legislation. The Government has not cited one example or given one instance of where an unlawful activity that is engaged by bloggers might be protected by this legislation.

It seems to me that the Government is stuck very much in a twentieth century mindset about the way news is delivered and disseminated. Increasingly, a large number of active people blogging, engaged part-time or in a voluntary capacity, as much for a community newspaper as it can be for an online blog, are not in the occupation or profession of a journalist. They are doing it part-time, perhaps after hours at work. It could not be described as the person's occupation or profession. If people are actively engaged in the dissemination of news, whether it is online or in print, their sources should be protected. They are putting out information and there is a tool for the dissemination of information. Clearly, their sources should be as protected as any person who is engaged in the profession or occupation of journalism.

The Hon. Dr Peter Phelps: Why? Are they covered by the code of ethics?

Mr DAVID SHOEBRIDGE: Because increasingly people are accessing news from those very kinds of people, from actively engaged bloggers—

The Hon. Dr Peter Phelps: Do they simply get the news from professional journalists?

Mr DAVID SHOEBRIDGE: —from actively engaged journalists who work in our community newspapers. Those people should have their sources equally protected as these rather opaquely defined persons engaged in the profession or occupation of journalism. If ever there was a phrase so ill-defined that it would likely produce litigation about where the bounds of the privilege lie, it is the phrase "a person engaged in the profession or occupation of journalism". Case law suggests that "occupation" does not necessarily require it to be paid. Does the Government intend to include both paid and unpaid work as a journalist in this legislation? Or does the Government intend to adopt a line of common law authority that suggests that "occupation" may need to be paid? What does the Government mean by "occupation"?

I am hopeful that it intends to mean a broad interpretation of "occupation". I am hopeful that the Government was aware of the case law when it introduced this law that said that "occupation" does not require someone to be paid and, in fact, it can be work that is done outside of their standard paid work. I am hopeful that that is in the mind of the Government. However, it is unclear from the agreement in principle speech of the Attorney General and the second reading speech in this Chamber whether the Government has expanded upon what it means by "occupation". I am hopeful it has an expansive interpretation. I would like the Parliamentary Secretary in reply to confirm that the Government has an expansive interpretation of "occupation".

Equally, what does the Government mean by the word "profession"? What does the Government mean when it uses the composite terms of "profession or occupation"? Does it mean they are entirely separate classes? Does it mean there is one class of professional journalists and there is another class of journalists who do it by occupation? What is meant by that term? Why does the State Government intend to put up such an opaque definition inconsistent with the Federal definition when the far better course, obviously, is both harmonisation and providing full-blown protection to all of those modern media workers? Why has the Government not adopted the Commonwealth definition, which does not have any of those complexities? It would not trouble the courts with having to go through century-long case law about the meaning of "occupation" and "profession" and would provide for clarity, harmonisation and greater coverage for what is otherwise a good bill.

Whilst The Greens will support this legislation because it moves it one step on and provides protection for those sources of journalists as defined, I am interested to hear the response of the Parliamentary Secretary and of the Government's intention with this rather opaque phrase. I foreshadow that The Greens will move amendments in Committee or support amendments moved by the Opposition that seek to make this law consistent with the Federal law, more expansive in its coverage and protect journalists operating in the twenty-first century. The Government seems to want journalists operating in the twentieth century.

The Hon. PAUL GREEN [4.17 p.m.]: The Christian Democratic Party supports the Evidence Amendment (Journalist Privilege) Bill 2011, the object of which is to amend the Evidence Act 1995 with respect to the disclosure of the identify of persons who give information to journalists. If a journalist has promised not to reveal an informant's identity, the bill provides that the journalist, and his or her employer, will not be compelled to disclose the informant's identity in any proceedings in a New South Wales court, unless the court determines otherwise in accordance with a specified public interest test. The bill also makes an amendment to the general provision relating to professional confidential relationship privilege that was agreed to by the Standing Committee of Attorneys-General as part of the Model Uniform Evidence Bill.

The Christian Democratic Party recognises the existence of good faith between journalists and their sources, as well as the identity of the source being kept silent. This good faith is balanced by the public interest. Although some may doubt information from confidential informants because they suspect it may be intended to mislead them; anonymous, off-the-record, or confidential material is often very valuable and in most cases essential to revealing the whole truth, as well as, often in the public interest to know the whole story. Defenders of confidential sources say they bring to light important stories that otherwise would never surface. If used carefully, they say unnamed sources are a valuable tool. In other words, confidential informants need to feel completely comfortable that their identity will not be disclosed so that the public is informed of the whole truth of a story, event or history. The Christian Democratic Party supports this bill.

The Hon. DAVID CLARKE (Parliamentary Secretary) [4.19 p.m.], in reply: I thank members for their contributions to this debate. The Opposition raised a concern that the Evidence Amendment (Journalist Privilege) Bill 2011 does not go far enough because it provides additional protection only for journalists and not for other professions. In particular, the Opposition notes that there are many other professional relationships in which there may be a public interest in protecting confidentiality, such as a counsellor and client, doctor and patient, social worker and client, and so forth.

The Opposition fails to recognise that the professional confidential relationships privilege already provides a general protection to confidential communications made in the context of professional relationships. However, in this bill the Government acknowledges that there are also some circumstances in which specific professionals may need a different kind of protection to that forwarded by the professional confidential relationships privilege. This is already recognised in the Evidence Act and the Criminal Procedure Act 1986 by the establishment of the sexual assault communications privilege, which creates a specific privilege for a specific class of professionals and their clients.

Similarly, journalists need a distinct privilege, based on the different kind of work that they do. Journalists need to be able to protect the identity of informants in circumstances where they obtain information

for publication on the condition that the source remain confidential. The privilege introduced by this bill is targeted at this very specific and narrow circumstance. It is unlikely that other professionals would obtain confidential information in the course of their work in the expectation of publication, because they do not publish. That is not their job. I note that the Opposition, while it raises these generalised observations about the Government's bill, does not propose any changes to this bill resulting from them.

This bill amends the Evidence Act 1995 to strengthen the protections available to journalists and their sources in New South Wales. It creates a specific journalists' privilege in the form of a rebuttable presumption that a journalist is not compelled to disclose the identity of an informant in proceedings in a New South Wales court. In addition, the bill strengthens the protections already available to journalists under the existing professional confidential relationships privilege by adopting the recent amendments to the Model Uniform Evidence Bill developed by the Standing Committee of Attorneys-General. I commend the bill to the House.

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

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 and 2 agreed to.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [4.23 p.m.], by leave: I move Opposition amendments Nos 1 and 2 on sheet C2011-039A in globo:

No. 1 Page 3, schedule 1 [3], lines 18-20. Omit all words on those lines. Insert instead:

journalist means a person who is engaged and active in the publication of news and who may be given information by an informant in the expectation that the information may be published in a news medium.

No. 2 Page 3, schedule 1 [3], line 21. Omit "a". Insert instead "any".

The first amendment deals with the definition of "journalist". What the Opposition has to say about this has been flagged both in the other place and in my contribution to the second reading debate. It alters the definition of "journalism" which currently the bill defines to mean a person engaged in the profession or occupation of journalism in connection with the publication of information in a news medium. I note the remarks of Mr David Shoebridge relating to uncertainty about the term "occupation" in particular. The definition of "journalist" that the Opposition seeks to insert is:

... a person who is engaged and active in the publication of news—

In that sense it is a broader definition, but also:

and who may be given information by an informant in the expectation that the information may be published in a news medium.

In a sense, it also provides that clear context in which the information is or may be shared, which is currently missing in the bill's definition of "journalist". The second amendment, which is a very minor one, seeks to change the definition of "news medium" from meaning "a medium" to meaning "any medium", recognising that there is simply more than medium for the dissemination of news or information. The principal reason for the amendment is to ensure consistency in evidence laws and in particular in this important area of confidential information protection to ensure consistency with the recently enacted Federal laws.

Currently, the bill would result in an inconsistency in this important area between New South Wales law and Federal law; and to promote comity between the two evidence Acts the Opposition strongly suggests that the law in New South Wales should be consistent with Federal law. We have heard no good or cogent reason, whether from the Parliamentary Secretary in this place or the Attorney General in the other place, as to why, in respect of this important area, the Government is proposing law that is not consistent with Federal law, when so clearly in relation to the occupational health and safety legislation that went through this Chamber only a few weeks ago harmonisation with Federal law seemed to be all the rage.

This is a serious issue. This law has been a long time coming. There has been a lot of discussion about shield laws for journalists, particularly in this place, for at least 16 or 17 years that I can remember, but possibly

longer. It is an important area, and it would be unfortunate if, through intransigence or some other reason, we ended up with definitions that are inconsistent and indeed clash with definitions in Federal law, giving rise to different case law and different decisions depending on which evidence Act a journalist or like person has the misfortune to come into contact with in connection with the legal system, and giving rise to different and inconsistent treatments in the law. That would be most regrettable. Although law-making is not perfect, and sometimes what Federal lawmakers create is not necessarily what everybody would want, nevertheless I have not heard any good or cogent reason for this departure from consistency with Federal law. I ask honourable members to consider carefully the two amendments proposed by the Opposition.

The Hon. DAVID CLARKE (Parliamentary Secretary) [4.28 p.m.]: The two proposed amendments would make the definition of "journalist" and "news medium" in the New South Wales bill identical to those recently adopted by the Commonwealth in relation to its journalist privilege. The more significant amendment is the change to the definition of "journalist". The proposed definition would substitute the plain English meaning of the term "journalist" with the formula:

> ... a person who is engaged and active in the publication of news.

There is no requirement that the person's activities be carried out in connection with his or her normal occupation or profession. This Government, of course, considered the definition adopted by the Commonwealth Parliament in relation to its journalist privilege. In Australia, a number of jurisdictions have established a substantially uniform statutory code for evidentiary law. The Commonwealth, New South Wales, Victoria, Tasmania, the Australian Capital Territory and Norfolk Island have all enacted evidence laws based on the Model Uniform Evidence Bill. This is a substantial achievement, and departures by individual jurisdictions from the Model Uniform Evidence Bill are not to be taken lightly. However, it is important to note that some jurisdictions have adopted some parts of the Model Uniform Evidence Bill only selectively.

As a consequence some differences between the model evidence law jurisdictions have already emerged over time. These include differences between jurisdictions in relation to the privileges established in part 3.10 of the Model Uniform Evidence Bill, which includes the new journalists' privilege. For example, the Model Uniform Evidence Bill includes a professional confidential relationships privilege [PCRP], a privilege that applies to professional relationships generally, including the relationship of journalists with their sources. The professional confidential relationships privilege is included in the New South Wales Evidence Act 2005 and in the Tasmanian Evidence Act, but has not to date been fully adopted in any of the other uniform evidence law jurisdictions.

The Commonwealth Evidence Act did previously include a version of the professional confidential relationships privilege that was limited only to journalists, not other professional relationships. However, these provisions were removed by the recent 2011 amendments introducing the new journalists' privilege. The parliamentary debates concerning those amendments indicate that the Commonwealth Government may consider introducing a general professional confidential relationships privilege in the Commonwealth Evidence Act in the future. So it is fair to say that the final form of privileges that apply under the Commonwealth Act is not a closed book.

Turning to the new journalists' privilege, changes to the Model Uniform Evidence Bill are subject to unanimous agreement between jurisdictions, until recently through the Standing Committee of Attorneys-General. However, the specific journalists' privilege recently introduced in the Commonwealth Evidence Act was not agreed between jurisdictions, is not currently included in the Model Uniform Evidence Bill and is not replicated in the evidence laws of any of the other uniform evidence jurisdictions. In that sense the Commonwealth was going it alone in introducing the new privilege at the Commonwealth level.

This is not to say that New South Wales should not pursue the goal of uniformity in relation to this new privilege wherever possible. But there is no sense in which New South Wales should slavishly follow the Commonwealth model for the sake of uniformity, at the expense of other public policy considerations, including legitimate concern about the expanded scope of the Commonwealth privilege. It is also important to note that the Victorian Government, like this Government, has announced that it also intends to introduce a specific journalists' privilege in substantially the same terms as the Commonwealth Act, but without adopting the unnecessarily broad definition of "journalist" adopted by the Commonwealth. The New South Wales Government has consulted with the Victorian Government in the drafting of the New South Wales bill so as to ensure, as far as possible, a greater degree of uniformity between the proposed New South Wales and Victorian journalists' privileges.

Perhaps the most important note to make is that the new journalists' privilege to be introduced by the New South Wales bill is, with one important exception, substantially the same privilege that has been introduced by the Commonwealth. Like the Commonwealth privilege, the New South Wales privilege establishes a presumption that, where a journalist has promised not to disclose an informant's identity, the journalist is not compellable in a civil or criminal proceeding to give evidence that would disclose the identity of the informant. Like the Commonwealth privilege, the New South Wales privilege does not establish an absolute prohibition on disclosure.

A court may order that the presumption does not apply if satisfied that the public interest in disclosure of the identity of the informant outweighs, firstly, any likely adverse effect on the informant or any other person and, secondly, the public interest in the communication of facts and opinion to the public by the news media and the public interest in the ability of the news media to access sources of facts. The New South Wales privilege also adopts the same definition of "informant" as the Commonwealth privilege. As a result the privilege will only apply in circumstances where the informant provides information to a journalist in the normal course of the journalist's work and where there is an expectation that the information be published in a news medium.

