LEGISLATIVE COUNCIL AND LEGISLATIVE ASSEMBLY

Thursday 13 October 2011

JOINT SITTING TO ELECT A SENATOR

The two Houses met in the Legislative Council Chamber at 3.45 p.m. to elect a senator in the place of Senator the Hon. Helen Coonan, resigned.

Mr BARRY O'FARRELL: Mr Clerk, I move:

That the Hon. Donald Thomas Harwin, President of the Legislative Council, act as President of the Joint Sitting of the two Houses of the Legislature for the election of a senator in place of Senator the Hon. Helen Lloyd Coonan, resigned, and that in the event of his absence the Hon. Shelley Elizabeth Hancock, Speaker of the Legislative Assembly, act in that capacity.

Mr JOHN ROBERTSON: I second the motion.

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

Motion agreed to.

The Hon. Donald Thomas Harwin took the chair.

Mr BARRY O'FARRELL: I present the proposed rules for the regulation of the proceedings at the joint sitting, which have been printed and circulated. I move:

That the proposed rules, as printed and circulated, be now adopted.

Mr JOHN ROBERTSON: I second the motion.

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

Motion agreed to.

The PRESIDENT: Before we proceed to the election, I recognise the presence in the President's gallery of Arthur and Elizabeth Sinodinos, the Hon. Helen Coonan and the Hon. Peter McGauran, former Federal Ministers, the Vice-President of the New South Wales Liberal Party, the State Director and Deputy State Director of the New South Wales Liberal Party and senior staff of the office of the former Prime Minister Mr John Howard. Welcome.

I am now prepared to receive nominations with regard to a person to fill the vacant place in the Senate caused by the resignation of Senator the Hon. Helen Coonan.

Mr BARRY O'FARRELL: I propose Mr Arthur Sinodinos to hold the place in the Senate rendered vacant by the resignation of Senator the Hon. Helen Coonan and I announce that the candidate is willing to hold the vacant place if chosen. Senator the Hon. Helen Coonan was, at the time she was chosen by the people of the State, publicly recognised to be an endorsed candidate of the Liberal Party of Australia, New South Wales division, and publicly represented herself to be an endorsed candidate of that party. Mr Arthur Sinodinos is a member of the same political party.

The Hon. MICHAEL GALLACHER: It is an honour to second the motion.

The PRESIDENT: Does any member desire to propose any other person to fill the vacancy? There being no other nominations, the question is: That Mr Arthur Sinodinos, an Officer of the Order of Australia, be chosen to hold the place in the Senate rendered vacant by the resignation of Senator the Hon. Helen Coonan.

Question resolved in the affirmative.

The PRESIDENT: I declare that Mr Arthur Sinodinos, an Officer of the Order of Australia, has been chosen to hold the place in the Senate rendered vacant by the resignation of Senator the Hon. Helen Coonan.

Mr BARRY O'FARRELL: I move:

That the President inform Her Excellency the Governor as soon as practicable that Mr Arthur Sinodinos, an Officer of the Order of Australia, has been chosen to hold the place in the Senate rendered vacant by the resignation of Senator the Hon. Helen Lloyd Coonan.

The Hon. MICHAEL GALLACHER: I second the motion.

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

Motion agreed to.

The PRESIDENT: I declare the joint sitting closed.

The joint sitting closed at 3.55 p.m.

LEGISLATIVE COUNCIL

Thursday 13 October 2011

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

The President read the Prayers.

STATE REVENUE LEGISLATION AMENDMENT BILL 2011

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

Motion by the Hon. Greg Pearce agreed to:

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

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

OMBUDSMAN

Reports

The President tabled, pursuant to the Ombudsman's Act 1974, the following reports of the Ombudsman:

1. Special report entitled "Kariong Juvenile Correctional Centre: Meeting the Challenges", dated October 2011.

2. Special report entitled "Addressing Aboriginal disadvantage: the need to do things differently", dated October 2011.

The President announced that he had authorised that the reports be made public.

Reports ordered to be printed on motion by the Hon. Duncan Gay.

ROYAL AUSTRALIAN NAVY 100TH ANNIVERSARY

Motion by the Hon. Dr Peter Phelps agreed to:

That this House:

(a) notes that 10 July 2011 was the 100th anniversary of the creation of the Royal Australian Navy;

(b) notes the close and enduring association between the RAN and the people of New South Wales;

(c) supports the retention of the Garden Island naval facility as a vibrant and integral part of the history and future of Sydney Harbour maritime activities; and

(d) congratulates the officers and sailors, past and present, of the Royal Australian Navy for their magnificent service in times of peace and war over the past 100 years.

GILLIAN SNEDDON SUPREME COURT DECISION

Motion by the Hon. Dr Peter Phelps agreed to:

That this House:

(a) notes the heroism shown by Ms Gillian Sneddon in coming forward as a whistleblower in the Milton Orkopoulos child sex case;

(b) congratulates Ms Sneddon for taking her courageous stand in the face of intimidation and potentially massive personal legal expenses;

(c) condemns the bullying, harassment and victimisation of Ms Sneddon by Mr Orkopoulos and staffers in his office; and

(d) congratulates the O'Farrell-Stoner Government for offering to cover the court costs of Ms Sneddon through an ex gratia payment.

LEBANESE MUSLIM ASSOCIATION FIFTIETH ANNIVERSARY

Motion by the Hon. Shaoquett Moselmane agreed to:

1. That this House notes that:

   (a) in 2012, the Lebanese Muslim Association [LMA] will celebrate 50 years since its founding in 1962;

   (b) the Lebanese Muslim Association is a community based, not-for-profit welfare organisation;

   (c) the association's first achievement was the construction of Imam Ali Mosque, Australia's largest mosque, in 1972;

   (d) the Lebanese Muslim Association's mission is to develop, advocate and provide support services, develop new programs and expand existing services to help address the needs of the Australian Islamic and wider Australian community; and

   (e) amongst a range of objectives, the Lebanese Muslim Association provides religious and settlement advice, raises awareness of community matters and meets the religious and community needs of the Australian Muslim community.

2. That this House congratulates the Lebanese Muslim Association on reaching a significant landmark of 50 years of community service.

INDIA AUSTRALIA FRIENDSHIP FAIR

Motion by the Hon. Shaoquett Moselmane agreed to:

1. That this House notes that:

   (a) the Hon. Shaoquett Moselmane, together with a great number of Federal, State and local government representatives, attended Sunday's India Australia Friendship Fair 2011 at Sydney Olympic Park in Homebush;

   (b) the first India Australia Friendship Fair was held in 1994 when United Indian Associations Incorporated was formed and it has grown from 400 patrons to over 14,000 people attending and enjoying a great day out with family and friends; and

   (c) the India Australia Friendship Fair not only celebrates Indian Independence Day but also showcases the rich traditions and cultures of India and promotes friendship, and closer community and business ties between India and Australia.

2. That this House congratulates:

   (a) the United India Executive Committee 2011-2012 including President Amarinder Bajwa, Vice President John Niven, Secretary Renga Rajan, Treasurer Debasish Chakrabarti, Joint Secretary Prakash Rao, Joint Treasurer Gunjan Tripathi, Public Officer Vijaykumar Halagali and the many volunteers who helped make the day a wonderful India Australia Friendship Fair day; and

   (b) all proud members of the United India Association including the Australian Indian Medical Graduates Association, Australian Punjab Business Organisation, Australian Telugu Samithi Inc., Basava Samithi, Bengali Association of NSW, Gujarati Samaj, Hindu Samaj, Hornsby Senior Citizens' Association, Indian Sports Club Inc., Marathi Association Sydney Inc., Punjabi Council of Australia, Sydney Kanada Sangha, Sydney Malayalee Association Inc., Sydney Sindhi Association, Sydney Tamil Mangram, Technocrats Association of Australia, Telugu Association Inc. and the Indian Sanmarga Ikya Sangam.

ANXIETY DISORDERS ASSOCIATION OF NSW INCORPORATED

Motion by the Hon. Shaoquett Moselmane agreed to:

1. That this House notes the formation of the Anxiety Disorders Association of NSW Incorporated.

2. That this House notes that the aims and objectives of the Association are:

   (a) to promote an awareness of anxiety disorders in the community of New South Wales, the treatments available and the needs of those suffering from these conditions;

   (b) to provide support services to those suffering from anxiety disorders and their carers by way of information, support and self-help groups and an education program for parents and teachers;

(c) to assist professionals in anxiety disorders treatment through organising or participation in workshops, seminars, conferences, exhibitions and other gatherings;

(d) to promote and support research into the causes and treatment of anxiety disorders; and

(e) to seek, collect and receive moneys or funds through contributions, donations, subscriptions, grants, bequests or any other means where those moneys are to be used in meeting these objectives.

3. That this House congratulates all office holders, members and supporters of the Anxiety Disorders Association of NSW Incorporated, a most worthy initiative.

NEW SOUTH WALES WARATAHS NETBALL TEAM

Motion by the Hon. Marie Ficarra agreed to:

1. That this House notes that the New South Wales Waratahs remained undefeated in the 2011 Australian Netball League, taking the championship title from three time winners Victorian Fury at the recent Grand Finals.

2. That this House congratulates the following people for their outstanding work with these fine young athletes:

(a) New South Wales Waratah players: Carla Dziwoki (Captain), Ashleigh Brazill, Joanne Day, Kristy Durheim, Nicola Gray, Paige Hadley, April Letton, Jessica Mansell, Samantha May, Verity Simmons, Amy Wild and Elly Willan;

(b) Coach: Robert Wright, and Assistant Coach: Anita Keelan; and

(c) Manager: Maureen Stephenson, OAM, and physiotherapist: Paula Peralto.

INAUGURAL SUPERTAG COMMUNITY GALA DAY

Motion by the Hon. Marie Ficarra agreed to:

1. That this House notes that on 25 September 2011, the Penrith Panthers and Mr Phil Gould conducted the Inaugural Supertag Community Gala Day and, despite cold and wet conditions, over 1,000 male and female children and young people participated in this very successful gala day.

2. That this House thanks and congratulates:

(a) Mr Phil Gould for the outstanding work he is doing in the Penrith and wider Western Sydney community to foster the welfare of and assistance to children, young people and families, particularly from Indigenous backgrounds, by providing them with the opportunity to participate in community activities and promote healthy lifestyles;

(b) Mr Perry Haddock from OzTag Australia for his contribution to the Gala Day and his long term work in providing a popular recreational sport for women, men and children of all ages, giving them the opportunity to participate in community activity promoting healthy lifestyles;

(c) Penrith Panthers and representatives of the sponsor, ASICS, Luke Lewis and Jonathan Thurston; and

(d) Penrith Panthers Chairman, Don Feltis, the Board of Penrith Panthers and Ms Diane Langmack for their continued efforts to serve the needs and interests of children, young people, families and the Western Sydney community.

DIABOLO DANCE THEATRE FROM TAIWAN

Motion by the Hon. Marie Ficarra agreed to:

1. That this House notes that:

(a) on 18 September 2011, in honour of the Republic of China's centenary, the Diabolo Dance Theatre from Taiwan performed at the Parramatta Riverside Theatres;

(b) the concert was organised by Commissioner John Chang, Overseas Compatriot Affairs Commission, Republic of China (Taiwan), and attended by Ms Frances Lee, Director General, Taipei Economic and Cultural Office, Sydney; the Hon. Graham Annesley, MP, Minister for Sport and Recreation; Ms Susan Yeh, Director General, Cultural Affairs Bureau, Taichung City Government; the Hon. Marie Ficarra, MLC, Parliamentary Secretary to the Premier; the Hon. David Clarke, MLC, Parliamentary Secretary for Justice; the Hon. John Ajaka, MLC, Parliamentary Secretary for Transport and Roads; and Mr Charles Casuscelli, MP;

(c) the opening statement by Ms Frances Lee was as follows: "Wealth might make a country big. It is the culture that can make a country great. The government of the Republic of China (Taiwan) has not only preserved the rich roots of the traditional Chinese culture, but also absorbed the essence of western contemporary civilisation.

As a result, you will find the core values in Taiwan are openness, kindness, enterprising spirit, diligence and passion. Taiwan in nature possesses the openness and innovation of a maritime culture. 'The Heart of the Ocean' presented by the Diabolo Dance Theatre will let Australian friends experience 'the East meeting the West'"; and

(d) the concert was sponsored by the Commonwealth Bank of Australia; Dr Dennis S. L. Lee; Jubo Tours, Beverley Park; Chaiselle boutiques; 'Yes' Optus; World Square and Muffin Break, Chatswood.

2. That this House congratulates:

(a) the Diabolo Dance Theatre Company for their performance which showed the journey from Taiwan's revolution to its centenary; and

(b) the Republic of China on its centenary.

WHITE RIBBON FOUNDATION AMBASSADOR OF THE YEAR DR PHIL LAMBERT

Motion by the Hon. Marie Ficarra agreed to:

1. That this House notes that:

(a) at the recent 2011 White Ribbon Ball for the prevention of violence against women, Dr Phil Lambert, Regional Director, Sydney, NSW Department of Education and Training, Adjunct Associate Professor, University of Sydney and Adjunct Professor, Nanjing Normal University, China was named a finalist for Ambassador of the Year in honour of his outstanding service to the White Ribbon Foundation and campaign;

(b) Dr Lambert has overseen a number of major policy initiatives in New South Wales in early childhood, primary education, rural education and Aboriginal education, including the delivery of distance education to isolated students using satellite computer-based technologies, the New South Wales review of Aboriginal education, the expansion of preschools in government schools and the class size reduction program;

(c) Dr Lambert is currently a board member of the Australian Children's Television Foundation, the Department of Education and Training's Confucius Institute, the Deans' Advisory Boards at the University of Sydney and Notre Dame University, a member of the National Rugby League Advisory Committee, Patron of the Early Childhood Education Council and the Interim Board of the NSW Conservatorium of Music;

(d) Dr Lambert has served as Chairperson of the South-East Sydney and Inner West Senior Officers Group from 2004-2008 and was the foundation Chair of the Human Services and Justice Metropolitan Regional Network of Senior Government Officers;

(e) in 2006, Dr Lambert represented New South Wales at the World Educational Leadership Conference in Boston, United States of America and in 2010 represented New South Wales and the NSW Department of Education and Training at the World Expo in Shanghai, China;

(f) Dr Lambert has been honoured with the NSW Primary Principals' Association Award for his outstanding contribution to primary education and in 2010 was the inaugural recipient of the Regional Director/School Education Director of the Year Award presented by the Federation of Parents and Citizens Associations of New South Wales; and

(g) since his appointment as Regional Director, Sydney Region has recorded significant increases in student enrolments and retention, record performances in external examinations and outstanding achievements in the arts and sport.

2. That this House congratulates Dr Lambert on his outstanding work in the New South Wales community and education system.

NEW SOUTH WALES UNDER-20 WEIGHTLIFTING TEAM

Motion by the Hon. Marie Ficarra agreed to:

1. That this House notes that:

(a) the New South Wales Under 20s Weightlifting Team participated in the National Weightlifting Championships held in Melbourne from 23 to 25 September 2011;

(b) the results achieved by New South Wales athletes far exceeded expectations, with many personal bests recorded;

(c) the team achieved the following results:

(i) NSW Men U20 3rd;

(ii) NSW Men U17 3rd;

(iii) NSW Women U17 6th;

(iv) NSW Women U15 4th;

(v) NSW Men U15 2nd and 3rd Trans Tasman Challenge; and

(d) Bassel Rana has been selected to represent Australia at the New Zealand versus Australia Championship in New Zealand in December 2011.

2. That this House congratulates the following athletes on their achievements:

(a) Luke Lilli: U17 85kg 1st Place, New South Wales U17 Records Clean and Jerk 108kg, Total 183kg;

(b) Aidan Steiner: U15 94+kg 1st Place;

(c) Mahi Rewi: U15 58kg 2nd Place, New South Wales U15 and U17 Records Snatch 38kg, Clean and Jerk 56kg, Total 94kg;

(d) Zoe Simon: U15 63kg 2nd Place, New South Wales U15 and U17 Records Snatch 34kg, Clean and Jerk 45kg, Total 79kg;

(e) Bassel Rana: U15 62kg 1st Place and Highest Sinclair in U15 Tournament, New South Wales U15 and U17 Records Snatch 65kg, Clean and Jerk 90kg, Total 155kg, Australian Records U15 Clean and Jerk 90kg, Total 155kg;

(f) Luke Robinson: U15 62kg 2nd Place;

(g) Matthew Lilli: U15 94+kg 2nd Place;

(h) Dan Dinh: U20 62kg 2nd Place;

(i) Patrick Chow: U20 69kg 2nd Place;

(j) Patrick Canavan: U20 85kg 2nd Place; and

(k) Iata Fasimalo: U17 69+kg 2nd Place, New South Wales U17 Records Snatch 52kg, Clean and Jerk 69kg, Total 121kg.

3. That this House thanks the New South Wales coaches, namely Head Coach Steven Tikkanen, and coaches Natasha Barker and Martin Harlowe, for all their hard work and dedication leading to the State's success at the national championships.

HIS GRACE THE MOST REVEREND BISHOP ROBERT RABBAT

Motion by the Hon. John Ajaka agreed to:

1. That this House congratulates His Grace the Most Reverend Bishop Robert Rabbat on his appointment as the Eparch of the Melkite Greek Catholic Church of Australia and New Zealand.

2. That this House notes that:

(a) on 14 June 2011, His Holiness Pope Benedict XVI consented to His Grace's appointment as Eparch of the Greek-Melkite Church of Australia and New Zealand;

(b) on 16 September 2011, His Grace received Episcopal consecration at the Church of St John Chrysostom in Beirut, Lebanon; and

(c) on 8 October 2011, His Grace was enthroned at St Michael the Archangel Cathedral, Darlington in New South Wales, as the third Eparch of the Greek-Melkite Church of Australia and New Zealand.

3. That this House notes that:

(a) His Grace was born in Beirut, Lebanon on 14 February 1960;

(b) His Grace studied at Collège des Frères de La Salle, The Christian Brothers, in Beirut, Lebanon and due to the Lebanese civil war finished his senior year of schooling at Ashrafieh High School, Lebanon;

(c) in 1979, His Grace travelled to the United States of America and graduated in 1982 from Ohio State University, Columbus, with a Bachelor of Science Degree in Chemical Engineering and another Bachelor of Science Degree in Mathematics;

(d) His Grace worked in the field of chemical industry and management, particularly water desalination, with many multinational companies and was responsible for the regions of Europe, the Middle East and Africa;

(e) in 1989, His Grace enrolled as a Melkite seminarian at Saint Paul Institute for Theology and Philosophy in Harissa, Lebanon under the auspices of the Archbishop of Beirut and graduated in 1994 with a dual Licentiate in Philosophy and in Theology;

(f) in 1994, the late Archbishop of Beirut Habib Basha ordained His Grace as a priest and he was assigned to help at Saint Anthony the Great Church in Ashrafieh, Lebanon, prior to leaving for the United States of America, where he arrived in August 1995 to serve Saint Michael the Archangel Melkite Church in Hammond, Indiana;

(g) in 1997, His Grace received a Master's Degree in Communication from Purdue University in Indiana;

(h) in 1999, Bishop John Adel Elya, the Eparch of the Melkites in the United States of America, assigned to His Grace the responsibility of Editor-in-chief of Sophia Magazine, the Melkite diocesan magazine for the whole United States of America, in addition to his pastoral work;

(i) in 2000, His Grace was assigned to serve at Saint John the Baptist Church (Northlake, Illinois) and Holy Saviour Mission (Oak Lawn, Illinois);

(j) in 2003, His Grace was nominated to be a member of the board of directors of Télé-Lumière International, and accepted the nomination upon receiving the blessing of his Bishop;

(k) based in Lebanon, Télé-Lumière International is the number one Christian television station in the Middle East that promotes peace and harmony amongst all the inhabitants of the region, mainly Christians and Muslims;

(l) in 2005, His Grace was elected as Vice President of the board of directors of Télé-Lumière International;

(m) ecumenically driven, His Grace was able to initiate an active coordination between the Antiochian Churches throughout his pastoral services, especially in the Metro-Chicago area with his arrival to the Northlake area and, as a result, for the first time four Antiochian Churches, being Greek Orthodox, Syriac Orthodox, Maronite and Melkite, came together for different social and spiritual events, driven by the dream of becoming "one church" as Jesus wants his followers to be: "United in their diversity";

(n) in 2005, His Grace was elevated to the dignity of Archimandrite and was assigned as Rector of the Cathedra of the Annunciation in Boston, Massachusetts; and

(o) on 25 June 2010, His Grace was elected to the episcopate by the Holy Melkite Synod.

PETITIONS

Game Council of New South Wales

Petition requesting that the House abolish the Game Council and legislate to permanently end recreational hunting on public land, received from **Mr David Shoebridge.**

BUSINESS OF THE HOUSE

Suspension of Standing and Sessional Orders: Order of Business

The Hon. MICK VEITCH [11.18 a.m.]: I move:

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 313 outside the order of precedence relating to Government responses to committee reports be called on forthwith.

This matter is urgent because the Government has indicated that it does not intend to respond to outstanding committee reports at all, other than by specific resolution of the House. Tuesday was the day upon which most members had expected the Government to provide its responses and there should be no further delay in providing a response to the outstanding committee reports. This matter is urgent because there are members who wish to peruse the Government responses to a number of committees and who have waited in good faith. This matter is urgent because there are citizens of New South Wales who are waiting in good faith for the Government response to a committee report of interest to them. This motion is urgent because the House cannot delay any longer the need for a Government response to be tabled and, quite simply, that is why this matter has now become more urgent than any other matter on the *Notice Paper*.

The Hon. ROBERT BROWN [11.19 a.m.]: The Shooters and Fishers Party supports the motion moved by the Hon. Mick Veitch. As members are probably aware, last year and the year before I was the chair of the Select Committee on Recreational Fishing. The response to the report of that committee was due by June this year. This is a matter of urgency. All committee reports that were current in the last Parliament should be reported on by the Government as quickly as possible.

Dr JOHN KAYE [11.19 a.m.]: The Greens also support urgency in relation to this matter. This matter is urgent because without government responses to those reports the whole committee system is called into question. The Government's response is the completion of the committee cycle. The Government has indicated that it does not intend to respond to those important reports. This matter is urgent.

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

Motion agreed to.

Order of Business

Motion by the Hon. Mick Veitch agreed to:

That Private Members' Business item No. 313 outside the Order of Precedence be called on forthwith.

GOVERNMENT RESPONSES TO COMMITTEE REPORTS

The Hon. MICK VEITCH [11.20 a.m.]: I seek leave to amend Private Members' Business item No. 313 outside the Order of Precedence, of which I have given notice, by omitting in paragraph 4 the words "28 days" and inserting instead "60 days".

Leave granted.

Accordingly, I move:

1. That this House notes that the President reported on 11 October 2011 that under Standing Order 234, Government responses had not been received to various committee reports tabled during the last session of Parliament.

2. That this House notes the following correspondence tabled in the House on Tuesday 11 October 2011:

    (a) the letter from the Hon. Duncan Gay, Leader of the House and Deputy Leader of the Government in the Legislative Council, dated 7 September 2011, indicating the Government's intention to not provide responses to committee reports tabled during the 54th Parliament; and

    (b) advice by the Clerk of the Parliaments, dated 9 September 2011.

3. That this House notes the statement in Mr Gay's letter, dated 7 September 2011, that "The Government would of course provide a response to any report of a Legislative Council Committee from the previous Parliament in relation to which the Legislative Council resolves to request a response from the Government."