Of course, the significant exception to this is the definition of "journalist". The amended definition of "journalist" adopted by the Commonwealth and now proposed as amendments to the New South Wales bill, inappropriately extends the application of the new journalists' privilege. The definition substitutes the plain English meaning of the term "journalist" with the formula "a person who is engaged and active in the publication of news". There is no requirement that the person's activities be carried out in connection with his or her normal occupation or profession. As a result, the privilege could potentially apply to any person who happens to publish, in any form, information received from an informant. This expands the scope of the privilege beyond its legitimate public interest purpose. As Senator Brandis said when the same definition was moved by The Greens as an amendment to the new Commonwealth privilege:

> It would not merely protect journalists and it would not merely protect news media; it would be carte blanche to anyone who wanted to publish anything anywhere that might be considered news.

There is no good reason of public policy to allow such a wide application of the new journalists' privilege. It is important to remember that the creation of a privilege is about withholding otherwise relevant information from a court. That is, it is a direct incursion on the principle that, to the greatest extent possible, all relevant evidence should be placed before the court. The public interest in this principle is self-evident: justice requires that courts making decisions that significantly impact on the rights and interests of the parties should be properly informed of all relevant matters that could legitimately influence their decisions. Any law that has the result of withholding potentially relevant evidence from a court must be shown to serve some other important public interest. Such a law must establish an appropriate balance between the public interest in making relevant evidence available to the court and the other public interest that is said to justify withholding the evidence.

The public interest that is to be served by the new journalists' privilege is the public interest in promoting the free flow of information of important public interest through the news media. This is vital for the proper functioning of an open and transparent democracy. Where this requires that journalists be able to protect the confidentiality of their sources, this should be protected. However, it does not require that the scope of the privilege be expanded to such a degree that anyone should be able to publish anything and be entitled to withhold the source of that information from a court. The definition of "journalist" in the New South Wales bill strikes an appropriate balance between these two public interest goals. It makes clear the policy intention that only persons engaged in the occupational profession of journalism, as those terms are commonly understood, should be able to claim the privilege. The definition of "journalist" in the New South Wales bill is not unduly restrictive. It remains sufficiently broad to apply to a range of professionals who are engaged in the production of news.

The Attorney General in the other place said that the original Council of Australian Government's decision was consistent with this bill, and he is correct. The Attorney General said in the other place that the Federal Government caved in to Greens pressure, and he was correct about that. The Attorney General said in the other place that anybody could blog, including terrorists, and he is right about that. The Attorney General said in the other place that the Opposition's amendment stretches the meaning of the word "journalism", and he is correct about that. Anybody who wants to damage someone else knows that he or she can go to a blogger and will be protected. As the Hon. Peter Phelps pointed out, bloggers are not bound by any code of ethics. This amendment confirms the subservience of the Australian Labor Party to The Greens in the Federal Parliament and in this Parliament and the Government opposes the amendments.

Mr DAVID SHOEBRIDGE [4.38 p.m.]: I have heard some nonsense and twaddle in my time in this Chamber but that contribution from the Parliamentary Secretary would have to be the greatest load of nonsense and twaddle that anyone has put onto the record in this Chamber. The thought that if the Opposition amendments to adopt the definition of "journalist" that is contained in the Commonwealth bill were adopted it would somehow allow information to be provided to bloggers not for the purpose of publication in news only confirms that the Parliamentary Secretary and whoever wrote that briefing note for him do not understand the scope of the Act and how the Act operates. It only protects the identity of an informant, and "informant" has the same definition in the New South Wales bill as it does in the Commonwealth bill. Let me read it onto the record so that the Parliamentary Secretary has the scales lifted from his eyes in relation to his earlier contribution. The word "informant" is defined as follows:

> Informant means a person who gives information to a journalist in the normal course of the journalist's work in the expectation that the information may be published in a news medium.

A "news medium" is defined as:

> A medium for dissemination to the public or a section of the public for news and observations on news.

Therefore it would not cover the mythical terrorist that the Parliamentary Secretary pulled out of his imagination and it would only cover people giving information to journalists as defined, with the expectation that it will be used in the dissemination of news in a news medium. It will not open the great and terrible vistas that the Parliamentary Secretary has so mistakenly read onto the record in this Chamber. It seems as though Coalition members are concerned about limiting the scope of protection because there are some journalists they like and there are some journalists that they do not like; and there are some news mediums they think are worthy of protection and there are some news mediums that they do not think are worthy of protection. It is the usual slice and dice classing by the Coalition. There are groups of people that they like and there are groups of journalists that they like, in much the same way as there are some public servants they like and some public servants that they do not like.

Again it is not based on principle; it is based on prejudice. It is not based on an understanding of the fact that people under 30 often do not buy newspapers; they obtain their news through those kinds of people that this Government does not want to protect. Why does the Government not want to protect them? It seems fairly clear that they are just not the kind of journalists that the Government likes. It is not based on principle or on any rational understanding of the intent of the amendments. Worse still are the petty politics of the Parliamentary Secretary in opposing these amendments because of their source. His opposition to the bill does not appear to be based on the principle or the actual operation of the amendments; rather it appears to be because the amendments came from Senator Scott Ludlam, a Greens senator in the Commonwealth Parliament. It appears as though, ipso facto, the Parliamentary Secretary and those who brief him do not support these amendments. His objection does not relate merely to the merits of this legislation; rather, shabby and tawdry politics have been imposed on what otherwise is a good bill.

I said earlier that in large part I support the Government's moves. I support its moves to introduce shield laws, which came in response to a private member's bill I introduced on behalf of The Greens. It appears as though that move is in direct response to the legislation that I introduced. It is good to see the Government respond, albeit belatedly. However, it then said, in a display of petty party politics, that it would not support these good amendments because it is concerned about the fact that they were originally sourced from a Federal Greens senator which demonstrates that this Government is more interested in politics and pettiness than it is in genuine law reform. These good amendments will protect sources of information in the twenty-first century—not the twentieth century to which the Parliamentary Secretary appears to be so attached.

The Parliamentary Secretary put forward another inelegant argument and suggested that there is some benefit in having consistency between the New South Wales Evidence Act and the Victorian Evidence Act, and that somehow that is a superior outcome than having consistency between the New South Wales Act and the Federal Act. The obvious flaw in that argument—an argument that probably should never have been made—is that litigants and practitioners very rarely jump between New South Wales courts and Victorian courts. Inconsistency between the States is of much less relevance than inconsistency between State and Federal courts because practitioners regularly bounce between State and Federal courts. Consistency between State and Federal courts is a much higher order objective than consistency between various State jurisdictions.

What remains opaque is why the Parliamentary Secretary feels driven to have consistency with Victoria, even though harmonisation with the Federal law is the more practical outcome and would provide

legal, economic and cost benefits. Perhaps it is because of the paucity of reason in his reply. I strongly support the Opposition's amendments. These amendments would have been consistent with the private member's bill that was read onto the record some weeks ago, and they are consistent also with Commonwealth laws. These amendments are consistent with principle and should, on any fair review of the merits, be supported by a majority of members in this Chamber.

Question—That Opposition amendments Nos 1 and 2 be agreed to [C2011-039A]—put and resolved in the negative.

Opposition amendments Nos 1 and 2 [C2011-039A] negatived.

Schedule 1 agreed to.

Title agreed to.

Bill reported from Committee without amendment.

Adoption of Report

Motion by the Hon. David Clarke agreed to:

That the report be adopted.

Report adopted.

Third Reading

Motion by the Hon. David Clarke, on behalf of the Hon. Michael Gallacher, agreed to:

That this bill be now read a third time.

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

CONDUCT OF MAGISTRATE JENNIFER BETTS

The Hon. MICHAEL GALLACHER (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [4.58 p.m.], by leave: I move:

1. That the following Address be adopted and presented to Her Excellency the Governor, seeking the removal from office of Magistrate Jennifer Betts of the Local Court.

   To Her Excellency the Honourable Marie Bashir, Companion of the Order of Australia, Governor of the State of New South Wales in the Commonwealth of Australia.

   May it please Your Excellency—

   We, the members of the Legislative Council of the State of New South Wales, in Parliament assembled, have the honour to communicate to Your Excellency the following Address adopted by the House this day:

   That this House, having considered:

   (a) the Report of the Conduct Division of the Judicial Commission of New South Wales concerning complaints against Magistrate Jennifer Betts, 21 April 2011 and tabled in this House on 26 May 2011, and

   (b) the written response of Magistrate Jennifer Betts to the Report of the Conduct Division of the Judicial Commission, dated 12 May 2011 and tabled in this House on 30 May 2011,

   and having heard Magistrate Jennifer Betts at the Bar of the House, seeks the removal from office by Her Excellency the Governor, under section 53 of the Constitution Act 1902, of the Magistrate Jennifer Betts a Magistrate of the Local Court of New South Wales, on the ground of incapacity

2. That the Legislative Assembly be requested to adopt an Address in similar terms.

3. That a copy of the address made by Magistrate Jennifer Betts at the Bar of the House on Wednesday 15 June 2011, as to why she should not be removed from office on the grounds set out in the Report of the Conduct Division, be also transmitted to the Legislative Assembly.

This is a matter that involves conduct that occurred before the Fifty-fifth Parliament of New South Wales was elected on 26 March. It is not something that the Liberal-Nationals Government initiated. It is a result of an investigation by the Conduct Division of the Judicial Commission of New South Wales in response to several complaints lodged against Magistrate Jennifer Betts. There has been no involvement by anyone in this Parliament on both sides of the House with any aspect of the Judicial Commission process. The Government's only function is to ensure that the report of the Conduct Division of the Judicial Commission is tabled and the matter is given serious attention by all members of Parliament.

The Conduct Division is an important body that does not make findings of professional misconduct or incapacity lightly. The Conduct Division is a fact-finding body, which in certain cases, if it finds that a complaint or complaints are wholly or partly substantiated and forms an opinion that the matter could justify parliamentary consideration of the removal of the judicial officer from office, sends its report to the Governor and a copy to the Attorney General. In such cases, the Attorney General is bound to table copies of the Conduct Division's report in both Houses of Parliament. The report and other material statements tabled are intended to give direction to the Parliament regarding its deliberations. Before any conclusion is reached by the Conduct Division, there is a rigorous examination of complaints and then a hearing that allows the judicial officer to present his or her case. It is crucial to note that the jurisdiction of the Conduct Division is a protective jurisdiction; it is there to protect the public. The report addresses this point:

> The power conferred upon the Parliament to remove a judicial officer on the relevant grounds is in no way punitive, and the proceedings in the Conduct Division are not to be regarded as disciplinary. The jurisdiction is entirely protective. It is designed to protect both the public (from judicial officers who are guilty of misbehaviour rendering them unfit for office, or suffering from incapacity to discharge the duties of office), and of the judiciary (from unwarranted intrusions into judicial independence).

Last year the Judicial Commission referred five of 64 complaints examined to its Conduct Division. All related to two judicial officers, Magistrate Betts and Magistrate Maloney. Conduct Division referrals are rare and they occur only in relation to the most serious matters. There have been three Conduct Division hearings since 2006. The Chairman of the Judicial Commission is the Chief Justice of New South Wales. For consideration of complaints against Magistrate Betts, the panel members were the Hon. Justice Carolyn Simpson, the Hon. David Lloyd, QC, and Mr Ken Moroney, AO.

The Hon. Justice Carolyn Simpson was appointed a judge of the New South Wales Supreme Court in 1994, having been admitted to the New South Wales bar in 1976, and was appointed a Queen's Counsel in 1989. The Hon. David Lloyd, QC, was admitted to the New South Wales bar in 1971. He has since been admitted to practice in the Australian Capital Territory, Queensland and Victoria. He was appointed a Queen's Counsel in 1991. The Hon. David Lloyd was appointed an acting judge of the Land and Environment Court of New South Wales in 1995 and a judge of the same court from February 1997 until January 2010. He has also served as an acting justice of the Supreme Court of New South Wales.

Mr Ken Moroney, AO, is a former Commissioner of Police who joined the New South Wales Police Force in 1965. He was promoted to senior constable in 1974 and sergeant in 1981. He was promoted to superintendent in 1987. In 2002 he was selected as Commissioner of Police and then served with distinction under four Ministers for Police. He has received numerous awards, including the Australian Police Medal for distinguished service. The report of the Conduct Division indicates that the conduct exhibited during the incidents under investigation was similar to that before the Conduct Division hearing. The report states at paragraph 178 that Ms Betts' evidence before the commission was "of grave concern", and at paragraph 179 it states:

> The magistrate's attitude to her behaviour can be traced through the various responses she has made to the Commission, to what she has told Dr Phillips and Dr Klug, what is contained in her sworn statement, and the oral evidence she gave in the Inquiry.

The report also makes clear that her appearance before the Conduct Division occurred while she was under medication. At paragraph 184, in relation to evidence of the first matter in the O'Regan-Passas complaint, the report states:

> In cross-examination the magistrate demonstrated a degree of obstructiveness and inability, or refusal, to direct her mind to the issues about which she was being questioned. For example, she was asked if it were incumbent upon her as a magistrate to listen to an application made by an unrepresented litigant. That is a simple question with only one correct answer. She replied:
>
> > "It is not as simple as that ..."

In relation to the Farago complaint, at paragraph 192 the report states:

> Contrary to the position maintained by the magistrate, the Conduct Division is of the view that her treatment of Mr Farago was, indeed, discourteous. The discourtesy is exacerbated by the fact that the magistrate was, in fact, in error in believing that she has specified "well before" the hearing as being the time at which the authorities were to be provided. Had she listened to Mr Farago, she may have understood that he had not disobeyed her direction to be as she later perceived it. He was, as it happened, correct.

In relation to the Castle complaint, paragraph 200 states:

> She agreed that telling Ms Cooper to "shut up" involved preventing Ms Cooper from responding to the criticism that the Magistrate had just made of her. She agreed that that was inappropriate. However, when asked if that was in breach of her judicial obligations, she merely replied:
>
> > "That is not for me to judge."
>
> When pressed further on the same question she said:
>
> > "Well, that is another difficult question to answer what are judicial obligations. Yes by being rude, totally inappropriate, yes, definitely."
>
> Ultimately, when pressed, she did make that concession.

In relation to the Maresch complaint, at paragraph 208 the commission stated:

> These responses by the magistrate afford the Conduct Division little cause to believe that the magistrate has even the most basic appreciation of the judicial function. Even when confronted with incontrovertible evidence, in the form of sound recordings, of her misconduct, she failed to recognise or acknowledge the implications of that misconduct. The failure to recognise the pre-judgment convincingly established in the Castle and Maresch matters represents an incapacity to understand (and therefore adhere to) proper standards of judicial conduct. That incapacity is present and permanent.

The Judicial Commission also recounted Magistrate Betts' treatment in great detail and what insights Magistrate Betts gained from that treatment. It stated that the findings of the two psychiatrists, Dr Klug and Dr Phillips, were consistent. At paragraph 211 the report states:

> Dr Klug agreed with the proposition that the condition from which the magistrate suffers is a recurrent one, not in complete remission, and therefore it is more likely that she will have further episodes in the future than if she had no history of this kind of behaviour.
>
> The Conduct Division accepts the medical evidence that, from a psychiatric point of view, the magistrate has gained insight into her conduct. That insight was not apparent in her oral evidence. Certainly, absent from her evidence was any insight into the quality of her conduct measured against the standards of judicial propriety. Her evidence disclosed a worrying lack of appreciation of the judicial role, and, more particularly, of her established failings in that regard. The hostility that permeated each of the hearings under consideration also surfaced in the Inquiry.

The commission also makes an observation in paragraph 214 about references supplied on behalf of Ms Betts. It states:

> None of the judicial colleagues who provided statements was able to comment upon the magistrate's conduct whilst in court.

The commission said that the issue before the House is not one of competence or a failure to handle her mental condition properly, and states at paragraph 220, "the magistrate does, at times, function, and functions judicially". At paragraph 220 the commission says that its findings of incapacity were "because she has demonstrated a failure to understand quite basic concepts of judicial behaviour". At paragraph 158 the commission states:

> The Conduct Division considers that incapacity within the meaning of s53 extends beyond physical or mental incapacity caused by an identifiable disorder (such as senility). That emerges when the question "incapacity for what" is asked. In the view of the Conduct Division, it is incapacity to discharge the duties of judicial office in a manner that accords with recognised standards of judicial propriety. These standards include affording a fair hearing to all litigants, avoiding offensive remarks and bullying, and maintaining, in the court room, the decorum that enhances respect for the judicial decision-making process, and, accordingly, the resultant decisions, and, in general, the administration of law.
>
> Failure by a judicial officer to adhere to these standards will inevitably cause litigants and observers to lose faith in, and respect for, the decision-making process, and the resultant decisions, and bring the administration of justice into disrepute.

I urge all members to consider the report of the commission, give it due weight, and remember that the commission exists to protect the public, not to punish judicial officers.

The Hon. LUKE FOLEY (Leader of the Opposition) [5.02 p.m.]: I speak on the motion to consider the future of judicial officer Magistrate Jennifer Betts, who appeared yesterday at the bar of the House. I accept the Leader of the Government's statement that this is not a matter initiated by the Government. At the outset I state that Labor members will have a conscience vote on this matter. I understand that Government members

will also have a conscience vote. The following comments, therefore, are those of a private member. The Parliament's power in this matter is under section 53 of the New South Wales Constitution Act 1902, which states, in part:

> (1) No holder of a judicial office can be removed from the office, except as provided by this Part.
>
> ...
>
> (3) 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. Before us we have a report of the Conduct Division of the Judicial Commission to which the Leader of the Government addressed his remarks. It is important to note that that report forms an opinion that the matter could—I emphasise "could"—justify parliamentary consideration of the removal of the judicial officer complained of. Indeed, in its report the Conduct Division said:

> 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.

Indeed, we members find ourselves somewhat in the position that judicial officers are in every day: being required to consider and weigh evidence for and against the proposition and, on balance, reach a decision. I have formed the view that I cannot support the motion to dismiss the magistrate from office. I have looked at all the evidence and I listened carefully to the magistrate yesterday. In the Conduct Division's own words, the Parliament would need a convincing accumulation of instances for dismissal, and in my view there is not a convincing accumulation of instances for dismissal in this case.

Magistrate Betts has a long period of service in the practice of law. For eight years she worked in the local courts of New South Wales. She then worked in the Attorney General's Department and for many years in the Office of the Director of Public Prosecutions. She was a senior Crown counsel in Hong Kong. She spoke of service over 34 years. I found persuasive her submission regarding the sheer number of matters that a Local Court magistrate is required to deal with. I recognise that many of those matters are far from easy and that Local Court magistrates face an intense workload, and indeed intense pressure. They deal with difficult matters and with difficult individuals who appear before them.

Magistrate Betts submitted that in her 17 years on the bench she has dealt with around 50,000 matters. There are four complaints that the Conduct Division addressed in its report. I do not want to sound trite, but I suggest that all of us as members of Parliament would be complained about far more often than on four out of 50,000 occasions. However, we must take those four complaints seriously, given that they form the basis of the Conduct Division's report. I have examined all four complaints and I do not believe the findings of the Conduct Division's report on those four matters reach the requirement threshold for me to vote in favour of dismissing a judicial officer.

I see the Passas and O'Regan complaints as minor. I have never met Ms Passas. However, I am aware of her activities as a local councillor. She has a high media profile in inner western Sydney, where I live. Frankly, she has a reputation as a flamboyant and controversial local government office holder. I am not shocked that Councillor Passas could provoke somebody into an undiplomatic reaction. I am not shocked by that, and I do not see the Passas matter as in any way leading me to a view that there is misconduct on the part of the magistrate that could cause me to vote for her dismissal.

I have looked at the Farago matter. Yesterday Magistrate Betts admitted that she was discourteous to Ms Farago, and she has apologised for her discourtesy. But the Conduct Division did not find proven any misbehaviour on the magistrate's part in relation to that complaint. The Castle matter is of concern. The magistrate acknowledged to the House that she acted, in her words, in "a substantially inappropriate way". The last matter is the Maresch complaint. It was not a matter before the magistrate for substantive hearing but for mention. The magistrate volunteered that she should not have used the language or tone she did in that instance. She also gave an explanation about her exact use of words that gives me some comfort.

I turn to the issue of the magistrate's depression. I have some experience of dealing with people known to me who suffer from depression. I think society has come a long way in the past decade or two in dealing with people who suffer from depression. I believe it is possible for people who suffer from depression, when treated well and when found the right medication, to lead completely fulfilling and productive lives, including

productive working lives. I believe Magistrate Betts has gained insight into her medical condition. I do not know whether the report of the Conduct Division has assisted her in gaining some insight into her medical condition, but I accept, on the basis of her evidence and on the evidence from medical practitioners, that Magistrate Betts has her depressive illness under control and that the mere instance of a depressive illness on her part is not grounds in and of itself for removal from judicial office.

I believe a judicial officer who suffers from a depressive illness and who is receiving the appropriate treatment to deal with that illness can function effectively and properly as a judicial officer. So I have considered the evidence, the various paperwork, and the evidence of the magistrate to this Chamber yesterday, which, frankly, I found persuasive. I cannot bring myself to vote to dismiss her from office, and therefore I will be voting against the motion.

The Hon. TREVOR KHAN [5.15 p.m.]: In 1866 an emancipated slave, Frederick Douglas, said:

> Where justice is denied, where poverty is enforced, where ignorance prevails and where one class is made to feel that society is an organized conspiracy to oppress, rob and degrade them, neither persons nor property will be safe.

I approach this issue primarily—indeed, almost exclusively—with emphasis upon the needs of the State to ensure that justice is available to all in our community and that individual members of the public can be satisfied that they will receive just treatment before our courts. As I indicated recently, I spent a good deal of the 20-odd years of my professional career as a lawyer in the Local Court and about half of that time as a specialist advocate. In that time I had the pleasure of appearing before a range of magistrates, many of whom were excellent. Some were compassionate and thoughtful; others had very strong legal backgrounds. I acknowledge all of them for the work they have done. I have seen such magistrates work extremely long hours with busy lists before demanding practitioners and members of the public.

The Local Court environment is a demanding one for magistrates. Court lists are often very long and varied, and practitioners appearing before the Local Court range, in truth, from the eccentric to the just plain dull, from the young to the old, from the highly competent to those of questionable or immature abilities. As I also said recently, members of the public appearing in the courts are equally varied. Sadly, however, the courts—particularly the Local Court—see a preponderance of people who are poorly educated or who suffer from a variety of addictions and human frailties. Regrettably, too many of them are affected by a mental disability or condition. Too many who come before our courts have a limited expectation that they will receive a fair hearing.

Sadly, too many of them come before our courts with a perception that justice is available only to the rich, the powerful and the well educated. I say that in the context of practising in the country, where many clients in the Local Court are Aboriginal. Their experience before our courts over some 200 years has often involved appalling injustices being done to them. One of my goals in appearing in the Local Court was to demonstrate as best I could that that perception of injustice was wrong and that our Local Court system, and our court system in general, is capable of delivering a just outcome for all. It is with that essential need for our court to consistently and dispassionately deliver justice both in form and substance which brings me to consider this matter.

We are presented essentially with four complaints of conduct with respect to Magistrate Betts. In approaching this matter I place great emphasis upon the transcripts of evidence and the material contained in the Conduct Division report. I have to honestly say that I place far less emphasis upon what Magistrate Betts said at the bar of this Chamber yesterday. I make it quite plain, without criticism of her legal representatives in any way, that in truth if she did not come here yesterday and put on a good performance I would have been amazed. She is represented by both a very competent solicitor and a very competent counsel. In that respect the outcome in respect of the quality of the address yesterday was no surprise at all. That is not to say in any way that it counts against her. In my case, it just counts for little. My experience with so many in court, particularly if they had a half-decent and half-educated client, was that if they could not get them up to the mark they had done something wrong in a professional capacity themselves.

I will deal with my perception of events. I will give my conclusions as to the O'Regan-Passass matter. Personal violence complaints are the bane of most magistrates. We have seen them, with the passing of the legislation, take up an enormous amount of time in court lists, particularly in personal violence complaints as opposed to what I would describe as domestic violence complaints between partners. They so often are the fencing disputes and the strata title disputes that have now morphed into a form of litigation. There can be no doubt in a busy Local Court list the reaction of so many magistrates is something along the lines of, "Oh, my God. We've got to go through this again. How much time will it take up?"

Frankly, without any knowledge of the participants involved, I understand the reaction of the magistrate in respect of that matter. It is one of those, "It is going to take court time. We really don't need too much time being taken on it" matters. I have to say that the only relevance of that complaint and the 2007 complaint is that they are issues that arise outside the time when the magistrate was off her medication. In a similar facts sense they detract from the explanation of the 2009 issues that it is because the magistrate was off her medication that her behaviour was problematic, if I can describe it that way. Nevertheless, in any other sense I do not place great store on the matters in 2003.

In relation to the Farrago matter, the Local Court is a robust environment in so many circumstances. It is not the same as the District Court and it is certainly a far step from the Supreme Court. Magistrate Betts was wrong and she was intolerant in her approach. Nevertheless, Mr Farrago stuck to his guns and in a sense won the day. I place, in a sense, little weight on that except to add as an aside that the magistrate had a ground of full complaint. I have seen it even recently in another matter. The complaint was he had the authorities and kept them until the last moment. I am concerned when material is communicated to a magistrate but not to the other side.

Having appeared in what used to be called the old Police Court, I know why we never wanted to give material to prosecutors, particularly when they were the old sergeants. In many cases, the case would morph before your very eyes. Putting that issue aside, the basic position of any practitioner before the court is that if one communicates material, such as authorities, to a magistrate or any judicial official it is entirely appropriate that at the same time that material is provided to the other side. Her complaint in that regard, amongst all the others, in a sense, bile that she communicated in that relatively short period of time to Mr Farrago was in that sense justified. There was a degree of discourtesy in failing to provide the material to the sergeant. It should have been provided to the sergeant at the same as it was provided to the magistrate.

That brings me to the 2009 Castle complaint. Yesterday, quite properly, Magistrate Betts said she was "horrified" at her approach. Indeed, my reading of that could lead to no other conclusion: Her performance was horrific. As I said in my introductory remarks, it is the matter that gives me the most concern. Magistrate Betts' behaviour towards the young lady was entirely inappropriate and lacking in the level of behaviour that one would expect from a judicial official. I will add as an aside that there needs to be a constant reaffirmation with practitioners who appear before any court, but particularly before the local court, that they have an obligation to stand up for their clients. I acknowledge that we have only part of the transcript. My comments should not be taken as a criticism of Mr Castle, but I say that in the context that this speech may be read by the Law Society.

It is not a popularity contest with magistrates. At times—strangely, it has happened to me—magistrates take a view. If one does not stand one's ground one is failing in one's responsibilities to the client. On this occasion the young lady seemed to me to be left alone without a leader and the support that she required. As was pointed out yesterday, she had no case at all. The adjournment that was sought was plainly for the reason of simply buying a bit of time with her licence. I get a sense of the developing frustration of the magistrate in that regard as to why this matter got appallingly out of control.