4. That there be laid upon the table of the House within 60 days of the passing of this resolution a response to each of the following Legislative Council committee reports tabled during the 54th Parliament:

    (a) Standing Committee on State Development:

        (i) Report No. 34 entitled "New South Wales Planning Framework", dated December 2010—response due 10 June 2010;

        (ii) Report No. 35 entitled "Wine grape market and prices", dated December 2010—response due 3 June 2011;

    (b) Standing Committee on Law and Justice:

        (i) Report No. 42 entitled "Spent convictions for juvenile offenders", dated July 2010—response due 6 January 2011;

        (ii) Report No. 43 entitled "Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council—Tenth Report", dated October 2010—response due 28 April 2011;

        (iii) Report No. 45 entitled "Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council—Third Report", dated November 2010—response due 11 May 2011;

    (c) Report No. 44 of the Standing Committee on Social Issues entitled "Inquiry into services provided or funded by the Department of Ageing, Disability and Home Care", dated November 2010—response due 11 May 2011;

    (d) Report of the Select Committee on Recreational Fishing entitled "Recreational fishing in New South Wales", dated December 2010—response due 10 June 2011;

    (e) Report No. 32 of General Purpose Standing Committee No. 5 entitled "The inquiry into the RSPCA raid on the Waterways Wildlife Park", dated September 2010—response due 9 March 2011; and

    (f) Report No. 36 of General Purpose Standing Committee No. 1 entitled "The Gentrader transactions", dated February 2011—response due 22 August 2011.

5. If at the time at which the government seeks to report to the House, the House is not sitting, a Minister may present the response to the Clerk.

6. A response presented to the Clerk is:

(a) on presentation, and for all purposes, deemed to have been laid before the House;

(b) to be printed by authority of the Clerk;

(c) for all purposes, deemed to be a document published by order or under the authority of the House;

(d) to be recorded in the Minutes of Proceedings of the House; and

(e) to be distributed by the clerk of the committee to inquiry participants.

This motion cuts directly to the importance that this House places on the work of committees, the committee process and the role committees play in assisting the House to fulfil its role as a House of review. A most crucial aspect of the committee process is the government response to committee reports tabled in this House. Committees have been an aspect of the work of this House since 1824 when a subcommittee was formed to investigate the female factory at Parramatta. The use of committees has evolved since then. The requirement or practice of providing government responses to committee reports commenced with the appointment of the first two standing committees in 1988 at the time of the Greiner Government.

The standing orders now require the Clerk to refer all committee reports that recommend action be taken to the Leader of the Government for a response within six months of the report being tabled. How did we get to this point today? On 20 June this year, the Leader of the Government advised the House that the Government intended to respond to outstanding committee reports tabled in this House within six months of the election in March. By all accounts I would suggest that is fair and reasonable. I do not think there are too many members who would disagree with that arrangement. Why would any members be worried when they read the correspondence from the Leader of Government Business? He said:

> We undertake to provide a full response to each report within six months of the date on which this Government took office, 26th March 2011.
>
> This Government is committed to providing a thorough response to each recommendation contained in these reports in accordance with the Standing Orders.

On Tuesday this week the House was advised that the Government does not intend to provide a response to any of the outstanding committee reports tabled in the House. That is not acceptable to a number of members in this Chamber. It smacks of arrogance from the Government. It is most definitely a slight, indeed disrespectful, to committee members, the hard-working secretariat, and to all the citizens of New South Wales who took time to prepare a submission or to attend a public hearing. There are citizens of New South Wales waiting to see what the government response will be to a particular committee report, whether they be wine grape growers, recreational fishers or people with a disability. The letter by the Leader of Government Business to the Clerk does however provide the House with a way forward. It states:

> The Government would of course provide a response to any report of a Legislative Council Committee from the previous Parliament in relation to which the Legislative Council resolves to request a response from the Government.

The correspondence tabled this week from the Clerk of the Parliaments dated 9 September 2011 provides a very clear opinion on the need for the Government to respond to recommendations in a committee report tabled in the House. It states:

> While prorogation has the effect of terminating all business pending before the House, the requirement for the Government to respond to recommendations in a committee report is not a matter pending before the House. It is a requirement under a standing order which has force whether or not the House is able to meet, ... If it was intended that the requirement to respond to recommendations would be limited to a particular parliament, I believe the standing order would need to specify such. Since it does not, I believe the current Government is bound by its provisions.

It is a very dangerous precedent indeed for the Government of the day not to respond to a committee report tabled in this House, regardless of when it was tabled and regardless of whoever has formed government in the Legislative Assembly. I ask members to consider supporting this important motion.

The Hon. ROBERT BROWN [11.25 a.m.]: As I said in my contribution to the urgency debate, in the last Parliament I was chair of the Select Committee on Recreational Fishing. That committee inquiry cost the taxpayers of this State of the order of $277,000. It took over 1,000 submissions, held five or six public hearings

around the State and had scores of witnesses at those hearings wanting to express an opinion as stakeholders. I recall that in the last Parliament when the Hon. Duncan Gay was the shadow spokesperson for fisheries and agriculture he and I stood shoulder to shoulder at a number of forums in public places telling the recreational fishers of New South Wales that we understood their disquiet at a lot of things that were going on. Indeed, the then Opposition supported the motion that set up that inquiry.

It behoves the Government to make sure it responds properly to that report, and to all reports. I know there is urging within the fishing community, particularly from the Recreational Fishing Alliance, for the Government's response to that report to be made as soon as possible. Members will be aware that I have a bill on the *Notice Paper* that looks at restructuring the representation model for recreational fishers in this State. I was expecting that the formulation of the legislation and the debate could be informed by a response from the Government to the recreational fishing inquiry. I hope that that will now occur. Therefore, I urge all members to support the motion.

The Hon. DUNCAN GAY (Minister for Roads and Ports) [11.27 a.m.]: The Government will not be opposing the motion. As I indicated in my letter of 7 September, it is obvious the House has a will in this area. The Government would of course provide a response to any report of Legislative Council committees from the previous Government in relation to which the Legislative Council resolves to request a response from the Government. At the end of the day we all are the servants of the House, and appropriately so.

There is a difference in the two legal opinions. I was given a Crown Solicitor's advice on this, as was the previous Government on occasions. The Legislative Council has the advice of the former Clerk that made a different recommendation. As a member of the Government, when one is given legal advice by the Crown Solicitor one should take that advice and act on it, which I did, and I sent the appropriate letter. There was a great deal of alacrity to do reports on some of these matters, which I will come to in a moment. The Crown Solicitor's advice was to do with the propriety of a different Government doing a report on issues that came to the committee section under a previous Government. Its recommendation was that it was inappropriate and unnecessary for us to reply to the reports.

I thank the Hon. Mick Veitch and members of the House for allowing the amendment which the mover of the motion put in place to increase the time to 60 days. We are about to deal with the budget estimates, when members and the bureaucracy will be very much sidetracked on particular issues. In part I can understand the Opposition wanting to move this motion but I look forward to the Government's response to paragraphs (d), (e) and (f)—the report of the Select Committee on Recreational Fishing, the inquiry by General Purpose Standing Committee No. 5 into the RSPCA, and report No. 36 of General Purpose Standing Committee No. 1 entitled "The Gentrader transaction".

I suspect that there is delight in the now Opposition wanting to use an opinion of the former Clerk to shove it up the nose of the Government. I suspect that delight will diminish when the Government response and report on the detail of the mess that was generated are available and members are aware of the terrific work done by the parliamentary committees to at least lift the lid on some of the mess that existed at the time. As I indicated, on the legal advice the Government had and on my advice, we did not believe it was appropriate. But, as always, we are in the hands of the House. The House is of a mind to go this way and, as I indicated in my letter, if that is the way the House wishes to go the Government will not oppose that.

Dr JOHN KAYE [11.30 a.m.]: The Greens support the motion. I had intended to make a longer speech about the importance of the cycle which finishes with the Government's response and about the importance of committees of this House. I shall not do so because the Government has indicated its agreement to the motion and its willingness to comply with the motion as by leave amended. However, I will say that the Government's response on the gentrader inquiry is important, not just to spend time raking over the coals of the disaster that was the botched gentrader transactions but also to look into the mind of the Government and understand where it is going with ownership of the electricity industry, a matter on which there is now a substantial lack of clarity. The Greens support the motion before the House.

The Hon. PAUL GREEN [11.31 a.m.]: I speak on behalf of the Christian Democratic Party. The reasons that the House should support the motion have been well articulated, and I therefore commend the motion to the House.

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

Motion agreed to.

PUBLIC SECTOR EMPLOYMENT AND MANAGEMENT AMENDMENT (ETHICS AND PUBLIC SERVICE COMMISSIONER) BILL 2011

Second Reading

The Hon. MICHAEL GALLACHER (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [11.32 a.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Public Sector Employment and Management Amendment (Ethics and Public Service Commissioner) Bill 2011. It is a fundamental principle of our democracy that the role of government is to serve its citizens, not the other way around, and to deliver on their behalf those things that people delegate in limited ways to government, such as regulation, compliance, the provision of public infrastructure and the delivery of certain services. The more than 300,000 men and women engaged in public service around our State are in many cases meeting some of the most challenging issues that the market or voluntary exchanges cannot or will not meet. For many, their choice is a vocation, not simply a job, because they want to make a difference.

Public service is a unique specialisation in our nation's work spectrum. But I believe that too often our public service is characterised as a faceless cohort, an anonymous workforce—an approach which demeans and undervalues the uniqueness of each employee and their contribution. So when we talk about a culture of public service integrity and independence we know that the culture of the whole relies on the strength and commitment of the individuals who create that culture. Individuals in public service set the tone of trust and dependability in our civil domain—the basis on which we sustain mature and honest democracy. It is about good people, and I believe the way to motivate outstanding innovation and customer service to citizens is to foster a public service in which individuals are truly visible and meaningful, regardless of the size of the team of which they are a part.

In our Westminster system the government of the day will look to public service leaders, as well as to the middle and front lines, for frank and fearless advice. My Government believes that Westminster traditions and processes established in the nineteenth century are our strongest resources to take the New South Wales public service into a brand new era of innovation. It is by honouring the institutions of an independent public service and the maturity of its systems and unique specialisations that we have a solid foundation from which to confidently innovate.

Government responsibilities are diverse and complex. The people we look to for these services require and deserve a highly professional, strategic and independent champion to lead the New South Wales public service into the future. The champion must understand the strength, appeal and opportunities of public service, and equally understand that the best public service is focused in all its efforts on the needs of the citizen, the taxpayer and the customer. As service needs change, what matters will be the shape, not the size, of government, and the outcomes it delivers for citizens and customers. My Government has made a commitment to rebuild the economy, return quality services, renovate infrastructure, restore accountability and strengthen our local environment and communities. As part of our commitment we need the New South Wales public sector to do this with and for us. I have been impressed by the professionalism and work ethic of our State's public servants and the goodwill and energy brought to the task of delivering and implementing our reforms.

The Government is determined to make the New South Wales public sector the best in the nation and a leader in the world, with unambiguous goals, clear policy directions, transparent processes and consistent accountability. We are determined to create a new customer service culture underpinned by value and choice in public services, with public sector employees increasingly collaborating with the private and not-for-profit sectors to help shape innovative, relevant and modern public services that are responsive to the needs of our citizens. To drive this vision for the public sector the Government committed to establish a Public Service Commission in New South Wales. We are encouraged by public service professionals keen to see overdue reform to strengthen the integrity of their profession.

Members may recall that in November 2008 the Government argued that the then role of the Department of Premier and Cabinet as both the "poacher and gamekeeper" in public sector employment was not in the public interest. It was said that to improve the integrity, impartiality, performance and accountability of the State's public sector workforce we would, if elected, establish a Public Service Commission. It is a position that has been put by various representatives of government, from the Premier right through to other members of the Government, and it is one that we have continued to pursue. We have arrived at a historic moment in the history of our State's public service.

The Premier and I genuinely invite the Opposition, which has taken a different view in the past about a Public Service Commission, to support these important reforms. It is important that the Legislative Council have the opportunity, as it has, to ensure that in areas such as delivery of services to the people of New South Wales we put aside our political differences and look at working in a bipartisan manner to support an independent Public Service Commission. That would be seen as a positive step in the evolution of the public sector. It would be a powerful signal to the New South Wales public sector if parliamentarians of all sides endorsed this reform, and by doing so strengthened the Westminster traditions of our parliamentary democracy in New South Wales—as indeed has already occurred in the Commonwealth, the States of Queensland, South Australia, and Victoria, and other Commonwealth jurisdictions such as Canada, New Zealand and the United Kingdom.

The establishment of a Public Service Commissioner is the centrepiece of our plans for the public sector. People have sometimes asked why we call it the Public Service Commission rather than the public sector commission. By definition, the public service refers to those 20 per cent of people who comprise particular departments under the Public Sector Employment and Management Act; the public sector includes a broader group of public employees, mostly in primary service delivery. The responsibilities of the New South Wales Public Service Commissioner will include the entire sector, and the word "service" in the title is a significant and active choice to recognise the value and intent of the public service ethic in the concept of public service.

In fulfilling the role and responsibilities the commissioner will be expected to use innovation to put the citizen, the customer, at the centre of public services, deliver improved outcomes and value for money, promote and embed independence and integrity, provide advice and make recommendations on how to implement contemporary practice in public administration, create capability for performance and targeted service delivery, attract and retain a new generation of our best and brightest to the public service, define the public service as an admired and competitive career choice, develop a cadre of young professional thinkers and, finally, to build and retain public confidence and trust.

Investment in public sector workforce management is critical to achieving productivity gains and improving service to customers. Effective management of our human resources at all levels and in service contexts will achieve improvements to service delivery and productivity and lead to positive budget outcomes. The Government made another key election commitment to introduce a Public Sector Ethics Act. I do not seek to provoke a political debate on this occasion in this historic context, but it is important to be honest about the challenge this Parliament faces to rebuild confidence in our public institutions, as people called for in March. We must acknowledge the uncomfortable truth of the recent past that trust in public institutions has been broken.

The Premier has spoken regularly about the need to restore trust between public servants and government through clear plans and mandates, between people and elected representatives through devolution and accountability, and between government and communities through a strong customer service and accountability culture. Including a public sector ethics framework in this bill will give strength to these important networks in our civil domain, whose success depends on trust. Clear rules, boundaries and standards are necessary to ensure appropriate separation between the political and administrative arms of that civil domain. In a recent speech to the Australia and New Zealand School of Government [ANZSOG] about trust in government the Director General of the New South Wales Department of Premier and Cabinet noted research that showed a decline in trust since the late 1960s in the most advanced industrialised democracies.

He noted that in a 2005 survey Canadians linked trust and confidence in government to public organisations that provide good leadership and management, equal and ethical treatment, and quality services that meet citizens' and community needs. These are important signals for self-aware and honest democracies, amongst which we surely must count ourselves. That is why it is important to provide our public service with effective tools to make good ethical decisions internally and in relation to their stakeholders, and to defend their independence if it is under external threat. The promotion of integrity, impartiality and accountability is one of the principal objectives of the commissioner. It is for this reason that the ethical framework is part and parcel of this bill.

Creating the Public Service Commissioner and establishing the new public sector ethical framework are significant changes that impact on employment and management in the New South Wales public sector. This bill amends the main employment legislation for the New South Wales public service: the Public Sector Employment and Management Act 2002. The Act does not apply to employees in local councils as they are not part of the New South Wales public sector. Separate legislation, the Local Government Act 1993, provides for the staffing of local councils whilst employment arrangements and conditions are included in the Local Government State Award.

The bill contains three main amendments: the ethical framework, the Public Service Commissioner and the Public Service Commission Advisory Board. The Government undertook consultation in recent months on the creation of the public sector ethics legislation as committed to in the 100 Day Action Plan. The Government has drawn up a draft ethical framework for the New South Wales public sector based around the four pillars of integrity, trust, service and accountability. To develop this framework the Government sought comment from individuals who are users and customers of public services, taxpayers and individual public servants across the occupations in the public sector.

A government website encouraged people to have their say about public sector ethics. Consultation was held with stakeholders, including government agencies, the Auditor-General, the New South Wales Business Chamber, the Council of Social Service of New South Wales, the National Disability Service and the New South Wales branch of the Institute of Public Administration Australia. Consultation was held also with Unions NSW and briefings were conducted for the Independent Commission Against Corruption and the New South Wales Ombudsman. Professor Peter Shergold, Chairman of the Public Service Commission Advisory Board, also contributed to the framework. The feedback gathered during the consultation process helped to refine the ethical framework and the development of the bill.

Part 1.2 of the bill establishes an ethical framework for the public sector with the twin objectives of, first, recognising the role of the public sector and preserving the public interest, defending public value and adding professional quality and value to the commitments of the government of the day and, second, establishing an ethical framework for a merit-based apolitical and professional public sector that implements the decisions of the government of the day. Embedded in the legislation is the single set of values that flow through the principles and standards of behaviour that we believe can reside either in legislation or in supporting policy documents.

As identified in the bill at new section 3C (4), the ethical framework and values will apply to the public sector as defined in the Public Sector Employment and Management Act. In the case of special temporary employees, an ethical framework reflecting the same values and high standards of behaviour will be included in any relevant code of conduct under which they work. The Public Service Commissioner's role will be to promote the core values of integrity, trust, service and accountability by articulating outcomes rather than prescribing or imposing complex processes. This will allow the New South Wales public sector to develop approaches that deliver decisions and outcomes that respond strongly to the customer focus, accountability and diverse service delivery models.

The Public Service Commission will assist departments to draft tailored codes of conduct that align with and expand on the values and principles outlined in the ethical framework. Therefore, as outlined in the bill, the four pillars upon which the ethical framework is built are the core values of integrity, trust, service and accountability. These values provide a nucleus that reflects most of the ethical concepts in current use. A set of supporting principles also has been formulated and translates each of the four values into behaviours and actions. These too are included in the legislation. The key to achieving the required culture change in the sector hinges on each public sector agency adopting this framework as a central stimulus for the shaping of the culture of that agency and individual employees considering and applying the values and principles of the framework in their daily work.

I believe that the ethical framework outlined in the bill will create and nurture a culture of integrity and independence in the New South Wales public sector, and will translate to a capable and ethical public sector committed to continuous improvement and worthy of people's trust and confidence. I refer now to the Public Service Commissioner. Part 1.3 of the bill provides for the appointment and functions of the Public Service Commissioner and are detailed in new section 3D to 3P. These provisions outline how the commissioner is to be appointed, the principal objectives and general functions of that role, and the requirement to report annually to the Premier on, first, the work and activities of the commissioner and, second, the state of the public sector.

After receiving these reports the Premier will cause them to be tabled in both Houses of Parliament as soon as practicable. The Public Service Commissioner is a statutory appointee with a non-renewable term of office not exceeding seven years. Terms of up to seven years will provide sufficient scope for the commissioner to articulate and implement a range of strategic initiatives and priorities. The bill allows for the commissioner to be appointed for a combination of terms as long as the total period does not exceed seven years. For example, this combination could be two terms of three and four years respectively.

New section 3G also identifies that the commissioner reports to the Premier in connection with the exercise of the commissioner's functions but is not subject to the control and direction of the Premier in the

exercise of these functions. This recognises both the independence of the commissioner in providing advice and reports to the Government as well as the responsibility of the commissioner to the Premier to deliver on the Government's key policy objectives for the New South Wales public sector. The commissioner's role will include, to varying degrees, responsibility for the entire New South Wales public sector, including the public service proper, police, health, firefighters, transport, education and State-owned corporations.

New section 3E outlines the principal objectives of the commissioner as being: to promote and maintain the highest levels of integrity, impartiality, accountability and leadership across the public sector; to improve the capability of the public sector to provide strategic and innovative policy advice; to implement the decisions of the Government and meet public expectations; to attract and retain a high-calibre professional public sector workforce; to ensure that public sector recruitment and selection processes comply with the merit principle and adhere to the professional standards; to foster a public service culture in which customer service, initiative, individual responsibility and the achievement of results are strongly valued; to build public confidence in the public sector; and, to support the Government in achieving positive budget outcomes through strengthening the capability of the public sector workforce.

New section 3F identifies the general functions of the commissioner with the key focus of identifying reform opportunities for the public sector work force and to advise the Government on policy innovations and strategy for these areas of reform. The inaugural Public Service Commissioner is Graham Head, a public servant with more than 30 years experience, including more than 18 years in executive positions both in New South Wales and, more recently, as the deputy secretary in the Commonwealth Department of Health and Ageing.

I now turn to the Public Service Commission Advisory Board. Part 1.4 and schedule 2B provide for the members and procedure of the Public Service Commission Advisory Board. In confirming our commitment to establish a public service commission the Government made clear that the commissioner would be assisted and supported by an advisory board. The advisory board comprises an independent chair, the Public Service Commissioner, Director General of the Department of Premier and Cabinet, and four other external members appointed by the Premier. The board members appointed by the Premier are to be persons who have expertise in human resource management, probity and accountability, strategic planning, budget and performance management and service delivery in the public, private, tertiary and not-for-profit sectors.

On Thursday 14 April 2011 the Premier announced that Professor Peter Shergold, AC, had been appointed as the incoming chair of the advisory board of the Public Service Commission. With a long and distinguished record as a public servant and an academic, combined with experience in the private sector and social enterprises, Professor Shergold demonstrates the very qualities the Government is seeking to build in this State's public sector: professionalism, innovation, independence and capability. The objective of the board is to provide the Public Service Commissioner and the Premier with strategic, independent and expert advice concerning the management and performance of the public sector workforce.

Professor Shergold has already provided valuable input through the course of the development of the roles and functions of the commission and we are confident that in his role as the founding chair he will continue to articulate a vision and clear direction for the commission and the public sector. Schedule 2B also provides for arrangements for the members of the board, including the term and disclosure of pecuniary and other interests and some of the procedural arrangements and processes for conducting meetings. These provisions are common across legislation where an advisory board is established.

I now turn to other amendments. A number of other amendments to the Act result from establishing the position of Public Service Commissioner. A significant number of amendments are as a result of omitting references to the Director of Public Employment, a role currently held by the Director General of the Department of Premier and Cabinet, and replacing the references with the "Commissioner" where the function is one falling within the roles and functions of the Public Service Commissioner and with the "Director General" where the function is one remaining with the roles and functions of the Director General of the Department of Premier and Cabinet. The Director General of the Department of Premier and Cabinet will continue to exercise all functions in relation to public sector industrial relations as identified in new part 6.2.

There is one change to the existing legislative provisions unrelated to establishing a Public Service Commissioner. It relates to combining the textures of different cultures to stimulate new ideas and healthy competitive thinking. The Premier has been a longstanding advocate of encouraging and developing two-way secondments between the public sector, the tertiary sector and the not-for-profit sector as well as other public sector jurisdictions. The Act is to be amended to expand the mobility powers to allow for temporary assignments beyond the New South Wales public sector as outlined in new section 88A.

This important change will facilitate the temporary assignment of staff between the New South Wales public sector, other Australian public sectors, universities and the private sector, including the not-for-profit sector. This amendment will greatly expand the opportunities for employers and their employees to explore joint projects and collaborative arrangements, including temporary placements or staff exchanges between employers, whether they are public sector, private sector, universities or not-for-profit organisations. Without this amendment, exchanges are limited to local councils, local authorities and the New South Wales public sector only. The change will contribute to the Government's aim to enhance collaboration with the not-for-profit, academic and private sectors in shaping public sector policy and delivery. It will contribute to developing the public sector workforce through increasing career experience and development opportunities and improved understanding of other sectors and their needs.

A great appetite for engagement exists amongst the business and non-government sectors and, critically, a real and genuine willingness to make a contribution that will enhance the performance of the New South Wales public sector. These new mobility arrangements will encourage flexible and innovative joint ventures, collaborative projects with the New South Wales public sector and either universities or other Australian public sector agencies. The private sector and not-for-profit sector could exchange staff for development purposes and the sharing of skills and expertise in providing services to our customers, the citizens of New South Wales. Sharing ideas between sectors can lead to innovation in service delivery. Innovation is the great driver of reform and key to shaping a better future. We must encourage new models and ideas and not be limited by existing paradigms. Innovation can be used to create opportunity and inform the way government delivers more convenient, effective, relevant and reliable services to people.

Mobility is a great promotion asset for the New South Wales public sector as an employer. It demonstrates that a public sector career can present a diversity of opportunities and a scope for the development of a range of skills. This can be attractive to employees and potential employees who seek variety, challenges and diverse career experiences. Expanding the arrangements for temporary assignments will allow this to happen very effectively. We have asked the Public Service Commissioner to embark on a challenge. This challenge is to establish and enforce high ethical standards. The commissioner will set clear expectations regarding ethical behaviour that will strengthen public sector performance by making the New South Wales public sector an employer of choice. The commissioner will ensure that public servants are appointed on merit, that citizens are the centre of service delivery and that the public sector collaborates with not-for-profit sector in providing services.