Finally, I refer to the October 2009 matter of Maresch. I heard Magistrate Betts say yesterday that she did not deal with the matter to finality. If one reads the transcript one can understand why. Unlike the Castle matter, Mr Maresch stood up to the magistrate. I have read the comments with regards to "Oh dear" and then later on "Oh dear, oh dear" in the transcript. By that stage Magistrate Betts was pulling back from the position that she had reached. The reason she did not hear the final matter, in my view, is quite plain: she recognised that she had gone beyond an appropriate mark and disqualified herself for that very reason. In my consideration that is a plus and a minus.

The plus is that it showed an insight in that she had lost control and had failed to behave judicially in her approach to Mr Maresch. There was, in a sense, a level of understanding even in that period of time when she was not taking her medication that she had gone too far. I am left extraordinarily discomforted with regards to the matters. I am satisfied with the comments made in paragraph 98 in the Judicial Commission report as follows:

> Other than the Farrago complaint which was essentially of gross discourtesy and unfairness to a legal practitioner—

I will discount Farago in the sense of: well, it's tough in the local court, and solicitors really do have to learn to stand up for themselves, and I think Mr Farago did. I continue with the reference:

> ... the complaints are of conduct that call into question the impartiality of the magistrate, and, importantly, her capacity to discharge that most basic function of a member of the judiciary, to afford a fair, dispassionate and impartial hearing to litigants.

Yes, there is no doubt those issues are called into question. Yes, her performance on those occasions, particularly on the final two occasions, was inappropriate, and, particularly in the Castle case, inappropriate in the extreme. However, I am also somewhat persuaded by the comments at paragraph 208. I have jumped forward because this deals with Magistrate Betts' evidence before the Judicial Commission. I do not believe I am wrong when I say that I assume by the time that Magistrate Betts was appearing before the Judicial Commission she already had retained competent lawyers and competent counsel. Therefore, in the same way that one prepares a person for the likely sorts of questions that they will be asked—but certainly not providing them with the answers—one would have expected that she may have handled the matter better than she did. The comments made in paragraph 208 are these:

> These responses by the magistrate afford the Conduct Division little cause to believe that the magistrate has even the most basic appreciation of the judicial function. Even when confronted with incontrovertible evidence, in the form of sound recordings, of her misconduct, she failed to recognise or acknowledge the implications of that misconduct. The failure to recognise the pre-judgment convincingly established in the Castle and Maresch matters represents an incapacity to understand (and therefore adhere to) proper standards of judicial conduct. That incapacity is present and permanent.

I read that and I consider it, but I am not persuaded, on the basis of the material that is available to us, that that conclusion is entirely justified. I am concerned with some of Magistrate Betts' answers. I am concerned that in some cases it could be said that she was not fully contrite; that she was not fully forthright. But I am not convinced, on the basis of the material, that it can be concluded that she did not have an insight and that she did not have a recognition or acknowledgment of the implications of the misconduct. She did not go all the way, but she went a fair way in the concessions that she made. Therefore, I am not satisfied that there is an incapacity, on the basis of her evidence, that is present and permanent. I take into account that she was, if I could so describe it colloquially, off her medication in 2009. It is clear that she has now received a good deal of assistance from various psychiatrists, and I accept, on the basis of the material that is available to us, that her failure to take her medication was a significant cause of her problems.

I am left, therefore, uncertain in many ways as to the way forward. But I have to say that my perception is that the sacking of a judicial official is a significant step for us to take. In my view, in only extra circumstances should we go that far. The invitation for us to do so on this occasion, in my view, is an invitation to crack a nut with a sledgehammer. It may well be that my position is wrong. It may well be that there are further instances of injustices, because there were injustices done. But no doubt that will be demonstrated by way of further complaints to the Judicial Commission, and if that be the case we may be asked in the future to consider the matter again. At that point in time I will be happy to say I was wrong and that we should have taken a difference course tonight.

I started from the basis that it is our obligation to protect the community, to protect the poor, to protect the uneducated and to protect the disadvantaged. It causes me agony that we could make the wrong decision for those people. Nevertheless, I think there is good in Magistrate Betts. I think she is capable of clearly learning from what one could only conclude to be an extraordinarily horrific circumstance of investigation, and indeed in her coming before us here yesterday. I hope that the faith I place in her is justified, from the point of view that I hope I do not cause another injustice to be done. I cannot support the motion.

The Hon. JOHN AJAKA (Parliamentary Secretary) [5.35 p.m.]: I speak on what I believe to be one of the most difficult motions that has confronted me in my short time in this Chamber. This is a motion whereby government members will determine their position by way of a conscience vote, and that is an appropriate way of dealing with the matter. It cannot be dealt with in any other way. As with all members of this House, I have the benefit of the following material when considering the matter. Firstly, I have a very detailed and extensive report of the inquiry of a Conduct Division of the Judicial Commission of New South Wales in respect of Magistrate Jennifer Betts, dated 21 April 2011. Secondly, I have a written submission by Jennifer Betts dated 13 May 2011, and attached supporting documentation from Dr Jonathan Phillips and Dr Peter Klug, as well as supporting affidavits from magistrates Anthony Marsden, Peter Norton and Dennis Burdell.

Thirdly, I have a number of submissions from individuals of the public, as well as Frank Walker, QC, President of the Schizophrenia Fellowship, and John Brogden, the national patron of Lifeline. Fourthly, I have the Supreme Court judgement of Justice Hoeben in the matter of *Maloney v The Honourable Michael Campbell Q.C. and others* [2011] NSWSC 470. Although that judgement relates to a different magistrate, who will come before this House at another time, there are observed in that judgement a number of dicta of benefit when determining this matter. Fifthly, I have the appearance before and address by Magistrate Betts to this House yesterday.

I would like to go first to the judgement of Justice Hoeben in the matter of *Maloney and Michael Campbell*. In that matter His Honour quoted Chief Justice Spigelman in the earlier matter of *Bruce v Cole and*

others [1998] 45 NSWLR 163. He does so as a form of guidance. In that matter, Justice Hoeben was looking at an appeal in relation to the determination of the tribunal, and not in relation to whether the magistrate should in fact be dismissed, to use that terminology. Some of the comments made are important in this respect:

> There is also a statutory context to the Division's fact finding. The statutory opinion is to the effect that "the matter could justify parliamentary consideration of the removal of the judicial officer". Such "parliamentary consideration" of removal is now governed by s 53(2) of the Constitution Act which identifies the contents of an address as "seeking removal on the ground of proved misbehaviour or incapacity". The use of the "proved" in s 53(2) establishes that a Conduct Division may only form its opinion on the basis of probative evidence.
>
> The fact that the statutory opinion relates to a process in which "proved incapacity" must be established requires a logical process of reasoning to draw an inference. There is a statutory standard by which the fact finding of the Conduct Division must be measured.

His Honour goes on to again quote the observation of Chief Justice Spigelman in that case as follows:

> His Honour was not saying that the statutory opinion must be expressed in terms of "proved incapacity" but that the formation of the statutory opinion is part of a process in which "proved incapacity" must ultimately be established if removal is to take place.

Finally, at point 105 his Honour states:

> The approach put forward by the Attorney-General focuses upon the statutory test, i.e. the formation of an opinion but has due regard to the standard of the evidence necessary to base that opinion. There has to be evidence available which logically leads to that opinion. The approach of the plaintiff focuses upon the standard which the evidence must reach and in doing so loses sight of the express statutory requirement, i.e. that the opinion need only be that Parliament "could consider" removal.

We are aware that under section 53 of the Constitution Act 1902 of New South Wales for a judicial officer to be removed by the Governor both Houses must vote to seek the removal on the ground of either proved misbehaviour or proved incapacity. The motion before us today is to consider whether Magistrate Betts is to be removed from her office as a judicial officer on the grounds of incapacity—that is, proved incapacity. It should be pointed out that there is nothing before us today—either in respect of the motion, the report or the various submissions—that in any way purports to claim the ground of proved misbehaviour.

One of the advantages of having practised as an advocate solicitor was the opportunity to appear on many occasions before numerous magistrates over a period in excess of 40 years. The reason I say 40 years is that the first time I appeared before a magistrate as an advocate was when I was 15 years of age. My parents in their wisdom decided to send me to Katoomba Local Court to act as an advocate for a gentleman who could not speak a word of English. It was an experience I have never forgotten. When I rose to announce that I was assisting this gentleman the magistrate at the time, of whom I have no recollection, immediately said, "Who are you and why are you here?"

When I tried to explain he yelled at me, asking me why I was not at school, to which I yelled back, "Why are you yelling at me?" That was the only reason I managed to get through it because after he stopped laughing he allowed me to explain the situation. I was apparently meant only to have the matter adjourned until the lawyer was able to appear in a few weeks time. I understood some years later how disappointed the lawyer was when I apparently obtained what was then known as a section 556A for the gentlemen and a mention, so he was obviously satisfied.

At the age of 19 years, as a legal clerk for my then master solicitor, the late Irwin Ormsby, I had the benefit of appearing on many occasions as an advocate. They were the days when legal clerks were allowed to appear with leave. That allows one to understand the differing ways that magistrates deal with their lists and each and every matter. It allows you to see the different personalities, if I can use that term, the different methods, the different points of relevance, and the different administration that each and every magistrate utilises. It would be good to say that all matters are dealt with equally and on the same basis, but that is not the reality. Magistrates are not computers or robots; they are human beings with life experiences who have to deal with matters every day based on knowledge of an ever-changing law, as well as their own personal attributes.

I believe that what has also occurred over this period of 40 years is in many ways a sad progression. Those of us who practised some years ago—there are a few of us in this Chamber—are well aware that a local magistrate would be greeted by a new practitioner who appeared before them and there were morning tea sessions where magistrates would meet and discuss with prosecutors, lawyers, members of the public or even clerks various matters that were occurring. Over the years, due to certain developments, that has ceased and we have placed magistrates almost in a glass bubble or cocoon where they are completely isolated from the legal profession, the police and the prosecution. They sit in judgement of matters that come before them.

Also evident, as it was to me before I came to this House, is the enormous workload magistrates are facing every day. Lists increased and practitioners would complain because what was meant to be a five-minute adjournment resulted in many people remaining in court for hours until their matter was dealt with. That was simply the result of the workload magistrates were facing. One cannot separate oneself from real issues when one needs to determine whether Magistrate Betts has proved incapacity to continue.

I would like to look at some of the personal matters—as I call them—that Magistrate Betts raised in her address to this Chamber. I am well aware of the competence of her legal advisers and I am well aware of the reputation of her Senior Counsel and, of course, we are dealing with a magistrate who would be very experienced when it comes to the matter of a plea. But I accept the personal matters raised by her as being truthful from a factual point of view. I will refer to some of them. She confirmed that on 24 October 1994 she was sworn in as a magistrate; so she has been a magistrate for a period of 17 continuous years.

She confirmed that she took the oath. It is important to remind members of the wording of that oath in which she swore to God that she 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". She acknowledges that she let down the people of New South Wales by not adhering to that oath. She went on to explain that during the period of the two main complaints, if I can call them that, in November 2009 she voluntarily commenced reducing her medication without seeking medical advice. She said:

> 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.

She now understands she is a person who needs to take medication for life, and she undertakes to do so. I accept an undertaking from a judicial officer to be an undertaking given in good faith. It is a very severe undertaking that should not be watered down in any way. It would not be an undertaking that a judicial officer with her experience would give lightly. She said that before becoming a magistrate she worked for eight years in the local courts of New South Wales, three years at the Attorney General's Department and eight years with the Director of Public Prosecutions.

I spent three years with the then Clerk of the Peace, which became the Director of Public Prosecutions, and I am well aware of the workload that that department had during that period of time. It was not easy meat. She said that she was a solicitor with the Director of Public Prosecutions and earned high accolades for her prosecution of the five men convicted of the murder of Anita Cobby. One can only imagine the anguish she would have gone through in that trial alone.

Magistrate Betts said that in her 17 years of service she had endeavoured to serve well the people of New South Wales. She said that being a judicial officer involved the making of decisions that impacted on people's lives. However, let us examine the other side of the coin. As the Hon. Trevor Khan said earlier, magistrates are duty bound by the oaths that they take. We must examine not only a magistrate's interests; more importantly, we must examine the interests of the public whom the magistrate and members of Parliament serve. We must ensure that members of the public are not placed in any situation in which the system fails them or they are caused any injury. We must ensure that there is a balance.

Magistrate Betts then goes on to state that the task of a magistrate is onerous and on occasions almost impossible. I do not disagree with her statement. As I have said, for years I have watched these magistrates dealing with their lists. I do not believe I would have the capacity to do what they do each and every day. She then said that apart from the four complaints with which we are faced in her 17 years on the bench she has dealt with over 50,000 matters. There is nothing to contradict that statement. She subtracted those four matters from the 50,000 with which she has dealt and said that in 99.992 per cent of cases there had been no complaints. She went on to state:

> I am not known for making outlandish decisions, nor have I earned the wrath of any superior court.

I believe we are duty bound to accept that statement as there is nothing before us to show that there is any contrary evidence. If we accept that statement and those percentages we then have to consider the four complaints in light of all the matters with which she has dealt. She referred next to personal matters relating to her 90-year-old father and her 17-year-old son who is currently doing his Higher School Certificate. During the past 17 years, while working as a magistrate, she also raised her son and experienced the usual difficulties experienced by parents relating to schooling, et cetera. I refer to her next compelling statement:

> 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.

It is somewhat ironic that today we are determining whether we have evidence of such proved incapacity that a magistrate should be dismissed or removed from office. For the past 18 months we have allowed her to continue with her duties as a magistrate. In that time no complaints have been made or brought to our attention. I assume that if the Judicial Commission had been made aware of any complaints over the past 18 months those complaints would have been brought to our attention and would have formed part of the brief that was tabled in this Parliament. Magistrate Betts has been allowed to continue in office. Clearly, she has done so without receiving any complaints.