This bill puts the necessary arrangements in place to help the commissioner meet these challenges. Our public sector must have confidence that its independence and integrity is strengthened by a Public Service Commissioner, who also understands that an effective and valued public sector is there to serve its citizens. The commissioner will build upon the professionalism, innovation, independence and credibility of our public servants so that our New South Wales public sector is the envy of other States and a model for other jurisdictions. I commend the bill to the House.

The Hon. LUKE FOLEY (Leader of the Opposition) [11.59 a.m.]: I indicate at the outset that the Opposition will not oppose the Public Sector Employment and Management Amendment (Ethics and Public Service Commissioner) Bill 2011. The bill has three main objects: to establish an ethical framework for the public sector, to provide for the appointment of a Public Service Commissioner and to establish the Public Service Commission Advisory Board. I refer to the first object of the bill. I heartily endorse the establishment of an ethical framework for the public sector. The bill gives an ethical framework for the New South Wales public sector based on four core values: integrity, trust, service and accountability. I also heartily endorse those four core values.

I welcome a development where the Liberal Party in this country is supportive of the public sector and public services. I do not want to see Australia go down the United States of America road where the principal right-of-centre party is so innately hostile to the public sector and public services that no potential Republican candidate for public office in the United States can have any hope of winning through a primary process unless he or she expresses utter contempt for public services at each and every turn. Many in the Liberal Party in Australia seek to ape the United States Republicans and express their undying hostility to the public sector. I believe Mr O'Farrell is better than that. Certainly his rhetoric during the election campaign was positive about the role of the public sector and public services. I hope he will live up to that rhetoric in government.

The four core values of integrity, trust, service and accountability will be welcomed by all members. However, I am concerned that whilst these core values are to be expected of employees of the New South Wales

public service, apparently they are not compulsory for Cabinet Ministers in the O'Farrell Government. The Minister for Police and Emergency Services in his second reading speech advised that in the development of these values consultation was held with many stakeholders, including government agencies, the Auditor-General, the New South Wales Business Chamber, the New South Wales Council of Social Services, the National Disability Services and the New South Wales branch of the Institute of Public Administration.

I turn to the four pillars, as the Premier put it, of integrity, trust, service and accountability. I note that the Premier and the Government have an entrenched record, in merely six months of Government, of treating the public service workforce in this State very harshly indeed. The bill before the House, sponsored and introduced by the Premier in the other place, preaches to them the values they should work by. I want to consider in greater detail the four core values as they are put in this bill. The first core value is integrity. Under schedule 1, part 1.2, new section 3B, public sector core values, the bill provides a definition of the four core values and the principles guiding their implementation.

Under "integrity" are four subsections. Paragraph (c) states members of the public sector should "take responsibility for situations, showing leadership and courage". That is to be expected of public servants but when the people of Stockton were exposed to the leak of a toxic chemical, what did the Minister for the Environment do? Did she take responsibility for the situation? Did she show leadership and courage? As we know, she did the opposite. She took no responsibility so that the people of Stockton were unaware for several days that their children were exposed to a leak of hexavalent chromium. Did the Premier take responsibility or show leadership and courage when it came to the Orica chemical leak? Of course he did not. He set up an inquiry that deliberately prevented an investigation of the inactions of the Minister for the Environment.

The Hon. Trevor Khan: Point of order: My point is relevance. The learned Hon. Luke Foley no doubt is engaging in preparatory work for his questions in the inquiry, but his comments have nothing to do with the bill before the House.

The PRESIDENT: Order! There is substantial merit to the point of order taken by the Hon. Trevor Khan. This is a bill to amend the Public Sector Employment and Management Act 2002 to establish an ethical framework for the public sector, to create the office of Public Service Commissioner and to establish the Public Service Commission Advisory Board. A discussion of the merits or otherwise of the actions of a Minister of the Crown is well outside the generally accepted wide latitude extended to members during a second reading debate. The member will confine his comments to matters that are generally relevant to the long title of the bill.

The Hon. LUKE FOLEY: Thank you, Mr President. As always, I respect your ruling. I am dealing with the public sector core values outlined in schedule 1 of the bill. I have dealt with integrity and I now will move on to trust. The second public sector core value is trust. There are five principles guiding the core value of "trust" in the New South Wales public sector. I draw attention to subclause (e), which states, "Provide apolitical and non-partisan advice". On the very first day of the O'Farrell Government—I remember it well—on Monday 28 March—

[*Interruption*]

You were waiting for a phone call, Charlie; I certainly wasn't. I remember the day well. I remember the Premier unveiling the oldest trick in the book in a breathless performance at a press conference—that he was shocked to learn of a budget black hole left to him by the former Government. Of course, we learnt very quickly after that that the black hole was bogus and had been manufactured by Mr O'Farrell and his spin doctors. The Parliamentary Budget Office and Mr Michael Lambert—who was appointed by the Premier, his Treasurer and Minister for Finance and Services to investigate—concluded that there was not a black hole. But as part of manufacturing this alleged black hole—

The Hon. Trevor Khan: Point of order: While it is not a matter for me to extend latitude, it is my submission that the Hon. Luke Foley is now embarking upon another journey into issues relating to ministerial conduct as opposed to matters falling within the long title of the bill.

The Hon. Lynda Voltz: To the point of order: The Hon. Luke Foley is talking directly to the ethical framework for the public sector of defending public value and adding professional quality and value to commitments. I fail to see how that is not relevant to the long title of the bill.

The PRESIDENT: Order! While that may be the case, the member should be careful not to venture into an area whereby he is reflecting on a member of the other Chamber. If he wishes to reflect upon another member he should do so by way of substantive motion. In addition, if he wishes to reflect upon a Minister's handling of a particular portfolio he should do so by way of substantive motion.

The Hon. LUKE FOLEY: I shall proceed with my speech in support of the Government's bill. Mr Schur, the former Secretary of the New South Wales Treasury—a respected public servant who I believe always upheld those core public sector values before us today of integrity, trust, service and accountability—lost his job very early in the life of this Government. In the *Australian*—a journal of record—on 30 April 2011, a distinguished member of the New South Wales Parliamentary Press Gallery, Mr Imre Salusinszky, observed the following:

> O'Farrell came into office promising to restore the independence and integrity of the public sector. Instead, he chose to make a political scapegoat of one of the State's most respected public servants.

I believe that the treatment of one of the State's most senior public servants, Mr Schur, served as a warning to hundreds of thousands of public servants in our State to not come forth and give fearless advice. There is a gap between the rhetoric of the Premier in sponsoring this bill maintaining that a core value of the New South Wales public service will be to provide apolitical and non-partisan advice—those words appear in the bill—and the treatment of one of the most senior public servants in our State, Mr Schur, who lost his job, I believe, because he did provide apolitical and non-partisan advice.

The third core value is "service". I note—just to pluck one out—subclause (c) states, "Engage with the not-for-profit and business sectors to develop and implement service solutions." I draw attention to this Government's treatment of one part of the business sector: the solar industry. Prior to the election the Liberals and The Nationals were strong supporters of the solar industry in New South Wales and of renewable energy. Prior to 26 March we were led to believe by the Liberals and The Nationals that there was going to be a new era and that the sun would rise on renewable energy in New South Wales.

But since then we have seen the rug pulled from under the solar industry in this State and we have seen solar businesses going to the wall. Solar Shop Australia Pty Ltd—Australia's largest provider of solar panels—recently went into receivership. Silex Solar decided to end local manufacturing of solar cells, with the loss of 30 jobs at its western Sydney plant. New South Wales is now the only State on the eastern seaboard with no tariff payable to solar customers. The solar industry has been stopped dead in its tracks by this Government—so much for the commitment to implementing service solutions when engaging with the not-for-profit and business sectors.

The fourth core value is "accountability". Subclause (c) commits to "Provide transparency to enable public scrutiny." Openness and transparency was the mantra of Mr O'Farrell in the lead-up to the election and not as often but still regularly since. Yet look at the treatment of the Parliamentary Budget Office. I believe that the treatment of that office is designed to avoid scrutiny of government. Prior to the election the Liberals and The Nationals pledged, "We believe that openness and transparency are the best ways to deliver better services and results for the community." But the Parliamentary Budget Office in this State is on the chopping block thanks to Mr O'Farrell and his Cabinet. Yet we are told that transparency to enable public scrutiny is to be a core value of the New South Wales public sector.

This bill introduces four core values that are noble and worthy—values, I believe, that all honourable members would endorse. However, when one looks at the practice of this Government since taking office one sees that its actions fall far short of the worthy goals that this bill ushers in for public servants in this State. One could only conclude that there is a large element of hypocrisy on the part of the O'Farrell Government.

I will briefly turn to the second and third objects of the bill. This bill provides for the appointment by the Governor of a Public Service Commissioner. The function of the commissioner is, among other things, to promote new public sector ethics, provide strategic and innovative policy advice, and ensure the integrity of the recruitment process. The commissioner will assume most of the public sector policy-related functions currently exercised by the Director of Public Employment. The commissioner will have the power to ask for reports about staff and agencies, conduct an inquiry in relation to staff, and inspect and gain entry to premises. The Public Service Commissioner will be Mr Graeme Head. I welcome the appointment of Mr Head. He is a capable and highly respected public servant.

The third object of this bill is to establish the Public Service Commission Advisory Board. The advisory board will comprise an independent chair, the Public Service Commissioner or delegate, the Director General of the Department of Premier and Cabinet and four other external members appointed by the Premier. Professor Peter Shergold has been appointed as chairman of the advisory board of the Public Service

Commission. The Act will also be amended to expand the mobility powers to allow for temporary assignments beyond the New South Wales public sector as outlined in clause 88A of the bill, including the private sector, tertiary sector and not-for-profit sector, as well as other public sector jurisdictions.

This bill provides nurses, teachers, police, firefighters—indeed, hundreds of thousands of hardworking New South Wales public sector workers—with a list of core values for them to work by. In introducing this bill in the other place the Premier said that consultation had been conducted with a wide range of stakeholders to come up with this list. It is a pity he did not consult the tens of thousands of public sector workers who rallied in the Domain on 8 September. They would have been able to tell the Premier a thing or two about core values. The Labor Opposition finds it ironic but not surprising that this Premier and this Government can treat public sector workers so badly, yet preach to them about the values that they should work by. The Opposition does not oppose the bill.

Dr JOHN KAYE [12.23 p.m.]: The Greens do not oppose the Public Sector Employment and Management Amendment (Ethics and Public Service Commissioner) Bill 2011 but we have a number of concerns related to the tenor of the legislation. The Greens are concerned about the lack of real action within the legislation, the lack of consultation on the legislation and the underlying premise that there is some kind of ethical crisis within the public sector.

As previous speakers have pointed out, this bill establishes an ethical framework for the public sector by creating a series of four core values: integrity, trust, service and accountability. Each of those core values outlines a number of principles by which the public sector ought to behave. The bill also appoints a Public Service Commissioner and seeks to confer functions in relation to the public sector workforce onto that commissioner. The bill establishes a Public Service Commission Advisory Board, which is responsible for general policies and strategic directions of the commissioner in the exercise of his or her functions and to provide advice to the Premier. The bill also makes a number of other amendments.

I agree wholeheartedly with the parts of the Government's second reading speech that emphasised the importance that the Government places on good quality public service. Good quality public service is extremely important. I join with the Leader of the Opposition in observing that this Government has not launched a wholesale attack on the public sector as some other Liberal Party and National Party governments have done historically around Australia. I also join with the Leader of the Opposition to express my and my party's concern about the industrial relations changes that were made earlier this year and the impact that will have on the values of a progressive, successful, independent, courageous and high quality public service.

The public service is important not just because it delivers services, gives advice to government and implements government policy but also because it stands as an instrument within our society that represents the values of the community. A good quality public service, as I believe we have in New South Wales, focuses on the community and delivers services to meet the needs of the community. In doing so it not only provides services for all members of the community but also levels out some of the inequalities that inherently exist within society. A high quality public service tends to deliver services at least with some degree of cross-subsidisation to those who are unable to afford them.

The Hon. Scot MacDonald: Shame.

Dr JOHN KAYE: I note the interjection from the Hon. Scot MacDonald. I also note the stream of thought within the Coalition that opposes the idea of free services for those who cannot afford to pay. I also note the hostility shown by the Federal Coalition particularly to public education and public health over the years and its sense that there is something inherently wrong with delivering free public education to children from families that cannot afford private school fees. I reject that. It is a major tenet of liberal and neoliberal thinking that is highly odious to the majority of Australians—as it should be.

A high quality public service does more than create a more just and equitable society. It also grows the economy. The contribution of the public sector is no better demonstrated than by the TAFE sector, which of course the Federal Labor Government and State Coalition Government are busily privatising. Over the next two decades the TAFE sector will deliver $6.40 of economic growth value to our society for every dollar invested in it. That is a huge multiplier and a massive economic return on investment. That is only the TAFE sector; similar investments occur across the State. Public sector teachers and welfare workers deliver enormous economic value to society by giving young people the capacity to avoid engagements with the criminal justice system and to stay out of jail.

The public sector delivers advice to government. Independent advice that is focused on the best interests of the community is at the core of good government. An inherent problem with any new government is that it will often come into office with some strange policies as a result of not having had the benefit of public service advice while in Opposition.

We have seen a number of those in the 100 Day Action Plan from this Government, such as the relocation allowance and some of the housing issues with which the Government is engaged. These are policies that would have benefited enormously from interaction with the public sector and public service advice. However, it has to be advice that is given not only without fear or favour but in such a way that there is no risk of recrimination. Also, the public sector implements government policy and the will of Parliament and as such it is a key ingredient in a successful democracy.

The Minister referred in his speech to Labor's politicisation of the public sector—I think that is the best way to paraphrase it. Any politicisation of the public sector and any attempt to cajole or cow the public sector or influence it in a partisan fashion is reprehensible. It is absolutely true that the 16 years of Labor saw some bad things happen to the public sector. But let us be absolutely clear; politicisation of the public sector and brutalising the public sector is not a Labor invention. We need to go back to the eight years of the Greiner-Fahey governments and see what they did.

The Hon. Michael Gallacher: These guys were perfectionists. They were pretty good.

Dr JOHN KAYE: I note the interjection of the Leader of the Government but if he really wants to see professional brutalisation of the public service—

The Hon. Michael Gallacher: Look at the Labor Party.

Dr JOHN KAYE: —he needs to look at what happened to the Office of Energy in the Greiner years. I refer to the night of the long knives—the appalling sacking of large numbers of public servants, and the selection of those public servants to be dismissed was based purely on the policies they had been involved with. Through no fault of their own they were implementing policies that were unpopular with the incoming Greiner Government and they lost their jobs because of it. The quality of advice given in the area of energy, which I was keenly observing as an academic, took a nosedive, not just because of the loss of expertise, which was appalling, but because those who were left behind knew what happened if one bucked the system.

The appalling outcome was that bad energy decisions were made throughout the years of the Greiner and Fahey governments and into the years of the Carr Government because there was no expertise and no willingness to stand up and say things that might be out of favour with the existing Government. This must never occur again. We must never again have an attack on a department, an office or an agency that is based on politics. We must never again see wholesale sackings. Despite the nice words in the Minister's second reading speech, which I think were admirable and which I was pleased to hear both the Minister and the Premier in the other House say, it is hard to escape from the industrial relations legislation and the 2.5 per cent wage freeze enforced on all public sector workers across New South Wales. There is a denial of the right to collectively bargain before an independent umpire and a denial of the right to seek a wage rise that goes beyond the Government policy's set amount.

If anything is going to undermine the objectives of this legislation it is taking away the capacity for the wages in the public sector to grow to make it an attractive option. The Minister quite admirably spoke about the need to make the public service an attractive career destination for engaged and intelligent young people, yet his Government completely undermined those opportunities. If we really want to strengthen the public sector the first thing we should do is ensure that wages keep pace with inflation and possibly go beyond inflation. That having been said, the basic tenet behind this legislation is probably sound. Any move that strengthens the public sector and strengthens its capacity to serve the community is admirable and should be supported. But we have four major concerns with this legislation. The first goes to the lack of consultation, in particular, with the unions that represent the public sector workers. Unions NSW was given a briefing on 28 June. It responded to that briefing on 15 July. That response was unanswered.

As I understand it there was a confirmation of receipt but that was the end of the communication between the drafters and promoters of this legislation and Unions NSW. We understand that the first thing the unions knew was that this bill had been introduced in the Parliament. The bill was never shown to Unions NSW and the provisions were never discussed with Unions NSW. It is absolutely impossible to say that there was any

meaningful consultation with the public sector about this legislation if Unions NSW was not consulted. Unions NSW was in no way consulted on this legislation. The Premier and the Minister for Police and Emergency Services both said in their speeches introducing the bill that Unions NSW had been consulted about this matter. It had not. A PowerPoint presentation outlining the general direction of the public sector was shown to Unions NSW in late June this year and that was the end of communication from the O'Farrell Government.

The second problem we have, despite the words in the second reading speech, is that the basic premise of the legislation is a lack of integrity in the public sector. That is dead wrong and it is an insult to the 400,000 public sector workers throughout New South Wales, the overwhelming majority of whom go to work each day with enthusiasm, with the highest moral standards, and with a commitment of service to the people of New South Wales through giving quality advice and making sure that life is better at the end of the day than it was at the beginning of the day. This becomes a subtle opportunity for the O'Farrell Government to bash public sector workers. I note the general cries of "Oh" from members opposite, but it does. The person advising the Government, Professor Peter Shergold, said:

> There is a concern to some extent it [the public sector] has not been as publicly accountable as it might be.

The Government is saying it will restore integrity to the public sector, but that is an insult to public sector workers. It might have played out well in the election and it might play out well on shock jock radio but it is an ideal way of undermining morale in the public sector and an ideal way of destroying the public sector in the long run.

The third problem with this legislation is that of private sector engagement. There will always be an interface between the public sector, the private sector and the not-for-profit sector, and we accept that. It is important that that interface is right. But if we look at proposed section 3B, which contains the public sector's core values, we see that core value (c) in the service sector is to engage with the not-for-profit and business sectors to develop and implement service solutions. It becomes a core value to outsource and to privatise the public sector. That is in keeping with a long Coalition tradition of privatisation. It is a clear warning sign as to where this Government is going—privatising yet more of the public sector.

The fourth concern The Greens have with this legislation relates to the lack of action in the legislation. It is all very well to create nice words about the public sector core values and, with the exception of service value (c), they all seem to be quite reasonable and things that one hopes would happen. If one really believed there was a desire to develop those ethical values, somewhere within the legislation there would be words that said that specific measures were to be implemented to support public sector workers.

There is within the Act methods of disciplining public sector workers, but nothing in the bill talks in any meaningful way about supporting public sector workers in understanding and implementing these ethical values. For many years I taught ethics at the University of New South Wales to engineers and engaged with the issue of professional ethics. This is a complex issue; it is not straightforward. Employees, unlike professional people and people who are self-employed, are often cast into situations which are ethically complex. If we want to support people in those situations, one of the key requirements is training in ethical values.

The Institution of Engineers Australia identified the need for training in ethics and moral reasoning, and asked the universities to train incoming engineers and existing in-service engineers. As someone who has been publicly and trenchantly critical of the institution I must say that the Institution of Engineers Australia did an extremely good job. It did so because it recognised the need not just to have a code of ethics but to train people in the code of ethics, to educate them in the art and in the science of moral reasoning, and to train them to confront the background of the ethical codes and assist them to confront complex ethical situations—in situations where the right and wrong answers are not straightforward, in situations where there is a conflict between the orders given to somebody and his or her understanding of what is ethically correct.

Nothing at all in this legislation supports public sector workers in either understanding or implementing these public sector core values. All this legislation does is state: Here they are, go love them. That will not work. It will not make an iota of difference, in a positive sense, unless and until there is support for public sector workers to understand and engage with these core values, and to have somewhere to turn to when they have a complex ethical issue to confront. To that end, The Greens will be moving amendments that seek to give the Public Service Commissioner and the board an obligation to support public sector workers and an obligation to train and educate them in these core values.

It is unfortunate that there was not adequate consultation on this bill. It is unfortunate that the basic premise of this legislation comes from an attack, which the Leader of the Opposition referred to, coming out of

America on public sector workers. It is unfortunate that privatisation has been made a core principle, and it is unfortunate that nothing is done to support public sector workers. However, despite those reservations, The Greens will not be opposing the legislation because it is in many senses a step forward—not as big a step forward as the Government claims but a step forward nonetheless. Therefore The Greens will not be opposing this legislation.

The Hon. PAUL GREEN [12.43 p.m.]: On behalf of the Christian Democratic Party I support the Public Sector Employment and Management (Ethics and Public Service Commissioner) Bill 2011, the object of which is to amend the Public Sector Employment and Management Act 2002 and to establish an ethical framework for the public sector. The bill outlines various core values and the principles that guide the implementation of those core values. The bill provides for the appointment of a Public Service Commissioner and for various functions in relation to the public sector workforce. It also establishes the Public Service Commission Advisory Board, which will determine general policies and strategic directions for the exercise of the commissioner's functions and provide advice to the Premier on matters relating to the management and performance of the public sector.

This bill reaffirms the principle that the primary duty of government is to serve its constituents. It is vital to recognise that the more than 300,000 men and women who are engaged in public service see their positions as vocations, not simply a job. As the Premier noted in the other place, they are not faceless or anonymous; they are a body of individuals whose unique talents strengthen and affirm our social fabric. The stability and foundation of effective democracies are dependent on transparency, accountability, and truth and integrity. The best public service is primarily focused on the needs of citizens, taxpayers and customers. The establishment of a role of Public Service Commissioner should work towards that end. By establishing clear policy directives and goals the commissioner will form innovative, relevant and modern public services which are centred on the needs of citizens.

This bill makes three main amendments: the ethical framework, the Public Service Commissioner and the Public Service Commission Advisory Board. The ethical framework is based on four core values: integrity, trust, service and accountability. These core values are practically implemented but a set of supporting principles translates those core values into actions. The Public Service Commissioner will have a non-renewable term of office not exceeding seven years. This should provide enough scope to allow that commissioner to implement a range of innovative strategies and prioritised needs to better serve the public interest. The Public Service Commission Advisory Board will support and assist the role of the commissioner. These board members should add collective expertise in human resource management, accountability and strategic planning and enhance the delivery of effective public service. This bill aims to increase the opportunity for interaction and collaboration between public, private, universities and not-for-profit organisations to make improvements to the public sector in New South Wales.

I want to comment on a matter mentioned by Dr John Kaye, the buy-in of employees. While that buy-in is very important, I am a firm believer in good leadership. Good leadership will embrace the employees and establish core values to which everyone will adhere. I am confident that Mr Graham Head will do a fine job and that those under his charge will tailor codes of conduct relevant to their different services. I am confident that this is a move in the right direction. However, it will not be without its teething problems The Christian Democratic Party commends the bill to the House.

The Hon. TREVOR KHAN [12.47 p.m.]: I speak in support of the Public Sector Employment and Management Amendment (Ethics and Public Service Commissioner) Bill 2011. The object of the bill is to amend the Public Sector Employment and Management Act 2002, firstly, to establish an ethical framework for the public sector comprising core values—namely, integrity, trust, service and accountability—and the principles that guide the implementation of those core values; secondly, to provide for the appointment of a Public Service Commissioner and to confer on the commissioner functions in relation to the public sector workforce, including the existing public sector policy functions of the Director of Public Employment and the equal employment opportunities functions of the Director of Equal Opportunity in Public Employment; and, thirdly, to establish the Public Service Commission Advisory Board, which will determine general policies and strategic directions for the exercise of the commissioner's functions and provide advice to the Premier on matters relating to the management and performance of the public sector.

In my contribution to the debate on this bill I would like to make reference to the bill's amendments relating to mobility. This important change will facilitate the temporary assignment of staff between the New South Wales public sector, other Australian public sectors, universities and the not-for-profit sector. This

amendment will greatly expand the opportunities for both employers and their employees to explore joint projects and collaborative arrangements, including temporary placements or staff exchanges between employers, whether they are public sector, private sector, universities or not-for-profit organisations.

Without these amendments, exchanges are limited to local councils, local authorities and the New South Wales public sector only. The change will contribute to the Government's aim to look to ways to recruit the best and brightest, and to retain and develop our valuable public sector employees through, firstly, increased exchange and career experience between departments, agencies and other jurisdictions and, secondly, two-way secondments with the private, community and not-for-profit sectors. This change to staff mobility will assist in delivering the Government's aim to make the New South Wales public sector an employer of choice.

Members may ask—and quite rightly—what is staff mobility in the context of employment in the New South Wales public sector and why may we want to improve it. The answer is that temporary assignments are part of the staff mobility provisions outlined in part 3.2 of the Public Sector Employment and Management Act. The current mobility mechanisms allow New South Wales public sector employees to transfer to another position in either the agency where they already work or to another New South Wales public sector agency. Transfers may be permanent or temporary and can occur for a number of reasons. They can be at the request of the employee or where the chief executive directs the employee to transfer because a specific need is identified.

Mobility mechanisms can be used in a number of ways—for example, for project work where the employee's skills and knowledge are essential to the delivery of the project, as a tool for developing employees, perhaps to increase the experience and skills of employees, to fill urgent or short term needs or for a change in work location. The most common form of temporary transfer is known as a secondment. A secondment is when a person moves to another job for some time. If that job is in another public sector agency, the person will move to that agency for the length of the secondment. Whilst the person is at the other agency he or she will be subject to the employment arrangements of that agency. In simple terms, effectively he or she becomes an employee of that agency for the length of the secondment.

Another form of temporary transfer in the Act is known as a temporary assignment. Section 88 of the Act provides for members of staff to be temporarily assigned to carry out work for another public sector agency. This type of temporary transfer means that employees remain in their own job and therefore are subject to their existing employment arrangements, but their work will be for someone else. The definition of "public sector agency" in section 88 includes local councils, local authorities and State-owned corporations such as Sydney Water or Ausgrid—formerly known as EnergyAustralia. Temporary assignment can be used in a number of ways, such as for special or significant events or projects, or as the mechanism to provide for the redeployment of non-emergency service public sector employees to assist with disaster recovery activities.

Emergency service employees such as firefighters, police, and ambulance and State Emergency Service personnel respond at the time of the emergency; however, disaster recovery, including the rebuilding of infrastructure and community welfare, is where other public sector employees can provide valuable support and assistance. The welfare services provided for emergency situations may include the provision of emergency accommodation, material and financial assistance, meals and food packages, community outreach and personal support. New South Wales public sector employees, such as caseworkers in the Department of Family and Community Services, may work in these types of temporary assignments with other agencies, such as the Salvation Army or the Commonwealth Department of Human Services, to ensure welfare services are delivered to affected communities.

A comprehensive New South Wales response for these welfare services needs to be initiated as required. This response recognises the need not only to deploy public sector employees to support disaster recovery activities, but also to ensure that business continuity within individual agencies is maintained. Often natural disasters can be of such a scale that the expertise of New South Wales public sector employees in disaster recovery activities would be useful in another State, such as the recent Queensland and Victorian floods. But no legal mechanism exists to allow this expertise to be shared as temporary assignment, to date, has been limited to work within this State and most often within the New South Wales public sector.

We should not impose jurisdictional or geographic limits on these arrangements. In addition to support for disaster recovery activities there may be a need for a project that goes beyond New South Wales, for example, those projects with a national focus. There may also be times when projects require some collaboration with the private sector or with universities. Temporary assignment is a good way of exploring these opportunities for collaboration and cooperation. Members may be surprised to know that if a public sector

employee sees an opportunity to work temporarily outside the New South Wales public sector—that is, for a university, a private sector company, a not-for-profit organisation or another State government or the Federal Government—there is no legislative provision to allow it to happen. The employee would have to take leave without pay in order to take up the temporary opportunity.

This adversely affects the employee's leave entitlements and superannuation scheme if he or she is in one of the closed defined benefit schemes. The uncertainty arising from the lack of legislative support and the impact on their conditions of employment can be a disincentive for employees to explore opportunities and limits the capacity of New South Wales to attract talented people to work with us. The amendment in the bill to include section 88A relates to mobility. This provision allows for temporary assignments beyond New South Wales to and from universities, other Australian public sector jurisdictions, the private sector and the not-for-profit sector. This provision also allows a person from outside the New South Wales public sector to carry out work for a public sector agency for a period of up to 12 months. This allows expertise to be shared but not lost to his or her employer.

There is an enormous appetite for engagement in the business and non-government sectors and, critically, a real and genuine willingness to make a contribution to New South Wales's enhanced performance. These new mobility arrangements encourage flexible and innovative joint ventures. The New South Wales public sector and universities, other Australian public sector agencies, the private sector or the not-for-profit sector could exchange employees on collaborative projects for staff development or for sharing skills and expertise in providing services to our customers and the citizens of New South Wales.

Debate adjourned on motion by the Hon. Trevor Khan and set down as an order of the day for a later hour.

CONDUCT OF MAGISTRATE BRIAN MALONEY

The President tabled correspondence received from Greg Walsh and Company, legal representatives for Magistrate Brian Maloney, dated 12 October 2011, enclosing the following documents:

(a) Report of Dr Olav Nielssen, Psychiatrist, dated 9 August 2011;

(b) Correspondence from the Attorney General to Greg Walsh and Company, dated 26 August 2011;

(c) Correspondence from Greg Walsh and Company to the Judicial Commission, dated 26 August 2011;

(d) Correspondence from the Judicial Commission to Greg Walsh and Company, dated 29 August 2011;

(e) Report of Dr Anthony Freeman, Cardiologist, dated 6 September 2011; and

(f) Correspondence from the Chief Justice to Magistrate Maloney, dated 13 September 2011.

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

QUESTIONS WITHOUT NOTICE

STRATEGIC REGIONAL LAND USE PLAN

The Hon. LUKE FOLEY: My question is directed to the Minister for Roads and Ports, representing the Minister for Primary Industries. I refer the Minister to comments by New South Wales Farmers that the Government's strategic regional land use policy is inconsistent with its pre-election policy, which stated, "At the moment this is not going to achieve the balance that the Government promised and we cannot be involved in a process that does not achieve that balance." How will the Minister deliver the right balance between agriculture and mining if he cannot keep the representatives of farmers at the table?

The Hon. DUNCAN GAY: It is a sad sight when the Leader of the Opposition is beaten to the punch by The Greens, who raised the matter yesterday. The honourable member at least did not distort the facts. The facts he detailed in his question were accurate, unlike the details in the question asked by The Greens yesterday. The strategic land process is not an easy one—

[*Interruption*]

The Hon. Steve Whan, the joke of the Parliament, is the first to laugh. He is sitting on the losers' lounge. He is the bloke who was Minister, and he absolutely sold them out. Before the Hon. Steve Whan laughed, I was going to say that if this were easy he would have fixed it. If it were easy anyone could do it.

The Hon. Dr Peter Phelps: They had 16 years.

The Hon. DUNCAN GAY: The former Government had 16 years to do it, and it did not do it.

The Hon. Steve Whan: Issues change, you know.

The Hon. DUNCAN GAY: He is the Opposition hero—he is destined to stay there for a long time. We have not adhered to the process that the former Government started is because it was hopeless. We had to start from scratch. As the then Opposition spokesman, I worked in good faith —

The Hon. Steve Whan: I was the sitting member actually.

The Hon. DUNCAN GAY: The Hon. Steve Whan does not like or want to hear the answer.

The Hon. Steve Whan: I would like to hear an answer.

The Hon. DUNCAN GAY: If you shut up for a moment you might. With the resources of Opposition—which is charm, intelligence and a will to do something—we set about fixing this process. We did something that the former Government could not do: From Opposition we put together with for New South Wales Farmers and with the minerals council a plan forward on strategic lands. It is something that has been acknowledged across the board. Even the honourable Shenhua from The Greens acknowledged the good work we did in Opposition.

The Hon. Jeremy Buckingham: It was good.

The Hon. DUNCAN GAY: Yes, it was. The hard work is resolving the detail in a way that satisfies all parties. During that process there will be the odd breakout by people wanting to make a point and influence the outcome one way or another. One has to accept that this is an area of controversy and that people will make statements in an endeavour to better represent their point of view. That goodwill is still there because the Government put in place a proper process, which is something that the Hon. Steve Whan could not achieve in his wildest imagination.

SPEED CAMERAS

The Hon. MELINDA PAVEY: My question without notice is addressed to the Minister for Roads and Ports. Will the Minister update the House on the Government's commitment to removing speed cameras that have been found to have no road safety benefits?

The Hon. DUNCAN GAY: I thank the honourable member for her question.

The Hon. Steve Whan: Tedious repetition.

The Hon. DUNCAN GAY: The Hon. Steve Whan has not been listening. This is an important question and people across the State want to hear the answer. Only a few months ago the Premier and I made it clear that if any of the State's 172 fixed speed cameras were found not to have improved roads safety they would be removed. The Auditor-General's report released on 27 July 2011 identified 38 speed cameras that had no proven road safety benefit. The New South Wales Government immediately ordered the cameras found to be ineffective to be turned off. Yesterday I announced that work had started to remove fixed speed cameras found in the Auditor-General's report to be ineffective.

The first of the speed cameras switched off in July was removed yesterday at Tilbuster on the New England Highway. When it was first installed the speed camera was on a bend, but thanks to safety work this section of the road has now been realigned and that bend is no longer there. This is a win for local residents who had become increasing frustrated by a speed camera that was no longer needed. It is a perfect example of how the former Labor Government ignored the community. In contrast, we want to ensure that cameras are there for road safety and not as a tool for raising revenue. As noted on Channel 7 last night: this cash cow has been put out to pasture. Gone are the days under the regime of those opposite when fixed speed cameras were used as cash.

Yesterday I also announced that a safety review is progressing to examine alternate safety measures at locations where the Auditor-General's report indicated fixed speed cameras had not delivered a road safety benefit. We will review locations where fixed speed cameras were switched off and find out what other safety measures can be introduced to address the crash risks at these locations. This week fixed speed cameras will be removed at Quirindi and other sites along the New England Highway and Princes Highway.

In its route review of the decommissioned sites, the Roads and Traffic Authority Centre for Road Safety will work with the New South Wales Police, the NRMA and community members to find measures that will improve safety. This will include looking at the crash history, traffic volumes, road conditions, land use and high-risk road-user behaviour at each location. Alternate safety measures may include road improvements such as shoulder widening, realignment, safety barriers, line marking, signs and speed zone reviews.

Speeding still remains a key factor in fatalities on New South Wales roads. After 16 years of the former Government's failures and mismanagement, the public wanted someone to listen. More than 1,700 people responded to the Auditor-General's call for submissions on the speed camera program. We will continue this community consultation as part of the reviews to gain an understanding of current road safety concerns at each location. The three cameras at Clunes, Gymea and Epping operating in a warning mode will be the first locations to be reviewed and measures will be delivered by March next year, depending on the work proposed.

INDUSTRIAL RELATIONS COMMISSION

The Hon. ADAM SEARLE: My question without notice is directed to the Minister for Finance and Services. How many times has the Minister met with the President of the New South Wales Industrial Relations Commission, Justice Boland, since 26 March this year?

The Hon. GREG PEARCE: That is a question of great note and importance in relation to the State's affairs, is it not? Admittedly it is only the third question of the day. I ask the young professionals in the gallery: Is that the most important question on State affairs that you have ever heard?

The Hon. Adam Searle: Point of order: My point of order is relevance. The Minister is not being even generally relevant. He also is debating the question.

The PRESIDENT: Order! The Deputy Leader of the Opposition eventually got to a point of order that has some substance. I ask the Minister to be generally relevant in his response.

The Hon. GREG PEARCE: I am not surprised that the Deputy Leader of the Opposition is so embarrassed at the quality of his question. After all, he is well known to be able to run at least three careers at once—as a councillor, as a practising barrister and as the Deputy Leader of the Opposition.

The Hon. Eric Roozendaal: Point of order—

The Hon. GREG PEARCE: Here is a man who cannot run even one career.

The Hon. Eric Roozendaal: My point of order is twofold. First, it is clear that the Minister is flouting your previous ruling. Secondly, I refer to the issue of relevance. I would have thought a Minister of his senior years would be able to be relevant.

The PRESIDENT: Order! I ask all members, including the Minister, to resist the temptation to play to the gallery. I remind the Minister that he should not reflect on other members of the Chamber except by way of substantive motion.

The Hon. GREG PEARCE: I thank you, Mr President, for yet another excellent ruling. If only the points of order had the same substance and presence. My meetings with Justice Boland have been well ventilated in the media through letters from Justice Boland that were released to the media instead of being sent to me. Probably someone in Justice Boland's office thought that the way to communicate with a Minister is to release the letter to the media instead of putting it in an envelope and sticking a stamp on it.

The Hon. Adam Searle: Point of order: The Minister now is reflecting on the office of Justice Boland rather than attempting to answer the question. He again is debating the question rather than responding to it.

The PRESIDENT: Order! There is no point of order. While it is inappropriate to debate the question, it is not inappropriate to debate the issue that is the subject of the question.

The Hon. GREG PEARCE: Adam, will you be surly and ask me a supplementary question so that I can provide an answer?

The Hon. Lynda Voltz: Point of order: The Minister knows full well that he should refer to members in this Chamber by their proper title.

The Hon. GREG PEARCE: I was just asking about his mood.

The PRESIDENT: Order! I am not sure that is what the Minister was doing. I remind the Minister of the need for him to provide a generally relevant answer. If he has no further relevant information, I ask him to resume his seat.

The Hon. GREG PEARCE: I have excellent relevant information but I will need a supplementary question from the Deputy Leader of the Opposition to deliver it. [*Time expired*.]

BROTHELS

The Hon. CATE FAEHRMANN: My question without notice is directed to the Leader of the Government and Minister for Police and Emergency Services. What would be the impact on other police priorities, such as investigating and prosecuting human trafficking and sexual slavery offences, if the police had to enforce a new brothel licensing scheme such as the one in Victoria where there are approximately 100 licensed brothels while a further 300 are operating illegally?

The Hon. Michael Gallacher: Point of order: The Hon. Cate Faehrmann in her question is asking for my opinion on the impact.

The PRESIDENT: Order! I ask the Hon. Cate Faehrmann to hand me a copy of the question, part of which I did not hear because there was too much noise in the President's gallery.

The Hon. Dr Peter Phelps: To the point of order: I refer to Standing Order 65 (1) (g). The question contains hypothetical matter.

The PRESIDENT: Order! The question contains hypothetical matter. I will allow the Hon. Cate Faehrmann to ask her question later in question time if she rephrases it.

OPERATION SLOWDOWN

The Hon. JENNIFER GARDINER: My question without notice is directed to the Minister for Police and Emergency Services. Will the Minister update the House on the outcome of Operation Slowdown, which was held over the October long weekend?

The Hon. MICHAEL GALLACHER: While the rest of us were taking it easy or getting away for a short break over the October long weekend, our hardworking police were out in force. Operation Slowdown occurs every year with the aim to ensure that those driving dangerously are caught and that a strong and visible police presence will deter people from getting behind the wheel when they should not. Operation Slowdown targeted speeding, seatbelt offences and drink-driving or drug-driving. Tragically, five people lost their lives on New South Wales roads this long weekend. I extend my sympathies to the family and friends of each one, as well as to the police officers and other emergency services personnel who had to attend the scenes. The State had three fewer fatalities and a 160 fewer reported major crashes than occurred over the October long weekend last year.

Operation Slowdown was conducted over four days from Friday 30 September until Monday 3 October. During the operation police conducted just short of 150,000 breath tests. That is 30,000 more breath tests than were conducted during the operation last year. This year police laid 302 charges for drunk-driving, which is good news in that it is 126 fewer charges than last year. Perhaps we can hope that the message to not drink and drive is getting through. During this year's operation police issued more than 4,100 speeding infringements and more than 6,500 infringements for other offences, including dangerous driving and failing to

wear a seatbelt. Whilst it is reassuring to see a fall in some offence categories, it is distressing and frustrating to see how many infringements, serious crashes and injuries are still occurring on our roads. Those motorists put themselves, as well as everyone else, at risk through their dangerous and reckless behaviour.

Once people are behind the wheel things can and, unfortunately, do go wrong no matter how good a driver they all think they are. Thanks to the police men and women of our State who were out there and worked hard over the weekend to keep us safe, the vast majority of road users reached their destination safely. Road users and our police are to be congratulated, but we still have to continue to reinforce the message that unacceptable driving practices will see people caught. Unacceptable and dangerous driving practices put drivers, their families and other people at risk.

CRONULLA FISHERIES RESEARCH CENTRE

The Hon. PAUL GREEN: My question is directed to the Minister for Roads and Ports, representing the Minister for Primary Industries. In light of the recent decision to decentralise the Cronulla Fisheries Research Centre, will the Minister indicate how many positions will be relocated to the beautiful Shoalhaven/Nowra area and will the relocated persons be entitled to regional relocation grants? Can the Minister also indicate what economic benefit is expected of the relocation to regional areas such as the Shoalhaven?

The Hon. DUNCAN GAY: I thank the mayor of Shoalhaven for his question. It is an important question that makes a terrific point: the Shoalhaven is a fabulous area—it is the Venice of the south. In fact, there are members of this House who, out of all the State, have chosen to live in the region—in the Vincentia area, which is the jewel of the Nowra crown, in Berry and other fabulous areas. The Speaker of the lower House has also chosen to live in the area. It is a fabulous area with pristine bays, marvellous hinterland, and great views from Cambewarra Range, Kangaroo Valley. It is the home of rock stars and other such people.

The Hon. Rick Colless: It is close to Crookwell.

The Hon. DUNCAN GAY: Yes, it is close to Crookwell.

The Hon. Marie Ficarra: You should be in tourism.

The Hon. DUNCAN GAY: I should be a tour guide.

The Hon. Greg Donnelly: Coal seam gas.

The Hon. DUNCAN GAY: There is coal seam gas all over the State, as you know; it is a resource that is part of New South Wales. It is a terrific area. A Government initiative is encouraging the decentralisation of the staff of the Fisheries Research Centre at Cronulla. If people are thinking about relocating they have great choices—they have the choice of going to Port Stephens, Coffs Harbour or Nowra. We are a good Government to put that sort of initiative in place and to give people those options.

The Hon. Lynda Voltz: Why bother since you closed the fisheries centre?

The Hon. DUNCAN GAY: Where would you like to live?

The Hon. Lynda Voltz: I would like to live in Cronulla.

The Hon. DUNCAN GAY: But you have the choice to live in Cronulla. You are telling a fib. You have a choice as to where you live in Sydney. If your job was being moved and you had a choice of one of those sites you would just love it.

The PRESIDENT: Order! There is far too much interjection.

The Hon. DUNCAN GAY: I am sure people who take the opportunity to move with their family to the Shoalhaven region will enjoy the change of lifestyle—whether it is to Greenwell Point, Berry or Bomaderry.

FODDER AND TRANSPORT SUBSIDIES

The Hon. MICK VEITCH: My question is directed to the Minister for Roads and Ports, representing the Minister for Primary Industries. The latest drought figures state that more than 14 per cent of the State has slipped back into drought. Why has the Government not introduced fodder and transport subsidies for drought-affected areas, as the former Government had in place during the previous drought?

The Hon. DUNCAN GAY: I thank the honourable member for his question. It is an important question.

The Hon. Greg Donnelly: Like always.

The Hon. DUNCAN GAY: Like some of them—there was a pretty ordinary one yesterday, but he has lifted his game today. They have told him to man up; he has been too nice. He was the only popular Labor member in New South Wales, but now he will be like the rest of them—hated by the populace.

The Hon. Michael Gallacher: Cranky.

The Hon. DUNCAN GAY: Cranky and nasty like the rest of them. There is hope for him. People like him because he is a decent member—

The Hon. Mick Veitch: A hard worker too.

The Hon. DUNCAN GAY: And hardworking—and underpaid. We will see if we can get you 2.5 per cent this year. This question on transport subsidies is important. As the Hon. Mick Veitch indicated in the preamble to his question, people across regional New South Wales have come out of a decade of drought and the subsidies in transport and fodder were important. I do not think at this stage there are problems with water. But much of New South Wales has been enjoying a great season, and many people in this House who are not a part of regional New South Wales—which is all the Labor Party with the exception of the Hon. Mick Veitch—would not realise that there has been a change in climate in those areas. Our wheat crop will be affected. There is a decreased expectation for the wheat crop, which will reduce the amount of money that goes into those communities. I will pass the question on to my colleague the Minister for Primary Industries and get an answer as soon as I possibly can because this is a matter of great importance.

UNIONS NSW

The Hon. MATTHEW MASON-COX: My question without notice is directed to the Minister for Finance and Services. Will the Minister outline to the House the influence of unions in New South Wales on this Government and on the previous Government with respect to matters within his portfolio?

Dr John Kaye: Point of order: By its nature the question seeks an opinion and is not within the standing orders. When a question refers to seeking influence it is absolutely seeking an opinion of the Minister. It is not a matter that is measurable or testable.

The Hon. Lynda Voltz: To the point of order: The question is also argumentative.

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

The Hon. GREG PEARCE: I do not think there is any argument about this. Unions NSW represents a sizeable although decreasing number of employees in New South Wales. For the most part representations are made to this Government with respect to public sector employment matters as the former Government referred the power for industrial relations with respect to the private sector to the Federal Government system. In addition, there is legislation that binds the Government to consult with Unions NSW on certain appointments. Unions NSW continues to be consulted on issues.

However, our consultation with Unions NSW does not compare with the deference that was given to the union movement by the previous Government. Most of those opposite relied on one union or another to guarantee them their place in this House. Their union debt drove many of the decisions of the former Government. Indeed, we are given some insight into that by none other than Frank Sartor in *The Fog on the Hill*. It is a good book and I recommend it. We love it; it just keeps giving. With respect to work, health and safety laws Frank Sartor recounts:

> In 2010 Premier Keneally reneged on several aspects of uniform national workplace safety laws, which attracted the ire of Prime Minister Julia Gillard.

Frank Sartor goes on to say:

> There were no compelling reasons to move from the agreed laws other than deference to the New South Wales unions.

Let us be clear: The previous Labor Government signed New South Wales up to a Council of Australian Governments agreement to implement national occupational health and safety harmonisation. Then Kristina Keneally reneged on that promise for no compelling reason other than—according to Frank Sartor—deference to her union masters. Opposition members have become quiet now.

The Hon. Luke Foley: Point of order: I refer to Standing Order 91. All imputations of improper motives and all personal reflections on members are considered disorderly. I submit that the Minister's comments and reflections about Labor members are out of order.

The PRESIDENT: Order! It is not out of order for the Minister to make those sorts of remarks about Labor members collectively. However, it is out of order for the Minister to make such reflections on the member for Heffron. The Minister should be careful not to transgress Standing Order 91 in his answer.

The Hon. GREG PEARCE: We saw a couple of weeks ago that the Hon. Luke Foley—the Mark Latham of this Parliament—has a glass jaw and is prone to blowing up when things do not go his way.

The Hon. Eric Roozendaal: Point of order: I have two issues with the bumbling Minister—

The PRESIDENT: Order! The Hon. Eric Roozendaal knows full well that he should not make a point of order in those terms. I note that the Minister's time for speaking has expired.

NORTHERN NEW SOUTH WALES ELECTRICITY SUPPLY

Dr JOHN KAYE: My question without notice is directed to the Minister for Roads and Ports, representing the Minister for Resources and Energy. Regarding the proposed 330,000 volt Bonshaw to Lismore line being developed by TransGrid, is the Minister aware that the request for proposals commissioned under the previous Government by TransGrid did not seek alternatives to construction of the line? If not, will the Government commit to halting the project until a genuine attempt is made to find a less expensive, less environmentally damaging, non-network solution to the energy needs of the far north?