Magistrate Betts then confirmed that she suffers from a medical condition. She went on to state that now that she is taking her medication she believes she is well. She said that Dr Phillips was of the view that in 2009 she was suffering from burnout due to stress. She asked us to take account of the fact that her behaviour at the time was influenced by her earlier decision to stop taking antidepressant medication. She then said that the doctors believed she could continue in her position. She made reference to 295 judicial officers and 134 Local Courts and to the workload of each and every magistrate. She gave a detailed breakdown of how complaints are dealt with and the proportion of those complaints.

We must be satisfied that there is proved incapacity based on each of the four matters of complaint, about which we have relevant evidence. I am of the view that we should make our determination based purely on the four matters of complaint. In other words, we should not base our determination on the possibility that there may have been other complaints, or other matters that were not complained of and that were not brought to our attention, as it would be inappropriate to do so. We should limit our determination to the four complaints that were made in her 17 years of service.

In dealing with those four matters I have carefully looked at the tabled report and various transcripts. I say without a doubt that at times, as an officer of the court, I was disappointed at the way in which she handled those matters, the language she used and what certain people had to go through. Magistrate Betts acknowledged that and gave her reasons for it. I will not repeat each of the four matters as I believe they have been covered well by previous speakers. I believe that the Hon. Trevor Khan summed it up nicely and I concur with what he stated in that regard.

The Conduct Division found in the Passas hearing that the magistrate used inappropriate language to a significant degree over a prolonged period. In the Cooper hearing the Conduct Division established the same problem. However, in that case the language was grossly inappropriate over an extremely prolonged period. The Conduct Division found that the magistrate prejudged the issues committed for her determination and that she was rude, offensive and bullying. In the Maresch hearing the Conduct Division found that the magistrate had prejudged the case. The finding in the Farago complaint was that the magistrate was discourteous. Clearly those are the findings of the Conduct Division. However, I have to be satisfied on the balance of probabilities that there is proved incapacity and that Magistrate Betts should be removed from her judicial position. I have to be satisfied on the balance of probabilities that this proved incapacity will continue in the future.

I am of the view that at the relevant time that the complaints were made, which is 18 months ago, there is not sufficient evidence about the magistrate's proved incapacity. The question we have to determine today is whether it means she is still currently incapacitated, or will continue to be incapacitated in the future. At the time there may have been grounds for proved incapacity. A good explanation is given in relation to her medical condition at the time—a condition for which she is seeking treatment. The submission from the Schizophrenia Fellowship sets out a number of persuasive arguments that must be considered. These include that mental illness is fast becoming the highest burden on our health budget.

The Mental Health Advisory Council of Australia advises that serious mental illness affects 10 per cent of the Australian population, and a further 10 per cent endure milder forms of depression, anxiety, stress and personal disorders. It makes the point that not only the judiciary but all employers need to find a better way of dealing with that 10 per cent of people who contract serious work-related mental illnesses. It goes on to state that few employers do it well and that many employers do not have the requisite understanding or compassion. It states also that the New South Wales Parliament has had its fair share of mentally ill members, although few have admitted it and their colleagues have decently protected their reputations. Of course, it referred also to the symptoms of mental illness as often being confused with bad and unacceptable behaviour. What we have to ask ourselves is this: In relation to a person who suffers a treatable mental illness, for whom the treatment is successful—in other words, the person is being healed—and for whom the prognosis is that the duties will be performed, should that person be punished, and punished permanently?

Removal of Magistrate Betts is a serious and permanent punishment for action that on the evidence has occurred due to mental illness for which she is seeking treatment, for which the treatment appears to be having a good outcome, and for which the medical evidence is that she should be able to continue with her work. More importantly, what message do we send to our community if we treat Magistrate Betts in a manner that is different from anyone else in the community? A matter of grave concern to me is this: Do we want to send a message to those who suffer mental illness—for example, a judicial officer—that they should never come forward and disclose their mental illness, that they should be very wary of treatment they receive becoming known because of the possibility it may be revealed that they may not have the capacity to perform their duties?

In conclusion I have to say that from the moment this matter came to my attention I was torn by the decision that must be made, and I have been torn up until this very moment. At the end of the day I need to be satisfied on the balance of probabilities that the appropriate course of action is to dismiss the magistrate. I am not so satisfied. I do not believe on the balance of probabilities that that is the appropriate course. Because I am not so satisfied, I cannot support the motion.

Mr DAVID SHOEBRIDGE [6.02 p.m.]: I join in the debate in my capacity as one of The Greens members of Parliament. I indicate to the House that The Greens also have determined that this matter is entirely appropriate for a conscience vote. In some ways the House is perhaps a larger jury that has been convened to sit in judgement upon this matter. The Greens will exercise a conscience vote and I understand that all members in this Chamber will do the same. I indicate at the outset that I will not support the motion to dismiss Magistrate Betts. I say that having examined with extreme care the material that has been presented by the magistrate and the report of the inquiry by the Conduct Division.

I fully respect the members of the Conduct Division, Justice Simpson, Mr Lloyd and Mr Moroney. I respect each and every one of them and I respect the work and effort they contributed in compiling a detailed and careful report about Magistrate Jennifer Betts. However, the test that the House must apply is the test I considered when I examined the material, and that is the test contained in the Constitution, which states:

> The holder of a judicial office can be removed from the office by the Governor, on an address from both Houses of Parliament in the same session, seeking removal on the ground of proved misbehaviour or incapacity.

It is a question of proved misbehaviour or incapacity, but it is not any misbehaviour that would move this House to dismiss a magistrate. This issue is being considered by both Houses because fundamental respect should be accorded to the concept of judicial tenure. We must ensure that magistrates and judges can conduct themselves in a fearless fashion and in a robust manner in the administration of justice. Therefore, for Parliament to remove a magistrate or any judicial officer, very substantial misbehaviour and/or genuine incapacity must be proved. Is the conduct, any misbehaviour or any alleged incapacity such that, for the purpose of protecting the public, a magistrate ought to be removed from office? I can say that on my review of the material, there is not a requirement to remove this magistrate for the protection of the public.

The Hon. Trevor Khan, the Hon. John Ajaka and the Hon. Luke Foley have dealt in some detail with the material. The Hon. Trevor Khan particularly gave a fair summary of the various complaints that have led to the report being presented to the House. I entirely accept the summary presented by the Hon. Trevor Khan, save criticism of the solicitor that was implied at one point in relation to the Castle matter. I would not like my comments to be construed in any way as criticism of the conduct of the solicitor. I will deal quickly with each of the complainants, and I will deal firstly with the Passas matter. If I have a criticism of the factual conclusions of the Judicial Commission it is the manner in which the commission dealt with one of the answers by the magistrate in relation to the Passas complaint. Paragraph 184 of the report recounts the cross-examination of the magistrate on the Passas matter. The commission states:

> In cross-examination the magistrate demonstrated a degree of obstructiveness and inability, or refusal, to direct her mind to the issues about which she was being questioned. For example, she was asked if it were incumbent upon her as a magistrate to listen to an application made by an unrepresented litigant. That is a simple question with only one correct answer. She replied:
>
> > "It is not as simple as that, Mr Gormly."
>
> When asked about this, she said:
>
> > "She didn't respond to that, and that's what we do find in a lot of unrepresented people. They do not have the ability to focus on what's on point and I was endeavouring to get her back on point because it was just using up valuable court time. Yes, we do have a role in relation to unrepresented people, but we are not their lawyer and that's the difficulty because there is no assistance available for such people such as Mrs Passas at that time and still isn't, with the reduction of services by the department of Attorney Generals."

At paragraph 185 the report states:

> Finally, in respect of this matter, she said:
>
> > "I dealt with the matter appropriately according to the law, bearing in mind all this was represented and indicated any hearing would take four days and it would be a rehashing of the original application, which is not the same grounds as a revocation application."

At paragraphs 186 and 187 the report states:

> She accepted that certain references to Ms Passas making speeches, and votes, were "inappropriate and sarcastic".
>
> She continued to refuse to accept that her comments had been "intemperate", but she did agree to "inappropriate".

We must take into account the heavy workload of magistrates. They often have to deal with unrepresented litigant after unrepresented litigant, the need to draw the unrepresented litigant to pertinent legal matters, to silence unrepresented litigants when they are running off at the mouth and not dealing with matters that are relevant, and ensure, as a magistrate must, that while they attempt to give an unrepresented litigant a fair hearing they do not step into the shoes of an advocate or legal representative for an unrepresented litigant. That is a very difficult line for a magistrate to draw.

While I agree that much of what the magistrate stated in the Passas case was inappropriate, we should recognise the difficult task that magistrates have. They have busy lists, scores of matters being dealt with, unrepresented litigants and the difficult task of trying to constrain them to the relevant facts and law while allowing them to be heard but not allowing them to dominate the entire day, and a duty to encourage a fair process while not becoming an advocate. A magistrate's task is enormously difficult. When I read what happened in the Passas matter I read it with acknowledgement of the difficult task of magistrates when litigants are unrepresented, and I do not believe that that constitutes grounds to dismiss the magistrate, either by itself or in combination with other matters. I agree that the language the magistrate used was inappropriate and, on occasion, intemperate.

In relation to the Farago complaint, the Hon. Trevor Khan recognised the frustration of the magistrate. The magistrate was wrong in her recollection of the order of time to provide the authorities. But the magistrate quite fairly was frustrated that a legal representative gave the authorities to the court but not to the opponent. That frustration was expressed by the magistrate in a robust exchange with Mr Farago. At the end of the day the magistrate not only heard Mr Farago but also accepted his legal arguments and delivered a quality extempore judgement at the conclusion of the hearing. After reviewing that material I do not believe that conduct comes even within the same field as the kind of material that would support justifying the removal of a magistrate.

The Castle complaint is a difficult matter. Clearly, the magistrate's conduct was totally inappropriate, overbearing and, indeed, amounted to the bullying of a litigant before the court. No other view could be expressed about that behaviour. That litigant appeared before our courts and did not receive justice. Although the outcome cannot be criticised, the manner in which the outcome was achieved was not just and quite rightly forms the basis of a very serious complaint against the magistrate. It is important to remember what the magistrate said to the Judicial Commission when addressing this complaint. Paragraph 196 of the Judicial Commission's report is a series of paragraphs from a statement provided by the magistrate on 28 November 2009. The magistrate said:

> In my view Ms Cooper's matter was dealt with on its merits. There is no basis for his complaint in this regard.
>
> Of concern to me are the words I used. I was shocked when I heard the cd and am very embarrassed by it. I have since taken steps to ensure that nothing like this ever happens again. I have sought professional help in relation to dealing with the stress of being a judicial officer and have put in place procedures and changes to how I run the court.
>
> I have no explanation for my words other than I succumbed to the accumulation of "judicial stress."

The commission then stated:

> The magistrate attached some unsolicited letters of appreciation from litigants and their relatives in other cases she had conducted.

And at paragraph 197 it states:

> In her sworn statement the magistrate adhered to the [earlier] responses. She said that she was "appalled" by some of the things she had said and apologised unreservedly. However, she denied the allegation that she had pre-judged Ms Cooper's application; she acknowledged that the word "blatantly" should not have been used, and that her comment "big deal" was "uncalled for and

> intemperate"; she accepted that she "certainly" should not have told Ms Cooper to "shut up" or said to her "you think you're God's gift do you?" However, she denied that her conduct amounted to bullying, and she denied that she did not permit Mr Castle an adequate opportunity to make submissions. She concluded by saying that she was "very embarrassed" by what she had said to Ms Cooper and that much of what she said should not have been said. She said she was sure she would never say such things again.

The report continues and states that the magistrate would not accept the characterisation of her conduct as bullying, but would accept the characterisation of overbearing. I repeat that I believe the magistrate clearly bullied that litigant, which is clear after a reading of the full transcript of the evidence. Magistrates by far and away deal with the bulk of criminal matters in our courts, and quite often deal with unrepresented litigants and, sadly, many of our Aboriginal citizens. The need is compelling for magistrates to ensure that they do not bully litigants and, as far as possible, they sit and listen fairly and not behave as happened in the Castle case. Had there been no other explanation about this magistrate's conduct, it would be sufficient to seriously consider the removal of a magistrate, particularly if the conduct amounted to a pattern.

The conduct by the magistrate in the Maresch case was inappropriate. I shall not repeat what the Hon. Trevor Khan said, but I accept fully his characterisation of the magistrate in respect of the Maresch complaint. However, I believe the Judicial Commission took a somewhat unnecessarily aggressive slant on the explanation the magistrate gave to this matter. Paragraphs 206 and 207 of the Judicial Commission's report state:

> On 9 December the magistrate wrote again to the Commission, advising that the charge had been heard in the Ryde Local Court by another magistrate and that Mr Maresch had been found guilty but the charge was dismissed under s 10(1)(a) of the *Crimes (Sentencing Procedure) Act* 1999. She said that she had been advised that Mr Maresch had relied upon the "trailer" explanation and suggested to the council officer that the photograph had been "photoshopped" taking out the trailer. She then wrote:
>
> "I am still at a loss as to why this gentleman complains that I allegedly coerced him into a plea of guilty and then refused to deal with it ... that just does not make sense. The transcript clearly outlines why I could not deal with plea 'under duress'. I guess he is now happy that I did not deal with it!"

The commission's report then states:

> In her sworn statement, she adhered to these responses, and repeated that she should not have told Mr Maresch ...

The Judicial Commission is enormously critical of the magistrate's statement and suggests that it showed she had no insight into her conduct. With respect to the Judicial Commission, it misunderstands what the magistrate was trying to say. The magistrate said:

> I am still at a loss as to why this gentleman complains that I allegedly coerced him into a plea of guilty and then refused to deal with it ... that just does not make sense.

My understanding is that she is not trying to excuse her conduct into coercing Mr Maresch into pleading guilty. She accepts with contrition that that was wrong. Indeed, after reading the transcript it is clear that the behaviour was appalling and utterly wrong. As I understand the statement, the magistrate is saying, "You can't on one hand criticise me for coercing a litigant into entering a guilty plea and then also criticise me for not accepting the guilty plea." That is the plea the magistrate was making. I do not believe that explanation founds the level of criticism the Judicial Commission made in its report. I read some of the comments about lack of contrition and insight with a slightly different eye to that of the Judicial Commission. The medical evidence, which is the ultimate excuse for her conduct in the Castle and Maresch matters, is relatively unanimous in providing a fair explanation for what happened. Paragraphs 167 and following of the Judicial Commission's report state:

> The Conduct Division accepts that the medical evidence provides some explanation for what occurred that gave rise to the Castle and Maresch complaints. Each of these events occurred at a time when she had unwisely (as it turned out) ceased taking her anti-depressant medication. Further, the Castle matter involved breaches of road traffic rules at a time very shortly after the death of her uncle in a road accident, an event which, the Conduct Division accepts, had a substantial impact on her.
>
> No such explanation is available in respect of the O'Regan/Passas or Farago complaints.

The Judicial Commission essentially accepts that she was suffering from a significant psychiatric disorder at the time of her inappropriate dealing of the Castle and Maresch matters. The commission also accepts in the Castle matter the very personal event that happened to her: she had lost her uncle in a road accident. Magistrates are human, have emotions and all the usual human failings that other citizens have. Combining all that personal grief experience she occasioned by road trauma together with the medical explanation when dealing with the Castle matter in a large part provides a full explanation for the conduct. Additionally, the nature of the Maresch

matter and the medical evidence of the magistrate's condition at that time provide a fair explanation for her conduct. In relation to the conclusions about the medical evidence, in paragraph 170 of the report the Judicial Commission states:

> ... In 2009, having scaled down her anti-depressant medication, the magistrate again developed psychiatric symptoms. The death of her uncle in that year was a significant factor in the re-emergence of those symptoms.
>
> Dr Phillips observed ... that the magistrate had;
>
> "... only recently developed insight into her aberrant behaviour"
>
> and that she expressed distress and remorse that she had acted as she did. The "aberrant behaviour" was behaviour aberrant from the judicial norm, and not from her own ordinary behaviour.
>
> Dr Phillips reviewed the magistrate on 8 March 2011, at the request of the Conduct Division. He reported that, by then, she was "symptomatically improved", was "barely symptomatic", and that such symptoms as she had did not reach a threshold for any diagnosable psychiatric disorder.
>
> Dr Phillips considered it unlikely (assuming continued compliance with the treatment regime to be determined by Dr Klug) that her behaviour would become problematic with the risk that she might act inappropriately in the discharge of her duties.
>
> 173 Dr Klug said the symptoms were in substantial but not complete remission. He recommended that the magistrate remain under the care of a psychiatrist for ongoing treatment and for more intensive treatment in the event of any deterioration. He saw the likelihood of recurring inappropriate behaviour as low if not negligible.

Of course, Dr Klug is treating this lady. At paragraphs 174 to 176 the commission stated:

> 174 In evidence, Dr Phillips acknowledged … that a person who has a biological depression (as he had previously found the magistrate had) is less resilient to stressors and therefore at risk of exacerbation of the disorder.
>
> 175 At the conclusion of his evidence, Dr Phillips said:
>
> "… I see the magistrate as being properly treated and as being pretty much asymptomatic at the present time and believing that insight will be much improved now that she is non depressed, it would be my view that she could continue in a professional role and the public could be reasonably protected in her continuing to work.
>
> 176 Dr Klug accepted that, because he had characterised the condition as "recurrent", repetition was likely.

But Dr Klug stated in evidence:

> The fact that she has got a recurrent condition makes it more likely for her to have further such episodes statistically speaking than if she had had no episodes in the past at all.

With due respect, I think the Judicial Commission has completely misunderstood what Dr Klug was saying. Dr Klug was not saying that repetition was likely—in fact, far from it. Clearly, Dr Klug thinks this lady is in remission and basically has a low risk of recurrence. All Dr Klug was saying was that someone who has this kind of disorder as a recurrent condition is statistically more likely to have a recurrence than someone who has never had the condition. I believe the Judicial Commission mistakenly mischaracterised Dr Klug's evidence and put the risk of a recurrence at a higher level than I think the evidence properly allowed.

That review of the medical evidence and the complaints lead me to conclude that the House should not accept the motion and should not refer this matter to the Governor. In doing that, we should recognise that mental illness cannot of itself disbar someone from holding office. People with a mental illness, properly treated, can live enormously productive, fruitful and fulfilling lives. In this case the evidence is that the mental illness is being properly treated now, this lady has shown contrition for her aberrant behaviour and as part of that contrition has committed to a course of medical treatment and medication, which means that the risk to the public is no greater than it would be from anyone else doing the difficult job of a magistrate, working endless hours and dealing with literally thousands of difficult matters.

If the House were minded to remove a magistrate on this material I would be concerned that the threshold would be such that magistrates would be vulnerable to complaint to the Judicial Commission. They would not feel they had the security of tenure that I believe they need in order to conduct their difficult task with the kind of fearlessness that we expect of them. That is not in any way excusing the kind of conduct that happened in those two difficult complaints. I am glad to say that I will be voting against the motion.

The Hon. PAUL GREEN [6.23 p.m.]: In the matter of the conduct of Magistrate Jennifer Betts the Christian Democratic Party will not support the motion for dismissal. As a new parliamentarian I am absolutely

uncomfortable adjudicating this matter. There do not seem to be enough circumstantial cases, accumulated cases, to warrant a presentation to Parliament by Magistrate Betts. In saying that, I understand that that is the process at hand. I note that Magistrate Betts has acknowledged the error of her ways—and some of her behaviour was pretty ordinary. I note also that she has apologised for her errors. Let those who have not made such errors cast the first stone.

In terms of numbers, Magistrate Betts mentioned the 50,000 cases she has dealt with, as well as the small percentage of complaints that were handled. I note her long working record in the legal profession and her commitment to the healing process, given her stresses and the medication she is on. She noted that she will be on that medication regime for life to manage her condition. Until yesterday I had seen the case only on paper. Yesterday I saw a skilled professional who had come to terms with a highly pressured and demanding life and quite unthankful job, which was lonely at times. In conclusion, when faced with situation like this I have a general rule of believing in the best of others. This case is no different.

This is an opportunity for Magistrate Betts to cap off her career with distinction, not controversy—or, even worse, dishonour. I do not believe people should not have an opportunity to redeem themselves. By adjudicating on this matter, we send a poor mental health message to the many people who face the daily challenges of keeping their world together, in many cases balancing family, career and community expectations. I am aware of the pecuniary penalties if we vote to dismiss Magistrate Betts. I am also aware of those who felt they were hard done by, and I hope that their cases will be managed through the appropriate channels. The Christian Democrats will not support the motion for dismissal.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [6.26 p.m.]: I will not be voting in support of the motion. I will not vote to remove Magistrate Betts from office. Thankfully, the Parliament is rarely called upon to turn its mind to the issue of whether a judicial officer should be removed from office on the ground of either proved misbehaviour or proved incapacity. Although that is what the words of the Constitution Act provide, obviously it is not simply any misbehaviour or incapacity. We must form the view that such incapacity or misbehaviour is at such a level that removal is the only solution to the issue. Removal of judicial officers is, thankfully, rare. The Constitution Act, and indeed the Australian Constitution for members of the Federal judiciary, comes from a long struggle between monarchs and the courts for independence. The Stuart kings regularly removed pesky judges from office without any kind of protection or recourse.

In England this ended with the Act of Settlement in 1701, but in New South Wales it took the formation of the Constitution Act 1855, which provided that Supreme Court judges remained in office only if they were of good behaviour. Section 53 in part 9 of the Constitution Act 1902 provides that a judicial officer can be removed only on an address by the Governor after an address of both Houses of Parliament seeking removal on the ground of proved misbehaviour or incapacity. That is an important restriction. As the Judicial Commission report notes at paragraph 10, this is a protective jurisdiction given to the Parliament. It is not punitive or disciplinary. It is to protect the public from judicial officers who are either guilty of sufficient misbehaviour making them unfit for office or suffer an incapacity to discharge their duties of office. It is also there to protect the judiciary from unwarranted intrusions into their independence.

Having heard the contributions of members, I am pleased that they are sensitive to the enormous and weighty responsibility that falls to us in deliberating on this matter. I have read the material provided in the Judicial Commission report, the material provided by Magistrate Betts, and communications from members of the public to many members of this House, and indeed the other place. But yesterday we heard from the magistrate herself, and her remarks were salutary and very important in the process of weighing everything up. As Reverend the Hon. Fred Nile said, and as the magistrate noted, she has dealt with some 3,000 cases per year. So in the course of her judicial office of some 17 years she has dealt with in excess of 50,000 matters, and we are considering four complaints.

I do not in any way belittle those complaints because even a single complaint of requisite seriousness could warrant a removal from office. I do not wish to diminish the seriousness of those four complaints, and I accept that the Judicial Commission found that each complaint was substantiated. However, the O'Regan-Passas matter on 11 October 2004, for example, was determined by the Judicial Commission and summarily dismissed. That is found at paragraph 68 of the Judicial Commission report. Submissions on behalf of the magistrate to the Judicial Commission were to the effect that the matter should not weigh against her on the basis that it had been dealt with already.

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

The House continued to sit.

The Hon. ADAM SEARLE: At paragraph 124 of its report I note that the Judicial Commission appreciates the force of the submission, but that matter has already been dealt with. Nowhere is there any explanation I can see as to why a matter that had already been dealt with and dismissed was revived and weighed in the balance against the magistrate. Without diminishing or reducing the seriousness of what the magistrate did in that connection, I would have thought the fact that the matter was resolved by a dismissal raises the very serious question as to whether either the Judicial Commission did not do its job when it dismissed the matter earlier, or in reviving the matter it is not doing its job properly now. I do not have a concluded view on that. Again, I have a great deal of respect for the three members of the Conduct Division who have authored this report, but it is a mystery to me as to how this matter has now been weighed in the balance against the magistrate.

Paragraph 75 of the Judicial Commission report refers to the Farago matter, which was not dismissed but referred to the head of jurisdiction. We are told that there was some counselling of Magistrate Betts, although she disputes whether it was counselling. Nevertheless there was dialogue between the head of jurisdiction and the relevant magistrate. Again, it seems to me that the matter has been dealt with. The only explanation for how it has been revived is to be found at paragraph 127, which states:

> The Conduct Division considers that the Farago complaint … alone would not warrant … action under s 53 of the Constitution Act. That does not mean, however, that the evidence relevant to that complaint is to be disregarded. The evidence concerning the proceedings remains relevant in the determination … that must be made in respect of the other complaints.

That falls into the pattern of conduct argument. But, again, the question in my mind is: The matter having been dealt with, how can it be revived and weigh against the magistrate? The remaining two matters occurred in 2009 at a time when the magistrate was suffering from an untreated and unmedicated illness, which was subsequently diagnosed. I am not going to traverse those matters. I accept that the misconduct said to have been found by the Judicial Commission was found correctly. However, Mr David Shoebridge indicated in his contribution that, while the Conduct Division seems to accept that the medical evidence provides some explanation, the material that I have read and heard seems to me to provide a complete explanation for each of those two matters. Admittedly, Magistrate Betts explained that she was on medication that she sought to wean herself off, the consequences of which can be seen in these two matters.

Magistrate Betts appeared before us yesterday afternoon and indicated that she now understands that she will have to be medicated or remain on treatment for the balance of her life. She understands that. That is obviously a very serious acknowledgement that shows she has proper insight into the nature of her illness. On that material, I am comfortably satisfied not that, as the Conduct Division would have it, the medical information provides some explanation for what happened but that it provides a complete explanation—not an excuse, an explanation. That is very important because many people in many walks of life, professionals and others, struggle with mental illness. Nevertheless, they are able to be high functioning and fulfil important roles in society and in the lives of their family and friends. It would send a terrible signal if we were to remove from office a magistrate for reasons of misbehaviour, for example, but misbehaviour that is fully and completely explained by mental illness.

That leads to the second question of incapacity. If we were satisfied that on account of mental illness there was continuing incapacity, it would be a very serious matter. Even with the best will in the world and even with the most complete understanding of his or her condition, if someone is not capable of fulfilling the functions of his or her judicial office it would be a very hard ask for us, as guardians of the public interest in relation to a matter such as this, not to remove that person. But that is not the situation we are facing here. Paragraph 144 of the Judicial Commission report contains various definitions of "misbehaviour", including:

> "to behave badly" (Macquarie Dictionary Online);
>
> "bad behaviour, improper conduct" (Oxford English Dictionary)
>
> "to behave badly or wrongly;"

Of course, reference is made to *Judicial Ethics in Australia* by Justice James Thomas, which I will not read from. All those definitions of would or could constitute misbehaviour by a judicial officer are well founded, and I accept them. At paragraph 157, the Conduct Division found that in each of the matters that had been before it misbehaviour had been proved, and I accept that in each of those cases there is misbehaviour. I believe the 2009 cases are completely explained by the mental health issues. In paragraph 157 the Conduct Division continues:

> There are, of course, grades and variations of misbehaviour. Whether demonstrated misbehaviour warrants parliamentary consideration of removal of a judicial officer from office depends on the gravity of the misbehaviour, and, in some cases at least, the extent (if any) to which the kind of conduct of the kind is repeated.