The Hon. DUNCAN GAY: In respect to the last part of the question all I say is that I suspect we would have to wait until the next millennium to find a solution that would satisfy Dr John Kaye. In response to the general question I advise that the project remains the most efficient and economic solution to maintain current levels of electricity reliability in the region over the longer term. TransGrid's request for proposal process followed more than 10 consecutive years of annual planning statements or annual planning reports that outlined the emerging network constraint in far north New South Wales. TransGrid's project is an important investment to secure a long-term electricity supply for the region. Increasing demand for electricity in the far north is placing pressure on the existing transmission network during critical periods of high demand. The most recent forecasts predict that the transmission network in the far north will reach capacity by summer 2016-17.

The project will also increase network efficiency, saving around 35 gigawatt hours of electricity—more than the amount of electricity used by Tenterfield in a whole year. Economic forecasts estimate that the project will also contribute up to $124 million to gross regional product with up to 200 staff to be employed during the height of construction. Local communities in northern New South Wales can also expect increased spending in the region through demand for accommodation, services and local contractors. Furthermore, I understand TransGrid will be offsetting any environmental impacts by developing an offset strategy in consultation with State and Federal government departments. More than two years of environmental studies and fieldwork have been undertaken to ensure that the environmental assessment is an extensive and detailed analysis of the project's environmental, economic and social factors.

The preferred route, which was established after extensive community consultation, avoids all national parks and wilderness areas. A large proportion of the project also involves upgrading an existing transmission line that will minimise its ecological footprint. I understand that the proposed sections of new transmission line have been designed to utilise local topography, ensuring the highest possible ground clearances and minimising the amount of vegetation management required. However, TransGrid recognises that removal of some vegetation will be unavoidable in order to ensure the safety of the community and the reliability of the electricity supplied. TransGrid will also offset this project by developing an offset strategy in consultation with State and Federal government departments. TransGrid will also source biodiversity credits through a market mechanism to offset any biodiversity lost as a result of the project. These offset actions will help protect threatened species and promote biodiversity.

ROAD SAFETY

The Hon. PENNY SHARPE: My question is directed to the Minister for Roads and Ports. What additional road safety measures has the Minister introduced on roads where speed cameras have been removed or turned off?

The Hon. DUNCAN GAY: I thank the Opposition spokesperson on transport for her question. Only one speed camera has been switched off. The road at that site has been completely realigned to provide an extra safety measure. The camera was originally on a bend; the bend is no longer there.

The Hon. Marie Ficarra: The Minister has already told the Opposition this.

The Hon. DUNCAN GAY: I advised Opposition members of this earlier in the day but they were obviously talking amongst themselves. It is important to listen in class. They were not listening and they missed that point. As we progress in these areas we will make changes to the shoulder, line marking, signage and differentiate lane routes. We have already requested more regular police patrols in areas where cameras will be removed and the police have undertaken to do that. It is a holistic process. We are implementing it carefully, and we will not act before proper alternatives are in place.

ROADS AND TRAFFIC AUTHORITY STAFF AWARDS

The Hon. JOHN AJAKA: My question is directed to the Minister for Roads and Ports. Will the Minister update the House on the recent Roads and Traffic Authority staff awards?

The Hon. Mick Veitch: You are his Parliamentary Secretary and you do not know?

The Hon. John Ajaka: I asked the Minister to update the House so that the Opposition can be informed.

The Hon. DUNCAN GAY: I thank the best Parliamentary Secretary I have ever had for his question. Last week I was delighted to present 18 awards across 15 categories to outstanding Roads and Traffic Authority employees, including the Chief Executive's Outstanding Achievement Award. The world of transport is busy at the moment—to say the least. Staff at the Roads and Traffic Authority have stepped up to the challenge and have continued to meet and exceed expectations. I am impressed by the level of excellence at which the Roads and Traffic Authority staff continue to deliver.

The awards recognised some of the fantastic achievements of those who are leading the Government's ongoing efforts to drive change and to put the customer at the heart of everything it does. As indicated earlier, I note the presence in the gallery of equally fantastic young professionals from the Roads and Traffic Authority and the Department of Transport who will be critical to the next step. I am sure the shadow spokesman would like their presence acknowledged also. Their innovative ideas and dedication to their work will help us change the face of transport delivery. This includes improving safety for all road users, producing better drivers through improvements to licensing and testing, and continuing the massive task of constructing, upgrading and improving roads across this State.

There were 13 categories in which staff could be nominated, including community involvement and public communication, customer service external, customer service internal, diversity and equity, employee excellence, employee program achievement, environment, excellence in infrastructure design, excellence in innovation, leadership, occupational health and safety, road safety, and team performance. This year there were 122 nominations from all areas of the Roads and Traffic Authority. The winners excelled in their fields and went above and beyond the call of duty to deliver outstanding results.

The Aboriginal Excellence Award, which is presented during National Aborigines and Islanders Day Observance Committee Week, was also presented at the ceremony. This year the authority's chief executive, Michael Bushby, presented an outstanding achievement award. This award is not presented every year; the last time it was presented was in 2007. This year it went to a long-standing—and I have to say very popular—employee, Phil Mahoney, who worked for the authority for 41 years before retiring earlier this year.

The Hon. Helen Westwood: A great man.

The Hon. DUNCAN GAY: I acknowledge that comment and agree with it. Mr Mahoney received the award for outstanding service delivery to the authority and the key roles he played as manager of key project development and as Acting General Manager, Environment. He played a key role in recent years in project development for the Hunter Expressway and important projects on the Hume, Pacific, Princes, Great Western and Oxley highways, and projects on the Central Coast and Camden Valley Way. In fact, when I phoned him on the eve of his departure from the Roads and Traffic Authority to wish him well, as one should, I said, "You've got the same name as a Philip Mahoney who lives down Fish River Road just out of Crookwell." He said, "Phil is my cousin." At the awards he told me that during his retirement he has visited the family— [*Time expired*.]

DISTRICT COURT ASSAULT CASE DECISION

Reverend the Hon. FRED NILE: My question without notice is addressed to the Minister for Police and Emergency Services, representing the Attorney General. Is it a fact that in a recent case a 14-year-old boy who confessed to his teacher regarding a theft and assault with a knife was acquitted by District Court Judge Helen Murrell, who ruled the confession inadmissible because the boy was not told his legal rights? Does the New South Wales Government believe Judge Murrell's ruling on the boy's confession to be correct? Is the Government concerned that this ruling may establish a dangerous precedent and discourage the reporting of other serious crimes by members of the public and teachers? What action is the Government taking to clarify this law and ensure justice is served in this and all similar cases?

The Hon. MICHAEL GALLACHER: I thank the member for his question. This case has understandably raised questions and concerns about important interaction between teachers and students. The decision by the court deals with whether the disclosure of an alleged offence made by a student to a teacher could be admitted into evidence during criminal proceedings taken against that student. It does not require teachers to issue a caution to students before a teacher and student discuss student welfare issues. It does not suggest that anything done by the teacher was improper, let alone deliberately so. As this decision arises from a criminal prosecution, it is unlikely to have any direct bearing on day-to-day operations at schools. I understand the Department of Education has communicated with schools to give them clarity about the issue.

The judge was required to balance the need to treat the juvenile fairly with the public's need to bring criminals to justice for the protection of the community. There was no clear authority regarding the admissions made to the teacher on which Her Honour could rely and a determination was required based on the unique nature of this case. The judge determined that the public policy consideration of bringing an accused person to justice has to be seen somewhat differently when the accused is a 14-year-old child. Where a child is concerned, the need for fairness to the child must generally tip the balance and the discretion should generally favour the child. Her Honour further argued that there is a public policy argument favouring the protection of the relationship of trust between teacher and student. I am advised that this decision was not appealed as it was within the judge's discretion to make this determination and there was no error in the exercise of this discretion that could form the basis of an appeal.

Following the exclusion of the teacher's evidence a new trial was conducted and the jury acquitted the accused by way of majority verdict. The Director of Public Prosecutions has advised that there is no avenue to appeal the acquittal entered by the jury. It appears the teacher concerned acted appropriately in the circumstances. Teachers must continue to report serious crimes to the police and act to ensure the safety of students and staff at their schools. If someone believes that a serious indictable offence has been committed and has information that might be of material assistance in securing the apprehension, prosecution or indeed conviction of the offender, that person has a legal obligation to inform the police or another appropriate authority. Where possible, teachers should inform students of this obligation before any admissions are made.

A question and answer document has been distributed to teachers concerning this case; however, further clarity may be required in this area of the law. I understand that the Attorney General's department is examining the current law and the implications of this case. If any further action is required, the Government will consider any reasonable steps to ensure that teachers have a clear understanding of their responsibilities and that people are held accountable for their crimes.

LAND CLEARING

The Hon. GREG DONNELLY: My question is directed to the Minister for Roads and Ports, representing the Minister for Primary Industries. Will the Minister rule out lifting or diluting the existing restrictions on broad-scale land clearing contained in the Native Vegetation Act 2003 and the Native Vegetation Regulations 2005?

The Hon. DUNCAN GAY: I thank the member for his question. I direct members from the west of New South Wales to the contribution made by the Leader of the Opposition in this place during the adjournment debate last night. He condemned the very existence of land clearers and said they had raped and pillaged regional New South Wales. He implied that they should not even be there. I suspect that the member has directed the question to the wrong Minister. I do not think this matter is the responsibility of the Minister for Primary Industries. However, I will forward the question to the Minister for Primary Industries and if the matter does not fall within her responsibility I will redirect the question to the appropriate Minister, who in my view is the Minister for the Environment.

LOWER HUNTER WATER PLAN

The Hon. CHARLIE LYNN: My question is directed to the Minister for Finance and Services. Can the Minister update the House on the New South Wales Government's Lower Hunter Water Plan?

The Hon. GREG PEARCE: I thank the member for the question and commend him for his interest in this matter. I am pleased to advise the House that the next stage in the development of the Lower Hunter Water Plan has commenced. Expressions of interest will be sought for a newly created independent water advisory panel that will lead and coordinate the development of the Lower Hunter Water Plan. The panel will be tasked with providing input to the planning framework and community consultation as well as other aspects associated with the plan's development where required. Key stakeholders and the community will be consulted throughout the plan's development to ensure the best solution is delivered for the community. The Government is committed to delivering a plan that is developed through a robust process.

The Lower Hunter faces significant water security challenges into the future. We need a plan that can enable the region to grow and prosper at the same time as it protects it from the possibility of future drought. As previously indicated, the former Labor Government's proposed Tillegra Dam will not be pursued as an option. The now Opposition created a multimillion-dollar white elephant—a proposal that would have been expensive, and was ineffective and environmentally unsound. It wasted time and money, created significant angst in the community, negatively impacted on local businesses and wasted vital resources. Unlike Labor, the New South Wales Liberals and Nationals Government has listened and understands the wide-ranging views raised by the local community.

We are committed to developing a long-term plan that is cost effective, meets the needs of the growing population, engages the community and ensures a transparent process. We will ensure that the plan will comply with Hunter Water's operating licence for an integrated water resource plan and national urban water planning principles adopted by the Council of Australian Governments. The development of the lower Hunter water plan is a major undertaking requiring both adequate resources and time to complete but, most importantly, proper consultation with the local community and expert advice. Those are the keys to our approach to this matter. There goes the Hon. Penny Sharpe again, interjecting. The member has just asked me a question about what type of car am I provided with, what year it is and who made it. The Hon. Penny Sharpe should ask Paul Lynch, because I am told I have Paul Lynch's car—

The Hon. Luke Foley: Point of order. My point of order relates to relevance. Clearly, the Minister had finished his answer to the question. He then invented a fictional interjection by the Hon. Penny Sharpe, who was minding her own business, in order to launch an attack on the member. The Minister should resume his seat given that he had finished answering the question.

The PRESIDENT: Order! The Minister made a personal reflection on a member of the House, who was not interjecting. If the Minister has any further relevant information to provide, he may resume his answer.

STRATEGIC REGIONAL LAND USE PLAN

The Hon. JEREMY BUCKINGHAM: My question without notice is directed to the Minister for Roads and Ports, representing the Minister for Primary Industries. The Minister will be aware that the New South Wales Farmers Association is deeply unhappy about both the process and the policy direction of the Government's strategic regional land use policy and aquifer interference policy, stating that "the entire process is at risk of being undermined". Have the wheels fallen off this process? Is the Government walking away from its election commitments and have The Nationals finally been rolled by the big miners and the Liberal Party?

The Hon. DUNCAN GAY: I thank the honourable member for his question. Once again, the member has overstated the position—but just a tad this time, in comparison to his normal contributions. I think it is time

I gave The Greens' members a detailed walk through of this process, because they are obviously very slow learners. They have been swapping the staff car among them—the company Prius—and could not get involved quickly enough. In the 16 years that they were in coalition with the former Government they failed to provide a comprehensive policy framework for the management of competing land uses in our regions.

The Hon. Steve Whan and others never understood the need to have in place a framework to strike the right balance between our important agriculture, mining and emerging coal seam gas industries. They preferred to deal with each project in isolation, ignoring the need for a broader narrative to manage economic growth, food security and the urban environment. In opposition we, along with the key stakeholders, as I indicated earlier, developed a strategic land use policy, with clear commitments that we will be implementing in government. Our policy, we said then, will strike the right balance between competing land uses in our regions. It will provide security for our strategic agricultural lands, while also providing certainty for the minerals industry. We will deliver where Labor failed.

The Government's strategic land use policy is about creating certainty, delivering balance, building strong and resilient communities, involving people in local decision-making, and giving farmers and industry greater control over their futures. This is about removing zealots like The Greens from the process. This policy includes a number of immediate and longer-term measures designed to address issues occurring now, as well as providing better certainty to our communities and industries about how our regions will change over time. We will deliver certainty for communities by developing regional plans for all of regional New South Wales. These plans will identify and protect productive farmland, involve communities in local decision-making, ensure a sustainable and healthy mining industry, and encourage industry best practice. These plans will be driven and owned by the local community, because we believe that decisions are best made by the people that they affect—not in some commune in North Korea, where The Greens have their policy handed down. The Government will not see the environment compromised by poor planning or by the political games of The Greens.

We are developing the most stringent environmental standards for coal seam gas in Australia. I am very proud that we are leading the Commonwealth in this area. No other State, as the Hon. Eric Roozendaal would know, is within a bull's roar of this State. We have already banned evaporation ponds, banned BTEX chemicals in fracking, put on hold fracking licences, removed upfront payments for exploration licences, and made sure that all coal seam gas applications are publicly displayed for comment.

The Hon. JEREMY BUCKINGHAM: I ask a supplementary question. Could the honest—honourable Minister elucidate his answer?

The Hon. Michael Gallacher: Honest. You got it right.

The Hon. Jeremy Buckingham: Honest Minister. Of course he is honest.

The Hon. DUNCAN GAY: I thank the honourable member for his supplementary question. I indicate that we are also developing a stringent groundwater regulation, reviewing fracking standards, reviewing access arrangements, and investing an extra $160 million in infrastructure in mining-affected communities. Discussion and concern about land use is not new. What is new is that finally New South Wales has a government that is committed to restoring balance and creating certainty for communities, farmers and industry. Gone will be the days when communities and farmers had no idea what would happen in the future. We are having a real go to fix this problem and put in place the best standards anywhere in this Commonwealth. Frankly, those ideals, which are helpful to a farming community—of which I am a fourth-generation member—are not helped by soothsayers and alarmists who want to distort the facts on this matter. People who have been involved in bogus television campaigns are not helpful to this process. People of goodwill, like Alan Jones and others who want to help, are welcome. The Greens' distortion is not welcome anywhere.

WIND FARMS

The Hon. HELEN WESTWOOD: My question is directed to the Minister for Roads and Ports, representing the Deputy Premier. What action has the Minister taken to implement the New South Wales National Party policy to institute a moratorium on wind farms in New South Wales?

The Hon. DUNCAN GAY: As members of this House know, I am not a great fan of wind generation—especially when references to it come from the Labor Party. It is unbelievably hypocritical for a member of the Opposition to ask a question on wind farming. Frankly, if Labor wanted to do something about

wind-generated power—which is splitting my community and destroying the community of the Hon. Steve Whan—he would not have stood aside, impotent and unable to do anything about it. If Labor really wanted to fix it, it would have fixed the root cause of the evil—the subsidy that comes from the Federal Labor Government. Without that subsidy, wind farming would not be destroying communities like mine at Crookwell, pitting neighbour against neighbour, friend against friend, and mate against mate. Because of the impotent form of members like Steve Whan sitting opposite on the losers' lounge—

The Hon. Lynda Voltz: Point of order: The question clearly asked about the policy for a moratorium on wind farms and what the Minister was doing about that. He has not on any occasion addressed the moratorium on wind farms. I ask that his answer be relevant to the question.

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

The Hon. DUNCAN GAY: Who cares about a moratorium if one fixes the problem? The only way to fix the problem is to remove the Federal subsidy. If members opposite do not want it, they should go to their mates in Canberra and get rid of the subsidy.

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

SAME-SEX ADOPTION

The Hon. MICHAEL GALLACHER: On 13 September 2011 Reverend the Hon. Fred Nile asked a question regarding same-sex adoption. The Premier has provided the following response:

> I am advised that all prospective adoptive parents, including gay and lesbian couples, are subject to a rigorous assessment process to determine their suitability to adopt. The assessment process considers skills and life experiences, financial circumstances, health, capacity to support maintenance of cultural identity and religious faith, stability of character, stability and quality of family relationships, and capacity to facilitate contact and exchange of information with the child's birth parents.

WESTERN RIVERINA NATIONAL PARKS

The Hon. GREG PEARCE: On 9 September 2011 the Hon Robert Borsak asked me a question regarding Western Riverina National Parks. The Minister for the Environment, and Minister for Heritage has provided the following response:

> These funds support the delivery of a range of operational activities such as pest animal and weed management, fire management activities and construction and maintenance of visitor infrastructure at these reserves. A significant proportion of National Parks and Wildlife Service [NPWS] expenditure in the Riverina pays the salaries of the staff who work and reside with their families in Riverina towns and communities such as Griffith, Hay, and Balranald. For example, since the purchase of Yanga, NPWS has spent more than $4 million in the Shire of Balranald and more than $5 million in the Shire of Hay, which includes salaries of staff living and working in the Shires.

WIND FARMS

The Hon. DUNCAN GAY: On 13 September 2011 the Hon. Robert Brown asked me a question regarding wind farms. The Minister for Resources and Energy has provided the following response:

> A Renewable Energy Action Plan will set the direction for renewable energy policy in NSW in consultation with the community.
>
> The Government is committed to developing renewables at the least cost to electricity customers and tax payers.
>
> The Government remains committed to the renewable energy target of 20% by 2020.

Questions without notice concluded.

SENATE VACANCY

Joint Sitting

The PRESIDENT: I shall now leave the chair for the joint sitting. The business of the House will be suspended during the joint sitting. The House will resume at the conclusion of the joint sitting following the ringing of the bells.

[*The President left the chair at 3.32 p.m. The House resumed at 4.05 p.m.*]

SENATE VACANCY

Joint Sitting

The PRESIDENT: I report that at a joint sitting this day to choose a person to hold the place in the Senate of the Commonwealth of Australia rendered vacant by the resignation of Senator the Hon. Helen Coonan, Arthur Sinodinos was chosen to hold that place. I table the minutes of proceedings of the joint sitting.

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

BUSINESS OF THE HOUSE

Postponement of Business

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

CONDUCT OF MAGISTRATE BRIAN MALONEY

Debate resumed from 22 June 2011.

The Hon. SCOT MacDONALD [4.06 p.m.]: I thank the House for the opportunity to speak on this motion. I am acutely conscious that I am not a lawyer and I have not experienced the hurly-burly of the magistrates court. I have no reason to disbelieve the descriptions of the pressure, the workload and the stress in those environments. Nevertheless, I am confronted with a decision that I recognise has serious consequences for the magistrate, the management of the judiciary and the separation of powers. This is only the third time a consideration for removal of a judicial officer has come before the New South Wales Parliament. Clearly, it is not done lightly. It is a last resort, as the Parliament is distanced from the judiciary wherever possible. To dismiss a judicial officer could be an erosion of the separation of powers and would only be considered in the most serious circumstances. Nevertheless, the mechanism exists for removal, and I believe it exists to protect and enhance the judiciary, not as a means of interference or the exercise of power.

I am satisfied the matter brought before this House warrants consideration, but I reject the notion that this motion is a referendum on mental illness. Without question our society has progressed to greater recognition of mental illness and how such conditions can be recognised, treated and accommodated in our daily lives, including in our work environments. We are showing compassion and understanding. I have no doubt this improved awareness is a great aid and comfort to many sufferers. I am sure it has enabled many people to remain engaged, productive members of the community. But that is of limited assistance when a decision is required in these unique circumstances. Our society's greater acceptance of mental illness and our belief in our capacity to treat or manage it is unarguably a strong incentive to see this matter in the most positive light possible. But that does not abrogate our responsibility to consider the evidence and make a judgement accordingly. We are tasked with judging an individual's capacity to carry out judicial functions, not the efficacy of mental health management. The findings of the Conduct Division are serious. They conclude:

> (f) The Conduct Division finds that Magistrate Maloney is and will remain incapacitated for the performance of judicial duties by his bipolar II disorder.
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> (g) The Conduct Division makes findings of fact as set out in this report.
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> (h) The Conduct Division is of the opinion that the matters referred to in this report could justify Parliamentary consideration of the removal of Magistrate Maloney from office on the ground of proved incapacity.

On my reading of the report and subsequent communications, the incapacity is proven. The behaviour of the magistrate has been unjudicial. Furthermore, the magistrate received warnings and advice about his behaviour yet the indiscretions continued. The magistrate acknowledged his inappropriate actions—yet was unable to desist. I acknowledge that the report also points out that the magistrate has since been diagnosed and is receiving treatment with encouraging results. We have since received a communication that there is a complaint arising from the period since the magistrate commenced his treatment. I understand the Judicial Commission has not yet investigated that matter.

But most compelling to me is the qualifications of the medical experts and element of "hope" that the magistrate can self-manage his condition. The strategy is heavily predicated on Mr Maloney or his family

recognising changes in his condition. There is then the expectation that treatment will commence and the capacity will be restored. While these strategies are admirable, I do not believe they give the justice system, the public and the Parliament sufficient assurance that the high level of capacity required to carry out the functions of a magistrate will be maintained. I am concerned about the timeliness of the diagnosis or self-diagnosis and the response from the magistrate and his superiors. I am also concerned about any interruption to the work of the magistrate and its impact on the affected parties.

I have read the report from the Conduct Commission, listened to Magistrate Maloney and followed the subsequent correspondence, including some as late as today. I believe my task can be condensed to a number of questions: Is the misconduct proven? Yes. Is it serious enough to warrant removal? Yes. Is the magistrate's condition manageable? Possibly, but not certainly. Is it necessary to protect future litigants and the justice system by the drastic step of removing a magistrate? Yes. Is it important to give effect to the self-governing body of the judiciary? Yes. I support the motion for the removal of Magistrate Maloney.

The Hon. LYNDA VOLTZ [4.11 p.m.]: Section 53 of the New South Wales Constitution Act 1902 allows for a judicial officer to be removed from 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. I do not believe that an illness such as depression or bipolar in itself automatically means that a magistrate or any person should be prohibited from their employment. But all illnesses manifest themselves in different ways and it is the impact of an illness on an individual on a case-by-case basis that must be assessed. In the case of Magistrate Betts, this Chamber wholeheartedly believed her to have insight into her condition and its management. There was therefore no cause for incapacity. Magistrate Maloney has stated that he suffers from bipolar II and, because he now receives treatment, that this should not be seen as an incapacity or a cause of misbehaviour. He argues therefore that the motion for his removal should be rejected.