The paragraph continues:

> The finding that misbehaviour has been proved encompasses the lesser finding that the conduct is such that the Parliament could find misbehaviour proved.

In this case, I accept that all four of the matters have been proved. However, given that the two 2009 cases in my view are fully explained by reason of mental illness, and given that the first two had been properly dealt with previously, its seems to me that in relation to all four matters, although misconduct has been proved, the question is: Is it misconduct of the kind that would warrant removal from office or is it misconduct of a kind that even could form the basis of removal from office? My respectful view on the information that I have is that it simply could not. That is not in any way to excuse the misconduct, but the first two matters were fully and properly dealt with originally and I have real concerns about the way in which they were revived after the fact, as it were. One was dismissed and the other was dealt with by counselling by the head of jurisdiction. The second two cases were explained fully and completely by reason of mental illness, which said mental illness is now being treated. So I think the misconduct issue is not of a kind to warrant removal, and I do not think it could even be considered such by this Chamber.

The next question—perhaps a more interesting question—is the issue of incapacity, which is dealt with in the report from paragraph 158. As has been indicated in this debate, incapacity goes beyond physical or mental incapacity, including alcoholism, drug dependency, senility or debilitating illness, and encompasses a wider range of considerations. I accept that. Failure by judicial officers to adhere to the standards expected of them, of course, could cause litigants and observers to lose faith in and respect for the decision-making process, and the resultant decisions, and bring the administration of justice into disrepute. That is what the Conduct Division states at paragraph 159. That is true. But, as has been said, in relation to all these matters, although the manner of the magistrate is the subject of criticism and complaint, the decisions themselves were not appealed in the way provided for by the law, and they have not been called into question for their legal veracity. In that situation I think the issue of incapacity, at least in relation to Magistrate Betts discharging her judicial functions, is severely dented. The Conduct Division went on to say at paragraph 163:

> An essential quality of a judicial officer is an appreciation of what constitutes proper judicial conduct, and what does not. The absence of that quality is apt to signify incapacity to discharge the judicial functions.

That is true. Leaving aside the medical evidence, I note what Mr David Shoebridge said. A reading, for example, of paragraphs 169 through to 177, where parts of the medical evidence are recited, I think would give a misleading impression of what is the totality of the medical evidence, if one does not go to that evidence. I refer briefly to that medical evidence. Consultant psychiatrist Jonathan Phillips said at the time he examined Magistrate Betts:

> Ms Betts is barely symptomatic at the present time, and does not reach threshold for any diagnosable psychiatric disorder.

He said further:

> ... it is unlikely that Ms Betts' behaviour will become problematic with risk that she might act inappropriately in the discharge of her professional duties.

Dr Klug, the treating doctor, said:

> ... it is my view that the likelihood of recurring inappropriate behaviour is low if not negligible.
>
> There is no clear indication to me that Ms Betts suffers from any significant personality dysfunction, let alone a personality disorder. I am aware that this is also the view of Dr Phillips.

So at the time of the second two incidents Magistrate Betts was ill because she had gone off her medication. Those two psychiatrists, having assessed her in the context of the Conduct Division investigation and report, were of the view that the illness, having been recognised, is being properly treated. In that regard, the issue of incapacity falls away. The real peg on which the Conduct Division seems to hang its hat is not in relation to the matters themselves but appears to rest on the division's perception of how Magistrate Betts responded to the investigation. I will cite two passages. I quote first paragraph 178:

> The Conduct Division considers that the most significant additional factor bearing upon the question of incapacity is the magistrate's own attitude to her conduct. In this respect, her various responses, and most particularly her oral evidence, are of grave concern.

Paragraph 184 states:

> In cross-examination the magistrate demonstrated a degree of obstructiveness and inability, or refusal, to direct her mind to the issues about which she was being questioned.

Having read all the attached transcripts provided to us, having read the material both from the Conduct Division and from Magistrate Betts, and having observed and listened closely to Magistrate Betts yesterday, I do not find any basis for either of those two observations by the Conduct Division. Furthermore, if it is to be said that the foundation for the suggestion that she might be incapable of exercising her judicial office was that response, then those matters should more fully and squarely form the basis of the report that is before us. They come as something of an afterthought, but from a reading of those matters it seems to be the most serious allegation against her as to incapacity, because the other foundations, when looked at properly, fall away.

The complaint seems to be that she did not respond appropriately when she was being questioned or investigated. We all know that people are human and that when they are under attack they can be defensive. Magistrate Betts has, I think, freely acknowledged that. But I certainly do not think, from anything that we have seen or heard, that those observations of the Conduct Division are made out. In relation to the investigation into Justice Murphy in the early to mid-1980s, there was a special report of a parliamentary commission of inquiry in August 1986 that examined what was the relevant standard to which judicial officers had to be held. The Solicitor General at the time essentially said that it had to be criminal conduct. But the parliamentarians took a different view, and said:

> ... conduct of the Judge in or beyond the conduct of his office, that represents so serious a departure from the standards of proper behaviour by such a Judge that it must be found to have destroyed public confidence that he will continue to do his duty under and pursuant to the Constitution.

So I think we have to be satisfied that, either by reason of the proved misbehaviour or by reason of the proved incapacity, these things are of such a nature that the public's confidence in the judicial officer to uphold the oath to fulfil his or her duties is destroyed beyond redemption. That is a very high standard, and I do not think any fair-minded or reasonable observer of this matter would see that such a matter has been made out. That is simply because, although there is no excusing the seriousness of the magistrate's conduct, the first two matters were fairly and appropriately dealt with, and it is not fair or appropriate to hold those matters against her now. The second two are fully explained by reason of illness, which at that time was not treated, but which now is, and she has said that she recognises that she cannot again allow herself to be unmedicated.

Magistrate Betts makes the point, which I think is worth remembering, that the allegations against her are not allegations of criminal corrupt conduct, or even conduct that is morally reprehensible. None of her decisions have been criticised as being judicially or legally unsound, or subject to any appeal, or found to be inadequate. Rather, it was the manner or process that she adopted that was found to be inadequate, or unbecoming, or falling short of the expected standards—and seriously so, but not to the point where she ought to be removed. In conclusion, I find to my satisfaction that the complaints against her are substantiated, and that misbehaviour has been proved. But, given the nature of that misbehaviour and the way in which the earlier two matters were dealt with, and the causality of the second two matters, I do not think that it is open to the Parliament to find that the proved misbehaviour could justify the consideration of removal in this circumstance.

I move on to incapacity. Yes, certainly while Magistrate Betts was ill and untreated there does seem to have been an element of incapacity at that time. But, as the matter is here before us now, I think we are clearly faced with evidence that shows beyond any shadow of doubt and beyond any argument that at present she is not incapacitated, she is not unable to fulfil her duties. As we stand here today, she is in fact fulfilling them adequately and without any further complaint. So I do not think there is before us any material that could lead this Chamber or any member of it to conclude that she presently suffers incapacity at all, and certainly not to the standard that would be required for us even to consider removal. On that basis I will not, I simply cannot even countenance, voting to remove Magistrate Betts.

The Hon. ROBERT BROWN [6.49 p.m.]: I will be brief. My colleague the Hon. Robert Borsak and I considered this matter in detail. We have read the evidence and we listened to the submission made to this House. I inform the House there is no way that we could support the motion.

The Hon. MICHAEL GALLACHER (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [6.50 p.m.], in reply: I thank all honourable members for their contributions to this debate. I think it is fair to say that all members understand how we have come to be in the position of having to make this decision. It is something that has not been done by choice; it is the result of a requirement arising from the way the Judicial Commission operates with this Parliament in respect of its recommendations. Members have approached this debate understanding that situation and mindful of it. I very much appreciate the contributions members have made in that regard. It is now for the House to determine the outcome of the motion.

Question—That the motion be agreed to—put and resolved in the negative.

Motion negatived.

ADJOURNMENT

The Hon. DUNCAN GAY (Minister for Roads and Ports) [6.51 p.m.]: I move:

That this House do now adjourn.

FERAL PIG HUNTING

The Hon. ROBERT BORSAK [6.51 p.m.]: Tonight I put forward some facts about an aspect of feral animal control which seems to attract a disproportionate amount of ill-informed criticism from those within the RSPCA who have extreme views and also from so-called animal liberation organisations. I am talking about the use of dogs in feral pig control. It might interest the House to know the background of those who use dogs to control feral pigs. There is a group called the Australian Pig Doggers and Hunters Association [APDHA]. It is fed up with being vilified by animal rights groups who try to make out that it is only one step removed from Satan. Since its inception in 2005 the association has worked closely with the Department of Primary Industries and the Game Council NSW to develop and implement humane and ethical guidelines for the use of dogs in feral pig control programs on both private and State-owned land.

When first developing the guidelines the association took and implemented advice from the RSPCA. The association has developed and implemented a code of conduct for the use of dogs in feral pig control that includes, among other things, housing requirements for dogs; transportation of dogs; care and keeping of dogs; dog training, including stock and wildlife proofing; sale of pups and dogs; working of dogs; humane handling and dispatch of feral pigs; and provision of public liability insurance for financial members. Let us now un-demonise this group. It is a fact that association members also abide by the Model Code of Practice for the Welfare of Animals: Feral Livestock Animals developed by the Department of Primary Industries with input from the association and published by the CSIRO.

When using dogs in Game Council-sanctioned New South Wales State forests strict regulations apply regarding the number of people per team, the number of dogs working at any time, the compulsory use of electronic tracking devices, and protective plates for dogs, as well as the requirement to possess a current Game Council licence. Association members who breach the guidelines face stiff penalties from both the Game Council and the APDHA. It is also a fact that the association has promoted and asked for harsher penalties for those who operate illegally and outside the guidelines. These include larger fines, prison sentences and confiscation of all equipment, including vehicles used at the time the offence was committed. Government authorities have estimated the current feral pig population at over 23 million Australia-wide and no doubt growing after the recent good rains. Their habitat covers more than 40 per cent of Australia.

In the 12 months ending 30 April 2010, hunters with Game Council licences culled 68,480 feral pigs on both government and private land in New South Wales. These same licence holders in New South Wales alone spend over $50 million annually on hunting goods and services. Even the greenest Green and the most rabid animal liberationist would have to acknowledge that feral pigs cause millions of dollars of damage each year, including damage to agricultural land and crops; destruction of fragile native ecosystems; spread of pest weeds and disease; destruction and pollution of natural waterways and reservoirs; destruction of turtle and cassowary nests; and attacks on livestock and native animals.

Feral pig eradication and control programs using dogs and promoted by the association are at no cost to landowners or the taxpayers of New South Wales. Feral pig control programs using a combination of dog teams, shooting and trapping have always proven to be the most cost effective and have given the best results in the number of pigs taken. If the Greens and the RSPCA can come up with better costed programs that will not cost the New South Wales taxpayer, I for one would like to see them. Like hunters and shooters, those who use dogs to find and eradicate feral pigs are from all walks of life and are far from being the bloodthirsty killers the RSPCA and others with extreme views would have people believe.

In closing, I note that after a very public appeal for donations by Rainforest Rescue to save the cassowary in Far North Queensland after Cyclone Yasi the association organised a fundraiser that raised more than $2,000. However, guess what? Rainforest Rescue has declined to accept the donation as has Wildlife Queensland, apparently due to pressure from anti-hunting forces. So just who are the conservationists here? I enjoy debates as much as anyone but I like them to have facts, not rhetoric.

DEBATE TIME LIMITS

The Hon. TREVOR KHAN [6.55 p.m.]: It was Shakespeare's Polonius in *Hamlet* who said:

> Therefore, since brevity is the soul of wit, and tediousness the limbs and outward flourishes, I will be brief.

The capacity to be a good communicator means ensuring the message is not lost in a sea of distracting words. In the last sitting week we heard a number of passionate speeches on the industrial relations bill, some of which lasted for many hours. If the purpose of those lengthy speeches was truly to deliver a message to an audience, then it was lost in a sea of words. There was great argument when an instruction was given to the Committee of the Whole, with extensive arguments delivered that this instruction in some way limited the capacity to argue each of the amendments. Thirty minutes of debate time was allocated for amendments moved individually, and 60 minutes for amendments moved in globo.

But let us look at what occurred with each of the amendments that were put. The Opposition moved three amendments, 30 minutes were allocated and 30 minutes were used. The Opposition then moved four amendments and 30 minutes were used. The Greens moved one amendment and 30 minutes were used. The Greens then moved one amendment and six minutes were used. The Opposition moved five amendments and 10 minutes were used. The Opposition then moved six amendments and four minutes were used. The Opposition then moved 152 amendments, 60 minutes were allocated and 35 minutes were used. The Shooters and Fishers Party moved one amendment, 30 minutes were allocated and 26 minutes were used. The Greens then moved 49 amendments, 60 minutes were allocated and 23 minutes were used.

The point I make is this: when time limits applied, the debate was clear, concise and to the point. Time limits on debates have existed in some Parliaments for some time. Time limits have applied in the New Zealand House of Representatives since 1894. I read that prior to the introduction of time limits in that Parliament, a Mr W. L. Rees spoke for some 24 hours in 1876. I suspect The Greens will have to do a little better to beat that record. The House of Lords also limits all speeches to 20 minutes. In the Senate of our own Federal Parliament, time limits have applied since 1919 after Senator Gardiner spoke for 12 hours in 1918. Under the current standing orders of the Federal Senate, no Senator can speak for more than 20 minutes on any debate in the Senate. Fifteen minutes is allocated to each Senator to speak on the first reading of a non-amendable bill. Motions and amendments to refer bills to committees are limited to five minutes for each Senator and 30 minutes in total. Committee reports and Government responses are limited to 10 minutes for each Senator and one hour in total. I could go on with other time limits, but in the interest of brevity I will not.