Unfortunately, there is no getting around the Constitution Act 1902 in regard to how this matter should be dealt with. I know that many people feel uncomfortable to see these issues aired in public and believe that personal issues ought to be dealt with privately. That being said, the Judicial Commission has been appointed pursuant to section 22 of the Judicial Officers Act 1986 and it has forwarded to this Chamber its opinion that the matters referred to in the report justify parliamentary consideration of the removal of the Magistrate Maloney. The Chamber therefore has no option but to air these matters in public. Of course, I wish there was a more private way of dealing with this. But just as politicians' lives are conducted in the full public glare of the media and at the mercy of the ballot boxes, so too magistrates must accept that they are bound by the procedure of the Constitution Act when taking on their role. The Constitution empowers the Legislature to make laws for peace, welfare, and good government in all cases. We must do that in this case as we do in every other.

Fundamental to the case of Magistrate Maloney is whether his treatment negates his illness, thereby rendering him able to fulfil his tasks without misbehaviour. This Chamber saw with Magistrate Betts that her ability to recognise and manage symptoms was fundamental to negating the impact her depression was having on her ability to continue as a magistrate. She managed to assure the Legislative Council of her recognition of her condition and of the measures she had taken to negate their effect on her behaviour. Unfortunately, I believe that Magistrate Maloney exhibits that he neither accepts nor acknowledges the inappropriateness of his behaviour, particularly in regard to sexualisation. I acknowledge that there is a risk that those who suffer from bipolar disorder tend to get themselves into risky sexual situations when their mood is escalating. But fundamental to this problem is that the sufferers recognise this and are able to manage the early symptoms. Magistrate Maloney acknowledged most of the inappropriate conduct but not all, and not that which related to this issue in particular. Dr Bautovich, a professional witness before the magistrate, said:

> I even considered that the magistrate might be mentally ill. I believed that he might be hypomanic, which is a stage of bi-polar disorder. I formed that view because the magistrate was really disinhibited, he was bringing up personal details in a serious hearing, he was talking about inappropriate and quite explicit details regarding labour.

In this instance Magistrate Maloney disputes that he did anything inappropriate and says that he was merely recounting an anecdote. The Judicial Commission found that Magistrate Maloney's evidence about this event was unreliable. His behaviour toward a professional witness was clearly inappropriate and sexualised. Given that Magistrate Maloney was receiving treatment at the time of his evidence, and to satisfy to my mind that he is able to recognise the symptoms of his illness, I would have thought he should have been able to acknowledge that perhaps inappropriate behaviour had escalated during mood elevation, particularly given the evidence of Dr Bautovich.

Regarding the screensaver incident, the Judicial Commission found that the image of a naked woman lying on the beach was available for use as wallpaper on 25 February as opposed to other images which were

unlikely to have been available at that time. Magistrate Maloney argued that the women who believed his behaviour was inappropriate were incorrect or mistaken. However, the Judicial Commission was satisfied that Magistrate Maloney showed the image of the naked lady and that there was a sexualised element to his conduct. Again, I believe that at this point Magistrate Maloney should have been able to identify signs of his illness during the evidence he gave. His continued inability to do so has raised great concerns in my mind about Magistrate Maloney's suitability to continue.

My greatest concerns were raised when I listened to Magistrate Maloney in this Chamber. My considerations were based on placing myself in the position of someone coming before Magistrate Maloney. If my daughter were to come before this magistrate, either as a professional witness or a defendant, would I be confident that he would be able to recognise his symptoms to negate a propensity to inappropriately sexualise his conduct in the courtroom? My answer to that is no. Therefore I support the motion for his removal.

The Hon. TREVOR KHAN [4.16 p.m.]: The issue before us is most serious. We are being asked to weigh up two competing interests. On the one hand is the issue of Magistrate Maloney's position of local court magistrate. On the other hand is the integrity and effectiveness of our judicial system. When these competing interests are in balance I am inclined to favour the importance of the integrity and effectiveness of the judicial system.

I wish to comment on four preliminary matters: the role of the judicial system in a modern democracy, the qualities the public should expect of their judicial officers, what constitutes judicial misbehaviour or incapacity, and what matters members of this House can take into account when considering the motion before us. As to the first of these preliminary matters, the role of the judicial system in a modern democracy, I suggest that it is a fundamental obligation of the government of an advanced democracy to ensure that it operates an efficient and impartial judicial system. This view is reinforced by our internationally recognised obligations. Article 10 of the Universal Declaration of Human Rights provides:

> Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charge against him.

Similarly, Article 14.1 of the International Covenant for Civil and Political Rights, ratified by Australia, specifies:

> All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law.

These obligations must be preeminent in our determination of this matter. In my view we are obliged to ensure that members of the public appearing before our courts have recourse to a fair and public hearing by a competent, independent and impartial tribunal. The second of the preliminary matters I wish to address is: What are the qualities that the public should expect of their judicial officers? Sir Anthony Mason, the former Chief Justice of Australia and now Arthur Goodhart Professor in Legal Science at Cambridge University and National Fellow of the Australian National University, in an essay entitled "Fragile Bastion: Judicial independence in the nineties and beyond", wrote:

> It goes, virtually without saying, that certain personal qualities are indispensable—integrity, impartiality, industry, a strong sense of fairness and a willingness to listen and to understand the viewpoint of others ...

I suggest in considering the motion now before the House we must constantly reflect upon the qualities identified by Sir Anthony Mason. Indeed, I go further and say a judicial officer who does not demonstrate, for whatever reason, the personal qualities identified by Sir Anthony Mason should be considered unfit or incapable to perform the functions of a judicial officer. This brings me to the third and related issue: What constitutes judicial misbehaviour or incapacity? I am assisted in addressing this issue by the paper by Professor Peter A. Sallmann of the faculty of law at Monash University delivered at the Judicial Conference of Australia in September 2005. At page 11, paragraph 21 of his paper, Professor Sallmann made the following observations:

> ... while one might readily agree with the retired judges who formed the Commission of Inquiry in the Justice Murphy case that the word "misbehaviour" should be used in an ordinary way and is not to be restricted to misconduct in office or to conduct of a criminal nature, a considerable amount of leeway is thereby created for debate and interpretation as to what is misconduct and as to whether, in any particular case, it is a "hanging offence". It will be recalled that the Commissioners (Lush Blackburn and Wells) spoke more or less in unison about notions such as conduct judged by contemporary standards which throws doubt on a judge's suitability to continue in office; conduct which, being morally wrong, demonstrates the unfitness of a judge to continue; and behaviour which represents so serious a departure from the standards of proper behaviour by a judge that it must be found to have destroyed public confidence.

Professor Sallmann then went on to say in paragraph 23:

> As the Commissioners in the Murphy matter pointed out, the distinction between criminal and non-criminal behaviour is not necessarily going to be very helpful. For example, while a conviction for a lower or medium level drink driving offence or a minor assault may not be regarded as sufficient for the removal of a judicial officer, non-criminal behaviour such as persistent failure to produce timely judgements or repeated serious rudeness to litigants and/or lawyers could be.

I must emphasise that, while Professor Sallmann was speaking specifically about misconduct, his observations are in my view equally apposite to situations where inappropriate conduct is as a result of illness or other incapacity. In short, the issue of judicial misbehaviour or incapacity is one for our determination and should not be construed narrowly. Whilst it may be attractive to suggest that the power of dismissal should be restricted to issues of serious criminal behaviour, I suggest that to do so fails to recognise our obligation to ensure that our courts operate fairly, competently and impartially.

That brings me to the fourth issue: What matters can members of this House take into account when considering the motion before us? As I have already stated, our responsibility is to consider whether there has been proved misbehaviour or incapacity. The proof of that misbehaviour or incapacity is a matter for this House, not for any other body. Under the Judicial Officers Act 1986 a report from the Conduct Division of the Judicial Commission only triggers the matter for our deliberations. Thereafter it falls for us to consider the matter consistent with our obligations under section 53 (2) of the Constitution Act 1902. In support of this contention I refer members to *New South Wales Legislative Council Practice* by Lovelock and Evans, which states at pages 587-88:

> When considering such a matter, the Houses may take into account facts other than those reported by the Conduct Division, including events which have taken place since evidence was given before the Division.

Additionally, Justice Priestly in the decision of *Vince Bruce v Cole* said:

> The material before each House will not necessarily be the same as that before the Conduct Division (nor perhaps the same as that before the other House). For instance, there is no reason why a House, in considering what to do, should not take into account events bearing upon the incapacity of the judge which have taken place since the giving of the evidence before the Conduct Division, upon which its report ... was based.

Justice Priestley then went on to say:

> ... the decision to be made on such material will be quite a different kind of decision from that of the Conduct Division.

Based upon these authorities, I suggest we are entitled to consider a range of materials well beyond that considered by the Judicial Commission. To the suggestion that we should take a far more restricted view I say that such an approach makes no sense if one considers the address by Magistrate Maloney himself and the material that he has sought to provide since his address. For instance, in his address not only did he draw our attention to various matters relating to the specific complaints but also he sought to raise such matters as his health, his marital status and how the wider public should consider his dismissal, if that were to occur, in the light of his admitted mental illness. In short, Magistrate Maloney has both specifically and by implication invited us to consider views and circumstances well beyond those ventilated before the Judicial Commission.

I now turn to the question of the fitness of Magistrate Maloney to remain as a judicial officer. In other words, are there grounds sufficient to warrant the exercise of the powers and responsibilities that arise under section 53 (2) of the Constitution Act? At this point I want to briefly compare the approach taken by Magistrate Maloney in his address to that adopted by Magistrate Betts when she addressed this House. Members of this House will well remember that I spoke following Magistrate Betts' address and opposed the motion before the House in that respect. I summarise Magistrate Betts' approach as involving a recognition by her that she suffered from a psychiatric illness and, most importantly, an acknowledgement that her behaviour as evidenced by the complaints had been inappropriate on occasion. In respect of one of those complaints she herself described her behaviour as horrific, as indeed it was. I formed the view on the whole that she did not seek to minimise her behaviour or to be equivocal in any significant way.

My approach with Magistrate Betts was that, having heard her, I accepted what she said or, put another way, I accepted she was credible and reliable. I was of the view, having heard from Magistrate Betts, that it was unlikely that there would be further instances of judicial misbehaviour or incapacity. In respect of both Magistrate Betts and Magistrate Maloney there is clear and compelling evidence that both suffer from a psychiatric illness, although in the case of Magistrate Betts it was a depressive illness and in the case of

Magistrate Maloney it is bipolar II. There is also clear evidence that both are receiving treatment. I am not satisfied, however, that this conclusion in and of itself should overwhelm all other considerations that this House must take into account.

In my view what differentiates Magistrate Maloney from Magistrate Betts is that I am not satisfied on the basis of his address that he has sufficient insight and genuinely accepts the nature of his conduct so as to ensure there will not be future instances of judicial misbehaviour or incapacity. I acknowledge that Professor Olav Nielssen asserts that Magistrate Maloney has insight into his condition. But, frankly, that was not demonstrated in his address. Further, I am satisfied that Magistrate Maloney in his address to this House gave evidence which causes me at least very significant concern. I will demonstrate the basis of my concerns by reference to parts of Magistrate Maloney's address. Firstly, Magistrate Maloney said in his address to this House:

> I have been a magistrate for 15 years. I have dealt with thousands and thousands of issues.

He then went on to say:

> There are four complaints against me.

In addition, early in his address Magistrate Maloney cites Her Honour Judge Syme's reference before the Judicial Commission and specifically recounts the words of part of that reference. He said, in recounting that reference:

> I am not aware of any complaints about his behaviour in court over and above those currently before the Commission.

Contrary to both Magistrate Maloney's address and Judge Syme's reference, there were at the time he addressed the House in fact three additional unresolved complaints. Those complaints came to the attention of this House on 23 June 2011 when correspondence between the Judicial Commission and the Attorney General was tabled. It will be noted that the issue of these three additional complaints is the subject of Magistrate Maloney's supplementary submission dated 9 August 2011, to which I will return later.

In that supplementary submission Magistrate Maloney seeks to explain his failure to disclose the additional complaints by essentially asserting that he was invited to address this House only in relation to matters set out in the report of the Conduct Division. Members of this House will recollect that he also referred to specific terms of the Act with regard to what can and cannot be disclosed. Whilst I accept this is the case, this does not excuse that in his address, by using the words he did, he misled this House. I am mindful of the fact that Magistrate Maloney has been a magistrate for many years, but also prior to his ascending the bench he practised as a solicitor for many years. Indeed, Magistrate Maloney addressed us on this very issue.

I have no doubt that Magistrate Maloney will have been well aware of the ethical constraints imposed on solicitors and particularly those relating to the obligation not to mislead the court. I quote specifically from the Law Society's Solicitors Manual dealing with the obligation that falls upon solicitors with respect to the disclosure of prior convictions. I quote:

> … a solicitor who appears for the defendant is under no duty to disclose to the prosecution or the Court … he must not, without instructions disclose facts known to him regarding his client's character or antecedents nor must he correct any information which may be given to the Court by the prosecution if the correction would be to the client's detriment. However, the defence advocate should not act in such a way that, in the context of the language used by him, his failure to disclose amounts to a positive deception of the Court.

I am satisfied that it was appropriate for Magistrate Maloney to act in a similar way to that laid down by the Law Society when addressing us; that is, he was under no obligation to disclose matters which were to his detriment. However, he was not entitled to engage in conduct which amounted to positive deception of the House. In the context of the current issue Magistrate Maloney was under no obligation to disclose to this House the existence of the three additional complaints. However, what he was not entitled to do was assert, as he did, that there were four complaints. By his making that assertion he engaged in conduct that amounted to an act of positive deception.

To summarise this issue, I am satisfied that Magistrate Maloney's use of the words, "There are four complaints against me" was wrong, and he said it knowing it to be so. I am also satisfied that at the time that he

quoted from Judge Syme's reference he knew that it was incorrect in a material particular. In short, I conclude that Magistrate Maloney intended to mislead this House when he addressed us. I am drawn back to the words of Professor Peter Sallmann when quoting the conclusions formed by the commission of inquiry in the Justice Murphy case at paragraph 21 of his paper where he said that the conduct should be judged:

> … by contemporary standards which throws doubt on a judge's suitability to continue in office; … behaviour which represents so serious a departure from the standards of proper behaviour by the judge that it must be found to have destroyed public confidence.

In my view, the giving of misleading evidence to this House satisfies that test. There are other areas of Magistrate Maloney's address that also cause me concern. These relate to the observations that he makes about the four complaints which were the subject of his report. If I may first turn to what could loosely be described as the screen saver incident. At this point it is important to note that the third and fourth complaints—that is, the Wallace/Kiloh Centre complaint and the screen saver complaint—were dealt with by the Judicial Commission as one complaint pursuant to section 31 (1) of the Judicial Officers Act 1986. I note that Magistrate Maloney said of the screen saver complaint in his address the following:

> The event occurred in February 2002 but the complaint was not made until August 2003—18 months later. In 2003 the Judicial Commission referred the matter to the head of jurisdiction without there having been a hearing. Yet it became the subject of the fourth complaint for which I was prosecuted. This situation would not occur in any court of law in this State.

There are two issues that arise out of this part of the magistrate's address. Firstly, Magistrate Maloney does not adopt the findings of the Judicial Commission with respect to his conduct. What we know is that the Judicial Commission found the complaint was made out and indeed rejected the evidence given by Magistrate Maloney. One would have to say that it is a matter of considerable concern that a body such as a Judicial Commission cannot accept the evidence of a judicial officer. In that respect Justice Hoeben, in his decision delivered on 24 May 2011 in the matter of *Maloney v Michael Campbell QC and Ors*, at paragraph 114 made this observation:

> The finding in paragraph 396 of the report that the plaintiff had shown considerable capacity for denial, self-justification and self-deception was challenged as having no evidentiary basis. I do not agree. I have set out in the factual summary of the evidence relating to the screen saver issue and the facial gesture made at the Prince of Wales Hospital. That evidence was given at a time when the plaintiff was functioning appropriately as a magistrate and was receiving treatment. The Conduct Division rejected aspects of his evidence on those issues, not solely on the basis of an imperfect recollection on his part. The findings as to denial, self-justification and self-deception were not about medical issues but were demeanour based findings that it was open to the Conduct Division to make having observed the plaintiff give his evidence.

I am profoundly concerned by Justice Hoeben's observations and equally concerned that Magistrate Maloney in his address to this House failed in any sense to deal with the findings of the Judicial Commission and the observations of Justice Hoeben. What I am confronted with therefore is material that suggests that Magistrate Maloney not only misled this House but when before the Judicial Commission gave evidence that was not considered credible. The second aspect of Magistrate Maloney's address on that screen saver issue deserving of comment is his observation that:

> The event occurred in February 2002 but the complaint was not made until August 2003—18 months later.

One must ask: Why did Magistrate Maloney make this observation? One is forced, in my view, to conclude that his purpose in referring to the delay in complaint was to suggest that the delay impacts upon the veracity of the complaint. One can say that there is just no evidence and indeed there is nothing in the Judicial Commission report that can lead to any conclusion other than that the complaints made in respect of the screen saver issue were justifiable and verifiable. I am forced to conclude that Magistrate Maloney's attack upon the evidence in this report supports a conclusion that he has, at best, limited insight into his behaviour and the ramifications of that behaviour on others. I note the Judicial Commission report at paragraph 434 said as follows:

> Mr Gormley [*Counsel Assisting*] has submitted that, quite apart from the view we may take of Magistrate Maloney's present and future incapacity resulting from his bipolar 2 disorder and the risks attached to it, he is unfit to be a magistrate because of characteristics demonstrated as being continuing, despite the fact he is said to be in a stable state.
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> He puts as live factors sexual disinhibition, forgetting, putting forward other stories and, in particular relating to the screen saver matters at both hearings, an inability to be objective and to accurately and responsibly handle questions of fact. He also refers to Magistrate Maloney's lack of insight which he puts at a high level.

Whilst the Judicial Commission was not satisfied that the submission of counsel assisting was made out, having now had the benefit of Magistrate Maloney's address to this House my view is that Mr Gormley's submission has far more weight and, indeed, is made out. I refer now to the second complaint relating to Mr Altaranesi, a matter dealt with in the Burwood Local Court. When Magistrate Maloney addressed this House he said:

> At that time I was endeavouring to deal with a busy list and to try, if I was able to do so, to encourage the parties to resolve the matter. In this case it seemed a sensible way to go. I was unsuccessful in that attempt. Perhaps, again in hindsight, I may have gone about it in a different way.

This explanation is to be compared with the evidence considered by the Judicial Commission and the observations in its report. I invite members to read paragraph 76 of the report where part of the exchange between Magistrate Maloney and Mr Altaranesi appears. It is worth nothing that the paragraph commences with this observation:

> Magistrate Maloney called the matter on with an exaggerated pronunciation of Mr Altaranesi's name. He agreed that that was inappropriate.

Why would a magistrate, a judicial official, engage in conduct that involves an exaggerated pronunciation of somebody's name? Do we expect people to appear before our courts to be humiliated or embarrassed because of their ethnic background? Paragraph 81 of the report states:

> He agreed that the statement "you can lead a horse to water, can't you" was a statement that would have the inevitable effect of ridiculing Mr Altaranesi in a public place if it were said for everyone to hear.

The report later stated:

> Other remarks that appear in the transcript are clearly designed to promote laughter, which came in good measure.

At paragraph 88 the report states:

> We accept that the cumulative effect of the matters set out in the particulars, to which it is unnecessary to go, does amount to bullying and belittling of Mr Altaranesi in an attempt to pressure him to give an undertaking.

To say the least, Magistrate Maloney's explanation to us that "perhaps, again in hindsight, I may have gone about it in a different way" falls well short of an explanation of his conduct and shows little or no insight into the seriousness of his behaviour. I fully accept the finding of the Judicial Commission at paragraph 93:

> The complaint in the Altaranesi matter is partly substantiated, albeit ... the substantial cause of the conduct complained of, was Magistrate Maloney's Bipolar II disorder.

My concern is that when Magistrate Maloney appeared before us, he was receiving treatment, and one assumes he asserts that because of that treatment he has insight and control over his behaviour. The explanation he gave us falls well short of any such insight and, indeed, again is consistent with the observations at paragraph 396 of the Judicial Commission report that Magistrate Maloney has considerable capacity for denial, self-justification and self-deception. The next complaint concerns Mr Banovec and the costs order made following the dismissal of the subpoena. The magistrate deals with this matter at considerable length, noting, among other things, that the complainant was convicted in the District Court of perjury and corporate fraud and was brought to the Conduct Division in custody to give evidence against Magistrate Maloney. In his address to us Magistrate Maloney said:

> I do not believe it was ever suggested that I did anything wrong in setting aside those subpoenas. But the Conduct Division took issue with me having ordered the man to pay the costs of the other side without giving him the opportunity to be heard. I guess in hindsight I probably should have listened to what he would have had to say. But I can say this to you all: In the circumstances, as I sat there, I would have found it very difficult to do anything other than the just thing—to order him to pay costs, which is what I did.

Magistrate Maloney's explanation of the nature of the Banovec complaint is, to say the least, unsatisfactory. For instance, paragraphs 125 and 126 of the Judicial Commission's report show that the commission does not accept that Magistrate Maloney set aside the complaints without hearing from Mr Banovec. The commission's findings appear in paragraphs 128 and 129, which state:

> Particular 1 (e) alleged Magistrate Maloney granted a significant costs order against Mr Banovec without hearing from him. Particular 1 (f) alleges that Magistrate Maloney made a significant costs order without enquiry as to how the quantum was arrived at.
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> Magistrate Maloney admitted both these matters.

I refer members to what Magistrate Maloney said to us:

> In the circumstances, as I sat there, I would have found it very difficult to do anything other than the just thing—to order him to pay costs, which is what I did.

Before the Judicial Commission he accepts that he did the wrong thing, but it seems that before us he draws back from that concession. At paragraph 130 of the judgement, the Judicial Commission observed:

> The award of $7,500 plus GST in these circumstances fell well below the standard of care and attention expected of a Judicial Officer.

It seems that in respect of this complaint Magistrate Maloney continues to engage in denial, self-justification and self-deception. The final matter to be considered relates to the events at the Kiloh Centre where the magistrate was considering whether a patient should be scheduled under the Mental Health Act 2007. Let us be clear about what is going on. The magistrate was determining whether a patient should remain against his or her will under psychiatric care. Of course, one does not know the level of distress of the patient, but this is a matter where present at least is the magistrate, a solicitor representing the patient, a doctor to assist in the determination and, in this case, two other staff members known as HASS officers—that is, security and health systems officers. There is no need to repeat the full nature of the events except to note that the magistrate questioned the doctor about her pregnancy and issues relating to childbirth and the pain of childbirth. When Magistrate Maloney appeared before us he said:

> I noticed that the psychiatric registrar, a doctor, was pregnant. I asked her to stand and I spoke to her about her stage of pregnancy. I was joyous about the impending birth of my second child and wanted to share that with her. I did make a quick comment about the pain of childbirth, but did not do this—I repeat: I did not do this—in a sexualised way.

The Judicial Commission made the following findings in paragraph 199 of its report:

> We do not find Magistrate Maloney's evidence reliable on this event. He concedes that he did make a gesture towards his mouth with his hand, to mimic childbirth. Even if his postulate is correct, that he was mimicking a pulling of the lower lip over the head, as a way he described the gesture, in the circumstances, it was clearly inappropriate and sexualised.
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> This particular is made out and clearly reflects serious misconduct.

Once again I am confronted with weighing up what one makes of the denials in Magistrate Maloney's address compared to the evidence before and findings of the Judicial Commission. Magistrate Maloney related only part of the incident when he addressed us. He made no reference to his own evidence, which is contained at paragraph 197 of the report. In evidence-in-chief—that is, evidence adduced by Magistrate Maloney by his senior counsel—he describes a conversation about an anecdote of Joan Rivers. That evidence reads in part as follows:

> Q. And what have you said in the past about this topic that Joan Rivers has said?
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> A. Joan Rivers says that the pain's akin to getting your bottom lip and stretching it over your head.
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> Q. And you just in the witness box, moved your hands to your bottom lip, and on—
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> A. And not so, but just—
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> Q. Yes, as I understand your position on this topic, you through reconstruction think that if you said or did anything that it was something like what you just did?
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> A. Yes.

Nowhere in his address to us was Magistrate Maloney prepared to concede that, in the midst of a hearing on whether a psychiatric patient should remain scheduled, he engaged in a conversation with a psychiatric registrar where he may have proceeded to make a gesture that involved him imitating pulling his bottom lip over his head. One might think, to use the words of Magistrate Betts when she appeared before the bar of the House, that a person with appropriate insight would have come before us and conceded that the conduct at the Kiloh Centre was horrific. The fact that the concession was not made, the fact that Magistrate Maloney seeks to slide sideways, if not backwards, from some of the concessions he made before the Judicial Commission renders his position untenable.

In summary: I accept that it would have been inappropriate to delve into the details of the additional complaints in his address to this House, but to mislead the House about the total number of complaints raises

serious questions about Magistrate Maloney's capacity for denial, self-justification and self-deception. To play down the screensaver incident in his address to this House and to attempt to discredit its veracity because of delay in complaint again calls into question his capacity to deal objectively with matters before him.

Honourable members, the difference between the cases of Magistrate Maloney and Magistrate Betts are the added component of demeanour based findings against Magistrate Maloney in the report of the Conduct Division. We are not being asked to determine whether people suffering from a mental illness should be allowed to be judicial officers. We know from the case of Magistrate Betts that they can be. This is about having the right people in the role of a judicial officer. In my view a person who has demonstrated, not only to the Conduct Division, but also to this House, a very considerable capacity for denial, self-justification and self-deception is not fit to perform the role of a judicial officer. I support the motion.

Reverend the Hon. FRED NILE [4.52 p.m.]: I speak on behalf of the Christian Democratic Party in regard to the motion before the House, the address to the Governor. This House is being asked whether it will support her Excellency the Governor under section 53 of the Constitution Act 1902 to remove from office Magistrate Brian Maloney, a Magistrate of the Local Court of New South Wales, on the ground of incapacity. I do not believe that any case has been made for the removal of Magistrate Maloney on the ground of incapacity. The previous speaker made a strong argument that Magistrate Maloney had misled this House. Words such as "deliberately misleading the House" and "deception" were used. I am sure members have seen the response by Magistrate Brian Maloney, dated 9 August 2011, which was addressed to all members of this House in which he deals with this very issue. He states:

> I am aware that some members are concerned that my address to the Council on 21 June did not mention the fact that I had three outstanding complaints that were to be considered by the Judicial Commission. I wish to explain why I made no mention of these fresh complaints.
>
> I sincerely regret any confusion that was caused by my decision not to mention these complaints. I certainly did not intend to mislead the Council.

I emphasise that sentence. He further states:

> I certainly did not intend to mislead the Council. Rather I was acting on a belief expressed by my legal advisors that the pending complaints, to which I had not yet completed my responses, were not relevant to the motion that was to be considered and that it would be inappropriate, perhaps even unlawful, if they were mentioned or commented on in any way.
>
> It was my belief at that time that I was addressing the Council on the complaints determined by the Conduct Division any further complaints would need to await proceeding through the Conduct Division before I could say anything about them or even reveal their existence.
>
> I addressed the Council as a consequence of a resolution that invited me to show cause why I should not be removed from office on the grounds "set out in the report of the Conduct Division dated 6 May".
>
> The letter inviting me to address the Legislative Council from the President, the Hon. Don Harwin MLC, dated 17 June (which I attach) made it clear that I was allowed time to address the House again "only in relation to matters set out in the report of the Conduct Division."
>
> In the period leading up to my address on 21 June there was correspondence between the Judicial Commission and the Attorney General on one hand and my solicitor Greg Walsh on the other, about whether the fresh complaints should be revealed or not.
>
> I attach the correspondence so you can see the issues which confronted me and to which I gave earnest consideration. Mr Walsh, on the advice of several counsel, argued in this correspondence that the publication of the fact of the complaints would defeat the purpose of section 18 (3) of the Judicial Officers Act which requires that preliminary examination take place in private as far as practicable.
>
> As well, section 37 of the Judicial Officers Act makes it a criminal offence for disclosure of information about complaints obtained by officers or members of the Judicial Commission. This provision highlights the importance of not disclosing the fact of preliminary investigations of complaints.
>
> In the letter which Mr Walsh sent to the Judicial Commission on 16 June he objected to the release of information about the fresh complaints. He said:
>
> > It follows that both complaints have not been investigated nor have there been any findings that the complaints have been partly or wholly established and they are still at a preliminary examination stage.
> >
> > Accordingly the mere fact that a complaint has been made in such circumstances is an irrelevant consideration in respect of the provisions of section with 53 (3) of the Constitution Act New South Wales.
> >
> > Even if consent is obtained pursuant to section 37 (1) (a) such information would be limited to information from the person who made the complaint.

> On 17 June, the Judicial Commission provided Mr Walsh with a copy of a letter addressed to the Attorney General advising him of the existence of the three fresh complaints. I knew, therefore, that the Government knew about these complaints. Indeed, I had been told by my legal representatives that they believed the Attorney General knew about the fresh complaints well before 17 June.
>
> On 21 June, before I addressed the House, Mr Walsh wrote to the Judicial Commission seeking guidance about whether I was entitled to reveal the fact of the existence of fresh complaints to the House. The Judicial Commission replied saying, "Magistrate Maloney should seek his own advice".
>
> I did seek advice. I was advised that fresh uninvestigated complaints were not relevant to the motion for my dismissal. That is why I did not mention them.
>
> It was not until 22 June that the Leader of the Government in the Legislative Council tendered the Attorney General's letter of 14 June to the Chief Justice that I fully understood that the Attorney intended to advise the House of the fresh complaints.
>
> While I regret the decision to omit reference to the fact of fresh complaints in my address I felt obliged legally to be silent about the complaints. I was always aware that they could be reviewed by the Council if the Conduct Division so directed at the end of its investigation which of course was not going to be the case by June 21.
>
> In retrospect it would have been better to have sought the deferral of my address to the Council until the additional complaints were fully investigated, which has now occurred.
>
> BV Maloney
> Magistrate

I believe that response by the magistrate clearly rejects any suggestion it was an attempt by him to deliberately mislead the House. Far from it: He sought legal advice as to whether he could or could not raise those matters. He felt it would have been improper for him to do so. I do not believe it is justifiable on this important motion to use that issue to try to put a cloud over Mr Maloney's future. The Judicial Commission inquiry and the Hon. Trevor Khan used the word "misbehaviour". Paragraph 9 of "Submission on behalf of Magistrate Maloney as to report of the Conduct Division of the New South Wales Judicial Commission" states:

> Section 15 of the Judicial Officers Act 1986 (NSW ("the Act") provides for receipt by the Judicial Commission of complaints concerning the conduct of the Judicial Officers which "may concern the ability or behaviour of a judicial officer". The distinction between ability and behaviour is important in this case. The Conduct Division rejected a finding of misbehaviour against Mr Maloney (paragraph 337 of the Conduct Division' report). The question became whether he has the capacity or ability to fulfil the role of judicial officer (paragraph 340 of the report).

That is why the motion before the House states "on the ground of incapacity". In this matter before the House there is no question of misbehaviour. Mr Maloney's submission to the report of the Conduct Division of the New South Wales Judicial Commission states:

> At paragraph 18 of its reports, the Conduct Division flagged what was the ultimate issue in a matter which was the effect of Mr Maloney's bipolar 2 disorder on his capacity to sit as a Judicial Officer. It was accepted by the three psychiatrists that Mr Maloney's mental condition had been a substantial contributor to any proven complaints and that he suffered the disorder probably since the mid 1990s.

The House is dealing with an issue of the incapacity relating to Mr Maloney's mental condition. There is no question of misbehaviour. An issue that has been raised by members in the community—even though it was rejected by an earlier speaker—is whether Mr Maloney is being punished because of his mental condition, which he now has under control through medication. SANE Australia, a national charity working for a better life for people affected by mental illness, wrote to me on 8 June 2011 stating:

> Dear Reverend Nile
>
> **Parliamentary vote on Brian Maloney**
>
> I write today to encourage you to support Brian Maloney and to vote that he retain his position as magistrate.
>
> Brian Maloney lives with and manages the mental illness bipolar disorder. Reports from his treating psychiatrist state that his condition is at the milder end of the spectrum with complete remissions between episodes; he cooperates with treatment and he has been working effectively—making as many as 5,000 sound decisions in a year.

I repeat that he is making 5,000 sound decisions in a year. That is a very heavy workload. The letter continues:

> There is no justifiable reason why he cannot continue to work as a magistrate. If Mr Maloney had recovered from a heart attack would he be sacked for fear he would have another heart attack in the future?
>
> Under these circumstances, if the NSW parliament sacks Mr Maloney, it will be sending a very clear message of discrimination to the Australian community—the wrong message, in particular to employers and to the many thousands of Australians living with mental illness who are currently working productively, or who wish to work.

> A major consequence is that people will be reluctant to acknowledge their mental illness for fear of losing their job. My preference is to fly with a pilot who is being treated for bipolar disorder, rather than with a pilot who is unwell with bipolar disorder, but is afraid to seek treatment for fear of losing his job.
>
> A vote against Mr Maloney will also undermine many progressive government policies to encourage and support people with a disability or mental illness into work. These include the 2010-13 *EmployABILITY strategy: Increasing employment opportunities for people with a disability in the NSW public sector* which aims to provide meaningful work and varied development opportunities including working in higher roles and access to professional development programs.

As I understand, that strategy has been supported by both sides of Parliament. The letter continues:

> I hope the NSW government will show true leadership—a vote to keep Brian Maloney at work will also be a vote to support the health and wellbeing of thousands of other people with mental illness such as bipolar disorder and to keep them at work, all the while making a major contribution to the NSW and Australian economy.
>
> Yours sincerely
> Barbara Hocking
> *Executive Director*

While reading that letter, my mind went back to former members of this House who suffered from a bipolar disorder. It was not raised in this House that they should vacate their seat in the Legislative Council. Many reports have been written about Magistrate Maloney's condition and treatment. One such report from Dr Olav Nielssen dated 9 August 2011 states:

> Magistrate Maloney has attended all appointments, which have been scheduled at regular intervals, and has taken medication as prescribed. He has had regular blood tests, including a test for the level of the mood stabiliser valproate (Epilim) prescribed to prevent the elevated and depressed phase of bipolar disorder. He has continued taking an antidepressant medication, escitablopram (Lexapro) at the reduced dose of 10 mg per day.
>
> He has demonstrated a good understanding of the symptoms of bipolar disorder and I believe he would recognise symptoms if they were to return and seek treatment. Moreover, he has expressed a commitment to continue treatment.
>
> Magistrate Maloney has attended an appointment with his wife, who has made herself familiar with his condition and demonstrated an awareness of symptoms of both the elevated and depressed phases of bipolar disorder. Mrs Maloney indicated that she would contact her husband's treating doctors in the event of an exacerbation of illness.
>
> At the recent interviews in July and last week Magistrate Maloney was assessed to be free of symptoms of abnormally elevated mood, depression, or any form of impairment in intellectual function.
>
> In my opinion, he is currently fit to work as a magistrate and should remain fit as long as he continues to receive appropriate treatment for his underlying disorder.
>
> Yours faithfully
> Olav Nielssen
> MBBS, M Crim, PhD, FRANZCP

Members should base their decision on that final paragraph which states that Mr Maloney is fit to perform his work as a magistrate so long as he continues to receive the appropriate treatment for his underlying disorder. Brian Maloney has received strong support from Andrew Robb, who had a similar situation with mental illness. Andrew Robb said that he found himself in a dark place more than 15,000 times. Every day for 43 years this senior member of the Federal Coalition team had to battle just to get out of bed in the morning. He has called for overwhelming community reaction in support of Magistrate Maloney. He said:

> If Parliament sacks him, it would be an overwhelming injustice and we will set back the acceptance of mental illness and the tackling of mental illness by two decades.
>
> It will set back the plight of sufferers who will be encouraged to hide their illness. It will send a message that if you have mental illness, don't tell anyone because it might compromise your job. This would set a dangerous precedent.

Following Mr Robb's comments, I have no option but to vote against the motion before the House.

The Hon. SHAOQUETT MOSELMANE [5.07 p.m.]: Magistrate Brian Maloney appeared at the bar of the House and addressed members in relation to the report of the Conduct Division of the Judicial Commission of New South Wales dated 6 May 2011 and to show cause why he should not be removed from office. Although stating the obvious, this is a serious matter and I will give it the serious consideration it deserves. First, I wish to extend to Magistrate Maloney my sincere wishes for a permanent recovery from his illness and congratulate him on mastering the courage to tell the House his case in such a frank and up-front way. I felt awkward in the House listening, as if I were judge and jury, to a judicial officer pleading his case and asking us to judge him. I hope we can make an objective decision.

It was a humbling experience and, at the same time, a confronting one. I felt a little of the pain, the sense of humiliation and the anguish that this man, a judicial officer diagnosed with bipolar II, is clearly going through in fronting up to plead his case. Those who face the personal and social challenges of mental illness and step up and speak out should be commended and supported. Interestingly, research has found that 40 per cent of law students, 20 per cent of barristers and 33 per cent of solicitors have a mental illness. As a lawyer and a politician I sympathise with them all but I am not surprised, as members of the law fraternity are always under pressure to perform well for their clients, their peers and society generally, and to keep high standards. As Leonard Cohen said in an article in the *Sun Herald* on 29 May 2011 entitled "Matters of the Mind":

> Depression is a dangerous disease. Lawyers are prone to it more than most. It affects almost a third of solicitors and one in five barristers, recent research by Sydney University's Brain and Mind Institute has found.

Some illnesses are so extreme that sufferers become victims and take their own lives. The scourge of mental illness affects many in our society. It affects not only judicial officers but also medical practitioners, teachers, dentists, politicians and many others in our community. Let us not forget the high-profile cases of Federal member Andrew Robb, former member of the Legislative Assembly John Brogden, Geoff Gallop and many others. Andrew Robb, who has suffered the terrible scourge of mental illness, said he saw himself in a dark place more than 15,000 times. In his 5 June 2011 article entitled, "My fellow MPs, show me some justice", it is noted that every day for 43 years the senior member of the Federal Coalition team had to battle just to get out of bed in the morning. Mr Robb stated:

> I would go to sleep ready to take on the world and wake up in a totally opposite state of mind.

Is it any wonder that there has been a significant growth in community-based organisations that have established associations to alert people about the significance of the effect mental illness has not only on the livelihood of the individual but also on their families and society in general. Magistrate Maloney has been diagnosed by a number of senior doctors as suffering from a major depressive illness, bipolar II. Dr Nielssen placed Magistrate Maloney on medication and Maloney says:

> I have faithfully taken that medication since then. Dr Nielssen has continued to treat me since February 2010. I continue to see him and will continue to see him on a regular basis.

Dr Jeremy O'Dea, another eminent psychiatrist appointed by the Judicial Commission to examine Magistrate Maloney, gave evidence to the Conduct Division that Maloney should be permitted to perform his judicial functions and official duties subject to specific structured psychiatric treatment. Similarly, Dr Jonathan Phillips, one of Australia's most eminent psychiatrists, also at the request of the Judicial Commission, agreed with Dr Nielssen and Dr O'Dea that Magistrate Maloney suffers from bipolar II disorder. In his evidence he accepted that appropriate treatment made it far less likely that Magistrate Maloney would "reoffend".

Magistrate Maloney admits that he could have handled things better with the several complaints against him and that he could have better dealt with the complainants, whom I have no doubt are genuine. I note that the first complaint relating to the subpoena arose in September 2008, the apprehended violence order matter arose at Burwood in January 2009 and the Kiloh Centre complaint arose in December 2009, among others. I accept the genuineness of the complaints. However, we must keep things in perspective. Magistrate Maloney has served as a magistrate for the past 15 years. He has dealt with thousands and thousands of issues—around 5,000 cases a year—criminal cases, bail applications, apprehended violence orders, civil motions, civil hearings, traffic matters, parking matters and a host of other matters.

That is not to dismiss the complaints but to argue that the level of complaints should be put into context and perspective as to the number of cases that have gone before him. He tells us that he has done everything possible to be psychiatrically assessed. He said, "I have done everything that the Judicial Commission has asked of me". Dr Nielssen made the following points and I have taken them into consideration in my deliberations. Dr Nielssen maintained:

(1) Magistrate Maloney's condition is in the milder end of the spectrum with complete remission from symptoms between episodes.

(2) He has never been admitted to a psychiatric hospital.

(3) His condition had not prevented him from working as a magistrate until the onset of a more severe episode of depression accompanied by disabling anxiety in the last year.

(4) He has since returned to work.

(5) He has been an extremely energetic and productive magistrate making as many as 5,000 decisions in a year.

(6) The criticism of him has been to do with his manner and not his legal decisions.

Dr Nielssen makes a number of other points. Magistrate Maloney is clearly a competent, capable and well-respected magistrate. He is a magistrate who is willing to do his job with care and compassion. He has shown that he did his job with a sense of conviction, decency and humanity. I have taken into consideration letters in support of Magistrate Maloney and I have heard the plea of Salvation Army Court Chaplain Ms Sharyn Widdowson to give Magistrate Maloney a chance to do the work that he loves and does best.

I have taken all of Magistrate Maloney's arguments into consideration. I note with significant disappointment that Magistrate Maloney did not show sufficient contrition. He was insufficiently apologetic, but I do not believe that in any way he misled the House, as claimed by others. However, on balance, I accept Magistrate Maloney's overall submission. I accept that he admits his mistakes, I accept that he has a mental illness, I accept that he has and is continuing to seek medical assistance and I note that he is currently at his bench doing the job that he enjoys. I therefore oppose the removal of Magistrate Maloney and hope that all members do the same.

The Hon. MARIE FICARRA (Parliamentary Secretary) [5.16 p.m.]: I speak on the motion concerning Magistrate Brian Maloney. I am pleased that the Coalition has granted a conscience vote on this very important matter. I have been overwhelmed with representations in support of Magistrate Maloney—representations individually face-to-face, by email, by phone and through letters. These representations have come from people of all backgrounds and from several people that I know and for whom I have the highest respect. It is clear to me that Magistrate Brian Maloney is a good-hearted man. He has performed his duties ably over many years, and sometimes in very difficult circumstances. What is clear is that he has a mental illness. Many of us know that members who are currently in this Parliament and members in previous Parliaments—State and Federal—suffer or have suffered from a mental illness. Why should we be judged any differently from members of the judiciary? I find it incredible. I find it unacceptable in this day and age that we should be judging members of the magistracy.

Magistrate Maloney's mental illness caused him to err on four matters that originally were brought before the Judicial Commission. We are discussing that issue now. Magistrate Maloney has been a member of the Local Court bench for approximately 15 years but he was not diagnosed with his illness until February 2010. We have heard from previous speakers that he has been diagnosed as probably suffering from a bipolar disorder for many years. As a health scientist and now a decision-maker in this matter I ask myself: Should a person with such a long and distinguished career as Magistrate Maloney be removed over four incidents that were due to mental illness? Furthermore I note that the three additional complaints to the Judicial Commission that occasioned the deferral of this matter have been found to be minor and did not warrant referral to the Conduct Division of the Judicial Commission. I understand that one of the complaints related to his support for a particular rugby league team and that two of the complaints related to the period before his diagnosis.

Magistrate Maloney first consulted a specialist, Dr Olav Nielssen, on 15 February 2010, having been referred by his general practitioner, Dr John Carmody, on 9 February 2010. Since treatment began with Dr Nielssen in February 2010 for his bipolar disorder there has been no further aberrant behaviour or any evidence of a hypomanic episode. Magistrate Maloney recognised the need for treatment and it is documented in his solicitor's submissions that he showed good insight into his condition. From talking to him it is clear that he shows good insight into his condition and is repentant for his actions. In hindsight perhaps that should have come out more strongly, but when listening to his address in the Chamber I felt very much for his having to bare his soul to us and to the public. But Magistrate Maloney undertook to take immediate and appropriate action should he experience any further episode—he said that most fervently. We believe it to be true and so do his physicians. An updated report from psychiatrist Dr Olav Nielssen dated 25 May 2011 states:

> With respect, I believe the Commission has misstated the psychiatric evidence provided during the hearing. I disagree with the conclusion that Magistrate Maloney has an incapacitating condition and that he is unfit to perform his duties as a Magistrate. I also disagree with the finding that his prognosis is for further episodes of illness that would affect his fitness for duty, or that he is likely to stop treatment against medical advice.

Dr Nielssen also made the following points:

(1) Magistrate Maloney's condition is in the milder end of the spectrum, with complete remission from symptoms between episodes.

(2) He has never been admitted to a psychiatric hospital.

(3) His condition had not prevented him from working as a magistrate until the onset of a more severe episode of depression accompanied by disabling anxiety in the last year.

(4) He has since returned to work.

(5) He has been an extremely energetic and productive magistrate, making as many as 5000 decisions in a year.

Magistrate Maloney has an incredibly heavy workload and is in fact now back at work. Dr Nielssen also states:

(6) The criticism of him has been to do with his manner, and not his legal decisions.

(7) Those criticisms in themselves are relatively trivial, and have not had a significant impact on cases he had heard or on any individual.

(8) He had never previously been diagnosed with a disorder or made aware of the nature of his symptoms.

An important point is that he was never made aware of the nature of his symptoms. Dr Nielssen continues:

(9) He has now received a diagnosis and commenced on appropriate treatment.

(10) He is, in my opinion, a rational person with good insight regarding the nature of his condition and a strong commitment to continuing treatment, regardless of the outcome of this hearing.

(11) He has a condition that is generally responsive to treatment and he should remain well while receiving treatment.

(12) Treatment is readily available in Sydney.

(13) His adherence to treatment can be readily checked.

(14) Bipolar disorder affects as many as 1% of the population. There are many other highly successful people in Sydney with more severe forms of bipolar disorder who carry out a range of important roles.

Indeed, some members of Parliament and Ministers have suffered from bipolar disorder. Many of them, when treated, conduct themselves properly and are highly productive and successful members of the community. Concerning ability or capacity, the Conduct Division made some additional comments based on the medical evidence from the psychiatrists involved in this matter. For example, at paragraph 350 of the report of the Conduct Division there is reference to Dr Nielssen's observation that Magistrate Maloney had not had any symptoms of depression or hypomania since responding to treatment for depression and that his mood was currently stable. He expressed the view that Mr Maloney was currently fit to perform the duties of a judicial officer and has been since July 2010. Dr O'Dea and Dr Phillips did not disagree with these views.

I believe it is essential for His Honour Judge Henson, the Chief Magistrate, to continue to support, monitor and liaise with Magistrate Maloney should this motion be defeated today and Magistrate Maloney returns permanently to the magistracy. Magistrate Maloney is willing either voluntarily, or pursuant to an undertaking, to communicate on an ongoing basis with Judge Henson. Magistrate Maloney's legal representatives have submitted that he ought not be removed as a judicial officer for conduct displayed whilst suffering from an undiagnosed mental illness.

As legislators and as fellow human beings we should be compassionate and understanding about his position. As we have heard from previous speakers, this approach is supported by many eminent members of the medical and legal profession, and members of the community. Professor Patrick McGory and Professor Ian Hickey, as well as eminent psychiatrists such as Dr Jonathan Phillips, Dr Jeremy O'Dea and Dr Olav Nielssen all support such an approach. The nature of Magistrate Maloney's illness is treatable and he has responded to treatment. He is repentant for the incidents that occurred when he was not aware of his condition and was not treated. He has shown contrition. I concur with the submissions of the eminent physicians and, accordingly, will not be supporting the motion.

Mr DAVID SHOEBRIDGE [5.26 p.m.]: This is a matter of conscience, not politics, and The Greens have adopted that approach in considering this matter. I have listened to the careful and detailed presentations made by other members of this House, in particular, the presentation of the Hon. Trevor Khan when he spoke of some of his concerns—concerns that trouble me also in relation to this matter. We are dealing with the potential removal of a magistrate from judicial office. The job of a magistrate is extremely difficult and serious. A magistrate can be removed only if there is an address from both Houses of this Parliament to the Governor seeking the removal in the same session on the grounds of proved misbehaviour or incapacity. That is the test set out in the New South Wales Constitution.