I raise this issue not because I seek to point the finger at members on the other side of the House, but rather so that all members will consider the importance of brevity in constructive debate. What we saw in the last sitting week was not concise debate. At times the debate was indeed not constructive at all. I believe we have a responsibility to the people of New South Wales to resolve matters in an efficient and effective manner. In my view, the introduction of time limits in debates is the best way for members of this House to honour that commitment to the people of New South Wales.

INTERNATIONAL CLEANERS DAY

The Hon. PETER PRIMROSE [7.00 p.m.]: Clean Start is an ongoing national campaign for fairness and justice at work for cleaners in retail and commercial premises. It is driven by cleaners themselves, standing up for their rights at work and achieving respect, recognition and fair wages for the work they do. Every year International Cleaners Day, which was held yesterday, is celebrated around the world as a day to recognise the hard, dirty and difficult work that cleaners do and their dedication to community safety and health. My mother was a cleaner and I know the pride that she took in her work.

International Cleaners Day began as Justice for Janitors Day. It was the twenty-first anniversary of the brutal 1990 clubbing by Los Angeles police of low-wage janitors protesting in the city's Century City district on 15 June. Violent images of the quashing of the protest were seen around the world, galvanising public opinion in favour of the janitors who subsequently won their first union contract. In Australia it has become International Cleaners Day and it is an important part of the Clean Start: Fair Deal for Cleaners campaign. After achieving significant wins for cleaners in commercial city buildings over the past five years, currently the Clean Start campaign is focused on shopping centre retail cleaning. I congratulate the cleaners and their United Voice union secretary, Mark Boyd, and president, Rebecca Reilly, on their work in helping make International Cleaners Day 2011 such a success.

Cleaners are committed to quality cleaning in order to provide a safe and pleasant environment for Australian families. However, many of them have no job security. They have experienced or witnessed harassment and sometimes do not receive proper salaries. The Clean Start campaign is a way to improve their industry nationally and meet the high standards that are expected of them at work. The cleaners are negotiating for a number of things. First, they want respect and fair treatment at work. They want to work free from harassment, discrimination and unfair treatment. Secondly, they want real job security. Cleaners want guaranteed minimum hours and the safety net of knowing that if a contract changes at their workplace, they will not lose their job.

Thirdly, they seek fair pay. Cleaners deserve full, livable pay with proper benefits, such as superannuation. Shift penalties and specific allowances are important and should be paid on time and in full. Finally, they are seeking fair and safe workloads. Cleaners have the right to work in a safe environment with realistic workloads. They work long hours in a very physical job and their workplace injury rates are among the highest of all industries. Many cleaners have reported the need to supply their own equipment, such as gloves, and if they are unable to do so it further places them at risk.

Spotless is the biggest publicly listed cleaning contractor in Australia and holds approximately 30 per cent of retail cleaning contracts. They have signed up to Clean Start in the central business district and in Adelaide hospitals, but when it comes to shopping centres Spotless has refused to meet with cleaners to negotiate a Clean Start agreement. Spotless prides itself on the fact that it pays cleaners the modern award, even though it is just the legal minimum wage. The award does not cover respect, job security and workloads, which are all key parts of the Clean Start campaign.

Spotless has told cleaners that it is "committed to fair treatment, pay and conditions for all staff", yet it has refused to even meet with the cleaners. Now Spotless has decided to bring back a form of WorkChoices. It has introduced Australian workplace agreement-style individual flexibility agreements, which mean that if the cleaners sign them they could lose the overtime and penalty rates that they need to get by. Cleaners have taken Spotless to court to fight these agreements because many feel they have been bullied into signing away their overtime. On behalf of many members in this House, I congratulate cleaners on their campaign and on International Cleaners Day.

ANIMAL CRUELTY

Mr DAVID SHOEBRIDGE [7.05 p.m.]: The Australian Government report entitled "Assessing Invasive Animals in Australia 2008" identified that invasive pest animals in Australia are estimated to cause losses in excess of $1 billion per year through environmental and economic damage. The report noted that invasive animals pose a threat to two-thirds of the animal species and to 83 per cent of the animal populations listed as threatened in New South Wales. The Greens recognise the damage done to our ecosystems and endangered native fauna and flora species by deliberate and accidental introduction of exotic animals. The Greens New South Wales consider that the control of feral animals must be carried out effectively and humanely. Sharp and Saunders, two authors of numerous Government standard operating procedures for feral animal control, state:

> There are three essential requirements for a pest control technique—necessity, effectiveness and humaneness.

They recommend in general that ground shooting should be used only in a strategic manner as part of a coordinated program. The question we need to ask ourselves is whether the Game Council New South Wales, and its practice of using recreational hunters, is able to control feral animal populations in New South Wales either effectively or humanely. There is significant evidence that some hunters engage in cruel and unauthorised hunting practices, including hunting protected species, and subjecting animals to long and lingering deaths. This evidence is found in a number of publications, including *Environmental Crime in Australia* by Bricknell, Australian Institute of Criminology, 2010; *Illegal trade in fauna and flora and harms to biodiversity*, a report of the Australian Institute of Criminology on 14 October 2010; and *Understanding Non-compliance in the Marine Environment* by Russell G. Smith and Katherine Anderson of the Australian Institute of Criminology in 2004.

In May 2011 the National Parks and Wildlife Service expressed dismay at incidents near Cowra involving reckless harm to kangaroos. In both cases the kangaroos were left with arrows impaled in their bodies. Just one month earlier the National Parks and Wildlife Service was searching for a kangaroo in Batemans Bay that had a target arrow through its neck, described by National Parks and Wildlife Service South Coast Regional Manager Dianne Garrood as "incredibly cruel". In October 2010 the National Parks and Wildlife Service was investigating the illegal shooting of four wild horses south of Jindabyne.

In February 2011 the National Parks and Wildlife Service issued a warning about harming wedge-tail eagles because two were found shot dead near Berry. In August 2009 the National Parks and Wildlife Service found kangaroos south of Bateman's Bay that had been shot, chopped up for meat and the remains dumped on the side of a track. Near Wagga Wagga the service responded to reports of kangaroos being torn apart by pig

dogs. In November 2010 the ABC reported that on the Sunshine Coast a baby koala, nicknamed Frodo, was found still clinging to life with 15 shotgun pellets lodged in its body and skull. The mother had been shot dead. As RSPCA Queensland spokesperson Michael Beatty said:

> It is beyond belief that someone would shoot a baby koala. Quite senseless and horrific acts of animal cruelty have been committed in the last two months and each one seems to top the other one.

In another barbaric act, in June 2010 in Victoria authorities went to the lengths of posting a reward of $1,000 for a group of men who shot and killed a koala north-west of Melbourne. Police reported that up to 20 shots were fired at the animal, which was affectionately known as Waistcoat Bear due to a large patch of white fur on its chest. These are just a few horrific examples of the extreme cruelty of some recreational hunters. This is not to say that all shooters are capable of such inhumane cruelty. There are clearly some shooters who are respectful of the life they take or the actions they engage in. I am thinking particularly of farmers who shoot feral animals on their properties to protect their livelihoods.

There are also the professional hunters who are used to control feral animal populations in national parks in New South Wales and across Australia. However, recreational hunters are historically a significant part of the problem—not the solution—in regards to feral animal control. It is hunters who introduced foxes and rabbits into Australia for sport, and more recently have moved pigs, deer and other feral animals into many new areas. Hunters using dogs have created a problem with the wild dog population in New South Wales. Many dogs are abandoned or lost during the hunting process. As a result, packs of wild dogs now cause huge damage to the environment and agriculture.

A rapid increase in the distribution of feral pigs from the 1970s in New South Wales and Queensland has been found to be due to "deliberate release of piglets and juveniles by unscrupulous hunters". The Federal threat abatement plan for feral pigs notes:

> Continued release of feral pigs for hunting, either in new areas or in areas that they do not currently occupy is a major threat to effective management of feral pigs and their damage.

We need to have a clear image of what recreational hunting really is. We should not say the words "recreational hunting" lightly. These are not people who shoot and kill because they need to or because their lives or livelihoods depend upon it. They are not sports men or women who are engaging in an Olympic-recognised sport. We are talking about recreation. We are talking about people who enjoy killing and who think it is fun.

As is the case in the examples I have just given, there are people who enjoy torturing animals to death who think it is okay to kill our native animals and cruelly impale them with arrows, and who think the idea of a weekend activity is to head out and engage in blood sports with their mates in the closest State forest. A gun culture that is based on recreation and fun is exactly what the Game Council and its parliamentary wing, the Shooters and Fishers Party, is endeavouring to promote in New South Wales. This is a culture that The Greens and most citizens in this State reject.

GLOBAL WARMING

The Hon. Dr PETER PHELPS [7.10 p.m.]: I wish to update the House in relation to the latest developments in the great anthropogenic global warming swindle. Members will be aware that recently I condemned the totalitarian tendencies of anthropogenic global warming supporters—and didn't they hate being exposed to the light? That rancid middle-class fool, Mike Carlton, dribbled his usual bile. Outraged emailers—fewer than a dozen, it must be observed—slammed me. Even the Federal Minister of almost nothing, Peter Garrett, had a go in the Federal Parliament. Well, I stand by everything I said. It is an unarguable fact of history that, except in Pol Pot's agrarian communism, the symbiotic relationship between totalitarians and their scientists always has been very strong.

Today the global warming totalitarians are on the march. In 2009 James Hansen of the National Aeronautics and Space Administration [NASA] said, "The democratic process doesn't quite seem to be working." Even in Australia, David Shearman of the University of Adelaide and an Intergovernmental Panel on Climate Change reporter, said, "... authoritarianism is the natural state of humanity". David Shearman wrote a book, *The Climate Change Challenge and the Failure of Democracy*, and one must ask: If democracy has been such a failure, what do they propose will replace it? [*Quorum called for.*]

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

I have nothing further to add.

TEDxSYDNEY FORUM

The Hon. PENNY SHARPE [7.14 p.m.]: Late last month I was fortunate to attend the TEDxSydney Forum held at CarriageWorks in Redfern. TEDx was created by the United States based not-for-profit enterprise, Technology, Entertainment and Design [TED], and began life in 1984 as a conference to bring together interesting ideas outside religion, politics or profitable enterprises. [*Quorum called for.*]

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

Technology, Entertainment and Design was established in 1984 by Chris Anderson in Palm Springs in the United States as a forum on technology, entertainment and design. As he recently told the *Sydney Morning Herald*, originally it was supposed to be a forum for interesting ideas but instead it became a phenomenon for global distribution. It is a place to talk about ideas outside religion, politics or profitable enterprises. Technology, Entertainment and Design shifted its emphasis from an exclusive conference for 800 people to something much more ambitious—using the web as a vehicle to spread ideas throughout the world. The best TEDx videos are of presentations by speakers who were invited to give the talk of their lives at its flagship conferences. They have been selected for its website alongside some of the many associated TEDx functions, such as locally run events throughout the world, including the one in Sydney. Its videos are now downloaded half a million times each day.

Community groups throughout the world use the talks to spread ideas. TEDx is now a worldwide movement that aims to accomplish a very simple objective: It brings interesting and cutting-edge speakers to one place with the aim of giving them an audience, and then giving that audience very wide access to ideas that are worth sharing. At TEDxSydney participants were encouraged to join in the dialogue on the day and to continue the exchange of ideas through online networks and through the TEDxSydney website. It is estimated that more than 10,000 people joined in TEDxSydney, either in person at CarriageWorks, or as part of a live satellite event that was organised to bring people together at another venue, or by watching a live video stream on YouTube, or through listening to the ABC Radio National broadcast. TEDxSydney featured some of Sydney's—indeed, some of Australia's—leading visionaries, creative thinkers, musicians, performers, designers, commentators and historians.

Some of the speakers I heard at TEDx were outstanding and I will reflect on some of their comments. One speaker I found particularly inspiring was Richard Gill, who is the conductor, educator and music director of the Victorian Opera Company. Richard's philosophy is that every child has a right to a music education. He argued passionately that music education enhances creative and critical thinking that have important resonances in all areas of learning. I hope to have a showing of his talk later in the year in Parliament House because I believe it is an idea worth sharing. Music and performance are a key part of the Technology, Entertainment and Design events. Participants were able to hear from Tjupurru, Synergy, FourPlay and The Glamma Rays, to name just a few performers.

Genevieve Bell from Intel also gave a very interesting talk about the study of boredom and the need for people to put down their mobile phones and embrace boredom as an integral part of the way in which the brain operates to reset creativity—a lesson that perhaps I could learn. A talk also was given by Grace Karskens, who presented the untold history and story of the Sydney colony as told from some of the people in its understorey, such as some of the workers and some of the Gadigal women who were there at the time.

TEDxSydney was a fascinating glimpse and a showcase of the energy that makes Sydney such a vibrant place in which to live. TEDx is brought together by a dedicated group of volunteers. I congratulate them, especially Remo Giuffré, Janne Ryan, Julian Morrow, Belinda Henderson, Amy Denmeade and Michael Badcock for what was a stimulating and important event.

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

Motion agreed to.

The House adjourned at 7.19 p.m. until Friday 17 June 2011 at 9.30 a.m.