Mr Maloney was appointed as a magistrate a little over 15 years ago. The complaints that are the subject of the Judicial Commission report to us were provided to it in September 2009. As a number of members have said, there have been a number of psychiatric opinions given in relation to Magistrate Maloney. One of Magistrate Maloney's treating psychiatrists gave an opinion to the Judicial Commission and another two had seen the magistrate. All three agreed that he suffers from bipolar II disorder and has done so since approximately the mid-1990s. It is also clear that he did not receive treatment until after all the incidents that are the subject of these complaints. The magistrate has undertaken literally thousands of matters in his 15 years on the bench and these complaints amount to only a tiny minority of the matters he has dealt with. Of course there are some other complaints, but even all viewed together they amount to only a small minority of matters. That being said, the complaints about the magistrate's conduct are extraordinarily serious.

The first incident was on 9 January 2009. It occurred during an apprehended violence order list at the busy Burwood Local Court and involved Mr Altaranesi. There is no doubt that Magistrate Maloney subjected Mr Altaranesi to ridicule by calling out his name in an exaggerated fashion. He mocked him publicly throughout that directions hearing and indeed the Judicial Commission noted that Mr Altaranesi was the very sort of litigant who should have been especially protected from such ridicule. It is most unfortunate that in the magistrate's evidence before the Judicial Commission, when he was the subject of treatment and there was an agreement from his own representatives that he was fit to give evidence and to appear in the commission, he did not readily admit that he had ridiculed Mr Altaranesi. Yet that was a finding of the commission and it was well founded on the evidence.

The magistrate did admit that his handling of the matter was inappropriate. But when it was put directly to him that he had bullied and belittled Mr Altaranesi he sought to not adopt that argument. The transcript makes that very clear. Any fair-minded reading of the transcript, including, one would hope, by a magistrate who had his bipolar condition under treatment, would make it very clear that he bullied and belittled Mr Altaranesi in an extraordinary fashion and in a way that is most unbecoming of any member of the judiciary. Magistrate Maloney clearly denied Mr Altaranesi natural justice in repeatedly refusing to grant him a hearing date. But again, when it was put to the magistrate there was a real reluctance, even though he was being treated and was under medication, to readily adopt that position.

There is no doubt that the Judicial Commission's finding is that all of Magistrate Maloney's conduct in relation to Mr Altaranesi was explicable by his then untreated bipolar II disorder. The outstanding issue is why he would not admit to the seriousness of his conduct and accept the full particulars against him in the course of the judicial hearing. As I said, at that time he was in receipt of treatment and not impaired by any mental health concern. Of course, he acknowledged his conduct was inappropriate but the magistrate also did not make a full and frank statement of contrition in his presentation to this House. I do not quite accept the extent of the criticism by the Hon. Trevor Khan. I note there was some contrition by Magistrate Maloney but it really was a half-baked statement and more defensive than the kind of open contrition we saw from Magistrate Betts when she put her case before this House.

The second incident that is the subject of these complaints is the so-called Banovec complaint, which was about a return of subpoenas in the Downing Centre Local Court on 17 September 2008. Mr Banovec was a defendant facing serious charges under the Crimes Act. He had filed a subpoena seeking certain documents to be produced by two individuals, and a barrister appeared for the people who were being subpoenaed. Mr Banovec appeared for himself although he had earlier been represented in the hearings. A motion together with detailed written submissions was filed in court on behalf of the people being subpoenaed. Magistrate Maloney allowed the motion to be filed and heard the motion over the complaint of Mr Banovec, who said he was unrepresented and not ready to deal with the matter. The magistrate granted the motion, set aside the subpoena and without even hearing from Mr Banovec ordered him to pay costs of some $7,500 plus GST in relation to the motion and the subpoenas.

There is no doubt Magistrate Maloney was found to have not allowed Mr Banovec to make an adjournment application, to have continually talked over and interrupted him, and to have denied him natural justice by not hearing from him before making the substantial costs orders. All of those matters Magistrate Maloney admitted in the hearing before the Judicial Commission and he accepted the substance of the complaint in those proceedings. All of his conduct was explicable by his then untreated bipolar II disorder.

Of more concern is the third incident, which is referred to as the Dr Wallace/Kiloh Centre complaint that occurred on 23 December 2009. The magistrate was hearing a busy list—I think some 14 matters of applications under the Mental Health Act. There was no court reporter and he had very little assistance. Most

applicants were assisted by a legal aid lawyer and they each had a psychiatrist speak to the magistrate about the matter before him. It was alleged that the magistrate made a number of totally inappropriate comments and actions in the course of that day's hearing. It was said he was being comical and clowning around. He made an offensive statement in relation to a Jewish patient.

He required a psychiatric registrar to stand up and demonstrate the extent of her then quite advanced pregnancy. He made an inappropriate gesture involving his mouth and his fingers to demonstrate the pain and difficulty of childbirth. He did so when the psychiatric registrar was there and was clearly heavily pregnant. He made inappropriate comments about his own wife's pregnancy and about the weight of two security officers. He made inappropriate comments about the age of a patient's husband to that patient and he made inappropriate comments about what he said was the depressing state of the facilities. These were all in the context of hearing matters involving psychiatric patients who were obviously extraordinarily vulnerable.

The Judicial Commission found that the conduct of Magistrate Maloney in relation to these complaints was explained by his then untreated bipolar II disorder. It was agreed that he was depressed and in an elevated mood on the day as a result of his disorder. That fully explains his conduct on the day. The outstanding issue is that the magistrate did not readily accept the full substance of the complaints before the Judicial Commission. For example, he contested whether the inappropriate gesture had been made. His evidence was that he may have made reference to Joan Rivers saying that childbirth was the equivalent of pulling your bottom lip over the top of your head and he pulled his lower lip in the Judicial Commission. He said, and this is quite remarkable for a man who is under treatment and is said to be having medication to keep him under treatment, that he did not intend it to be offensive. He did apologise to the registrar if the registrar thought it was offensive.

It is difficult to see how a man under treatment and giving sworn evidence before the Judicial Commission could not view that conduct in retrospect as other than highly offensive, totally inappropriate and highly sexualised conduct which should never have a place in a hearing in any court in this State. The commission had trouble accepting Mr Maloney's evidence and explanation. Even assuming there is an adequate explanation for having a poor recollection because of his then mental condition, the failure to openly recognise that his version of events was totally inappropriate sexualised conduct for a magistrate is a real concern. Again, the failure to explain that in his address to the House and show contrition and a recognition of the seriousness of his conduct elevates that concern.

The fourth matter was a breach of a previous undertaking the magistrate had given to the Judicial Commission in 1999 to not engage in loquacious behaviour or interrupt solicitors. That undertaking came from earlier complaints that had been made and earlier determinations of the commission. The magistrate did admit he had breached his undertaking and he gave the fact of his bipolar II disorder as a full explanation. That was accepted by the Judicial Commission and I accept it. I think it is a full explanation of the breach of undertaking.

The fifth matter is the very disturbing matter of the screensavers, an incident dating back to 25 February 2002. The magistrate was found to have shown an education officer of the Judicial Commission, whom the magistrate knew to have a Canadian background, an image of a naked woman on the beach and said words to the effect, "Hey, what do you think of the Canadian on my screensaver?" He showed the same image to another woman and said, "What do you think of the wallpaper?" The magistrate initially said to the commission that he did not recall that he had said the words and denied there was any nudity in any image that might have been shown. In his evidence he then emphatically denied that he had said the words or shown the image of a naked woman. The magistrate tendered the hard drive of his computer, which contained a picture of three Brazilian women in swimsuits, and said that was the image on his screen at the time. I think that is problematic enough as it is.

A detailed search of the hard drive was then undertaken by computer technicians engaged by the Judicial Commission and they found an image of a naked woman on the beach that closely matched the image the two witnesses said Magistrate Maloney had shown them on the day in question. When shown the image the women maintained that the naked image or a very similar image was in fact the one they had been shown. The Judicial Commission accepted the women's version of events and did not believe the magistrate's denials. The magistrate's written submissions on the matter to this House, in paragraph 46, said only that there was a factual dispute where, in his words, "the Conduct Division preferred the evidence of Ms Windeler and Ms Blunt." There was no acknowledgement by the magistrate in his presentation of the seriousness of this finding as to his credit. Nor was there really any capacity to address the seriousness of the behaviour on the day, which was a finding of the Judicial Commission.

His behaviour on that day in February 2002 is fully explicable by his untreated bipolar II disorder and I accept that. The medical evidence and the finding of the Judicial Commission are absolutely clear on that. But it does not explain why his evidence was not accepted by the Judicial Commission, and there was really no acknowledgement by the magistrate of that fact or an attempt to address it. It also does not explain his failure to show full contrition about doing that to two women in the employ of the State Government who should not have been subjected to that kind of behaviour.

I note that many, many references were tendered. There were references tendered to the Judicial Commission. As the Judicial Commission concluded, and as I fully accept, many senior and junior legal practitioners put forward references in support of Magistrate Maloney. There is absolutely clear, demonstrated evidence that Magistrate Maloney was capable of performing his job well for much of the time, perhaps most of the time, that he has been a magistrate. I find the medical evidence and the way the medical evidence was dealt with by the Judicial Commission deeply troubling when considering this matter. It is a very difficult matter. The conclusion of Dr Nielssen, found at paragraph 362 of the Judicial Commission's report, is:

> I concur with Dr Phillips' comments that [the magistrate has] a lifelong illness and that there is a risk of further episodes. It's very difficult to say how great the risk is, when the next episode might come, whether it will be elevated or depressed mood, depends a little bit on life events and physical health. But certainly continuous treatment would reduce the risk and also if episodes were to occur, if they were treated promptly they should not become disabling or disruptive and should respond to treatment reasonably quickly if they're treated early.

There is no doubt that Dr Nielssen and the other two psychiatrists believe that the magistrate is on a course of medication that will keep his illness under control. They believe that it is accepted by the magistrate, and that it is likely that it will continue to be accepted by the magistrate, that the course of medication is necessary and that he will comply with that role, that he has some self-awareness in relation to his condition. When their evidence is looked at in total—and I will not deal with it in detail—they effectively say that his mental illness of itself is not a basis on which to dismiss this magistrate from office. I accept that. It is very clear that the psychiatrists are saying that his mental illness of itself is not a basis to make a finding of incapacity.

The Judicial Commission did not accept that. The Judicial Commission found that the magistrate showed a considerable capacity for denial, self-justification and self-deception. It made specific reference to the screensaver incident. The Judicial Commission said it was concerned that there will be times when Magistrate Maloney is suffering from a manic episode and will not be aware of the need for treatment. It makes reference to how he appeared before the Judicial Commission and the nature of his evidence before the Judicial Commission in their not accepting the psychiatrists' conclusions. The Judicial Commission noted as well that nobody can have an ongoing monitoring role in relation to the magistrate, as there would be for a doctor or others, and concluded in quite clear terms that there was an unacceptable risk of further incidents and that the magistrate was potentially unfit for the position of the office. One matter that continues to trouble me is that counsel assisting the commission, Mr Gormley, put forward a separate basis upon which to consider the fitness of Magistrate Maloney. It is found at paragraph 434 of the Judicial Commission's report. It reads as follows:

> And second, Mr Gormley has submitted that, quite apart from the view we may take of Magistrate Maloney's present and future incapacity resulting from his bipolar II disorder and the risks attached to it, he is unfit to be a magistrate because of characteristics demonstrated as being continuing, despite the fact that he is said to be in a stable state.
>
> He puts as live factors sexual disinhibition, forgetting, putting forward other stories and, in particular, relating to the screensaver matters at both hearings, an inability to be objective and to accurately and responsibly handle questions of fact. He also refers to Magistrate Maloney's lack of insight which he puts continues at a high level.

I note that all of those submissions are well founded on the lack of full contrition shown by the magistrate, as I detailed in my speech to this House. Indeed, I thought there was a lack of contrition shown by the magistrate in the full presentation that he gave to this House. If I were considering this matter without reference to another matter on which I will address the House shortly, if I were considering this matter on that issue alone, then I think there would be sufficient to find proved incapacity of the magistrate. But I note what the Judicial Commission said about the submission of Mr Gormley:

> We consider there to be some force in these submissions and others which essentially develop the same theme. However there is no psychiatric evidence to support this approach and, indeed, the psychiatric evidence is to the contrary.
>
> We do not consider that it has been established that Magistrate Maloney is incapacitated for the reasons put by Mr Gormley as distinct from the incapacity which we have held established.

This places me, and I think probably all members of this House, in an extraordinarily difficult situation. We have proved gross misbehaviour by this magistrate in a number of incidents, which are now fully explained by

the medical evidence as an untreated bipolar II disorder. We then have a package of behaviours and conduct undertaken by the magistrate after he had had treatment, when he is fully medicated and when he is acting in a position which he will continue to adopt if he is allowed to continue to be a magistrate. What is that behaviour? It is a clear minimising, in retrospect, of some of his truly offensive behaviour as a magistrate.

As I read it, he does not fully accept the seriousness of his previous conduct. We have questions as to credit in relation to the screen saver incident, in respect of which he simply was not believed as against the two ladies, and there was a credible basis not to do that because a computer image supported the ladies' evidence and was against the evidence of Magistrate Maloney. We have the difficulty about the lack of acceptance about what he did in those mental health hearings, the obvious belittling and sexualised conducted that he showed to the pregnant psychiatric registrar in the course of the mental health proceedings, and his failure to acknowledge the seriousness of that matter.

I cannot imagine a more difficult or more finely balanced case than this. It is truly a difficult and finely balanced case. I think though that when one looks at just that package of matters by themselves and thinks about the action we are considering here—removing a judicial officer who has judicial tenure—one has to consider that package of factors wholly independent from the offensive conduct that was found at the time. Whilst I find this an extraordinarily difficult decision, I do not believe that package of conduct of itself quite gets to the threshold that would see this House remove a judicial officer from office. I think it is extremely difficult. I look forward to hearing further submissions of members of this House.

But what has occurred with this matter shows the need for a far less cumbersome process in deciding such matters in the future. It shows that there is real merit in this Parliament considering a fresh approach to dealing with complaints such as this, including having them first considered by a multi-partisan committee which can hear, test and consider the evidence collectively and then provide a recommendation to the House. I urge members of this House to consider that kind of approach. Given the delicately balanced nature of this matter, given the inability to really test the magistrate, and given the seriousness of removing a judicial officer from office, which this House is now considering, I think it necessary for this House to consider such a procedure. With extreme reluctance and difficulty, I will not be supporting the motion.

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [5.48 p.m.]: As members would be aware, Magistrate Maloney can only be relieved of his office pursuant to section 53 (2) of the Constitution Act 1902, which provides:

> 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.

The motion before the House calls for the removal of Magistrate Maloney on the ground of incapacity. I do not intend to traverse all the details and all the evidence relating to this case, particularly in relation to the complaints that have been lodged. That has been done I think comprehensively by other members, and I thank them for that. Instead, I want to consider in particular the agreed facts as settled by the Judicial Commission in relation to the matters heard by that commission. The Conduct Division of the Judicial Commission found, at paragraph 337, misconduct not established on the basis that the misbehaviour complained of substantially was caused by the bipolar II condition suffered by Magistrate Maloney. In other words, all of Magistrate Maloney's misconduct occurred when he was untreated for his bipolar II condition and can be substantially attributed to that condition.

The Conduct Division found at paragraph 438 that the magistrate is and will remain incapacitated for the performance of judicial duties because of his bipolar II disorder. The commission found that there was a real risk the magistrate will suffer a hypomanic attack or other mood changes, which will result in events similar to those in the complaints. The commission found at paragraph 426 that the likelihood of such attacks, together with their probable consequences, constituted an unacceptable risk of the magistrate to continue in that role. Medical specialists agree that currently the magistrate is stable and fit to perform the duties of a judicial officer. At paragraphs 396 and 404 the Conduct Division points to the real risk that the magistrate may not take, or at least delay, appropriate action before the onset of a hypomanic attack.

The Conduct Division stated that neither it nor the Judicial Commission has the power to impose a reporting scheme, or a similar process, suggested by the medical specialists to treat the magistrate suffering from a mental condition. As part of its investigation the Conduct Division had the magistrate examined by forensic psychiatrist Dr O'Dea and consultant psychiatrist Dr Phillips. The magistrate gave evidence of his

preparedness to take prescribed medication, submit to blood tests and authorise his doctors to communicate with the Chief Magistrate regularly. Doctors Phillips and O'Dea gave evidence to the Conduct Division of their willingness to assist as psychiatrist observers.

The Conduct Division did not consider that any practical scheme consistent with principles of judicial independence could be devised in these circumstances. It strikes me as peculiar that on one hand the Conduct Division quite properly, pursuant to section 34 (1) of the Judicial Officers Act, sought an opinion from medical specialists in this field, yet on the other hand apparently does not have the power under current legislation to implement a scheme recommended by those doctors to manage mental illness of magistrates and other judicial officers. I suggest that the Attorney General consider the statutory introduction of such a scheme to empower the Conduct Division of the Judicial Commission to monitor judicial officers who are the subject of treatment for mental illness.

We should seek to manage the risk of inappropriate conduct of a judicial officer because of an untreated medical illness rather than opting for the drastic solution of dismissal. This is the appropriate social norm to apply in this case. This House is not a court of law. We are not judges and executioners. In my humble view we are not qualified to make such a judgement without recourse to specialist advice and our personal experience of these sorts of circumstances, which many members in this place have through friends and family affected by mental illness. I reviewed both submissions from the magistrate and the Judicial Commission's very detailed report to reflect on my conscience as someone with experience in this area having family and friends affected by mental illness, as well as an understanding of the social norms in this regard, rather than embarking on a strict legal interpretation as I was tempted to do with my legal background.

My role—I urge members of this House to view it as their role—is to reflect on the matters raised in this very detailed and complex report and on other evidence from those perspectives rather than from a strict legal interpretation of the matters that have been put before us. It is my view and contention that dismissal on the basis of the evidence before us would not be acceptable in any other workplace or profession in this country. It should not be seen as acceptable in these circumstances even in the judicial profession. Judicial officers naturally have to uphold the highest standards of conduct. Perhaps in some minds that standard is above all reproach and all other standards that could be applied in any other profession, given the sensitivity of the administration of justice and the need to ensure that it has the highest priority at all times.

We must have confidence in the administration of justice of this State and in the judicial officers who do a magnificent job performing that role daily. But we cannot set them above all other societal norms: we cannot expect of judicial officers a higher standard than any other person in this community. They are human beings like the rest of us and are subject to human frailty. In these incredibly detailed and unusual circumstances Magistrate Maloney was brought before this place to be subjected to an onerous process on the basis of complaints that occurred when he was not aware of his mental illness. These are very unusual circumstances. I note particularly that the specialists all agreed—not just one or two, but all three—that Magistrate Maloney, now medicated, is fit to perform his duties under that prescribed treatment.

Indeed, Magistrate Maloney acknowledges his misbehaviour, perhaps not in the most fulsome of terms, but I believe that he is contrite about his behaviour, also perhaps not in the most fulsome way. Nonetheless, I believe that he understands that his behaviour is not acceptable. He acknowledges that he has an illness and that he needs to be treated. He has given undertakings to continue this treatment regime. All of the specialists who reviewed this case in detail provided advice that that treatment is effective for him to discharge his duties as a judicial officer. In these circumstances I urge members to return Magistrate Maloney to the job he loves, and to seek to manage any public risk from any potential future misconduct resulting from his illness by way of statutory intervention rather than parliamentary execution. Accordingly, I cannot in all good conscience support this motion.

Dr JOHN KAYE [5.58 p.m.]: Clearly, this is an extremely difficult matter in which I personally find I am extraordinarily ill-equipped to make a sensible judgement. On that note, I thank all the previous speakers for the guidance they have provided. I acknowledge particularly the submission from the Hon. Trevor Khan, which was an excellent case for the prosecution, if you like. I say that with complete respect for Mr Khan. He gave an excellent outline of the case for dismissing the magistrate. I thank also my colleague Mr David Shoebridge for his presentation, which was a highly balanced exploration of a complex matter.

I understand that the matter before us is a matter of incapacity. I take that to mean: Will the magistrate inflict on litigants before him, now or in the future, the sort of demeaning activities and behaviours that he has in

the past? We must decide the level of risk to litigants and counsel of the magistrate acting in a way that will adversely impact them. The three psychiatrists chosen by Magistrate Maloney have made it clear that his condition is treatable with medication. It is extremely likely that medication will maintain him in a condition fit for duty.

If we accept the evidence of the psychiatrists and the undertaking of the magistrate that he will continue to take medication, then we have to accept that he will maintain fitness for duty. The real issue in my mind is the risk he would lose insight into his condition, stop taking medication, relapse and behave in a way that demeaned, insulted and belittled the litigants and legal profession who appear before him. The degrading treatment of witnesses that was outlined in the evidence before the Conduct Division is something that the Parliament could not tolerate. It comes down to risk management. It comes down to the magistrate maintaining a level of insight into his condition such that he will continue to accept medication and treatment.

In comparison to Magistrate Betts, when Magistrate Maloney made his presentation to the House my confidence that he had insight into his condition and the ability to maintain a treatment regime was undermined. I do not think I was alone in that. A number of members came into the House believing that this was a lay down misere case, that they would dismiss the motion moved by the Leader of the Government and move on. Having listened attentively to Magistrate Maloney, my confident position, gained from the evidence I had read beforehand, was shattered.

Since that time I have read the evidence and gone backwards and forwards on this matter. There is no clear right and wrong in this matter. This is a very finely balanced matter. The matter is particularly troubling because I do not believe he displayed the level of contrition expressed by Magistrate Betts that would give me confidence to believe that he was not going to do this again. It was particularly troubling because the Judicial Commission rejected the psychiatric evidence and came down on the side of dismissing the magistrate. The Judicial Commission, because of the nature of the evidence and the way the evidence was presented to the Judicial Commission, lost confidence in the magistrate.

There is the question of monitoring. I do not think we should be putting in place ongoing monitoring of magistrates. That would be a poor outcome. We need to think carefully about support for magistrates and all people in critical workplaces. Magistrates are not the only people who work in critical workplaces where poor decision-making can have long-term human consequences. Support for people with a mental illness needs to be discussed. However, that is not the matter before us today. We are left with a matter of personal judgement: On the one hand, we are deeply concerned to protect future litigants and people who appear before Magistrate Maloney; on the other hand, we are concerned with proven capacity or incapacity. I can clearly see force in both arguments. I am still deeply troubled by my decision. I cannot in the end do anything but vote against the motion. I do so with full respect for those who vote for the motion and full understanding of the case for the motion.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [6.04 p.m.]: I will not be voting to support the motion to remove Magistrate Maloney from office. What we have before us is the question of whether, on the basis of the report from the Conduct Division of the Judicial Commission and all the material we have, we are satisfied to a very high level of comfort that there is proven incapacity such that we should vote to remove Magistrate Maloney. As on the previous occasion when we discussed the fate of Magistrate Betts, I am pleased and gratified to hear in the contributions to this debate that all members are conscious and sensitive to the enormous and weighty responsibility that falls upon us to determine this matter.

I understand that many members may be uncomfortable about the responsibility that comes to us under the present legislative regime. In the contributions of Mr David Shoebridge and the Hon. Matthew Mason-Cox we heard some embryonic suggestions for law reform in this area to improve the process. By way of observation, without having had the time to consider those matters, I would be slow to fundamentally alter the current legislative regime. If it does not fall to us to make this decision, who else can judge the judges? I do not think it would be appropriate to leave it to heads of jurisdiction. The idea of having a screening committee of this House to cross-examine judges or magistrates who may be brought before us would potentially have difficulties. With the maturity of time we can reflect on those matters.

Tonight we have before us the issue of whether or not there is material that proves to the relevant high standard that Magistrate Maloney is incapacitated such that he cannot perform the duties of his judicial office. I note that Mr David Shoebridge and Dr John Kaye described this as a difficult and finely balanced case, and I agree with them. When a similar matter of the former Justice Vince Bruce went to the Court of Appeal the then

Chief Justice Spiegelman indicated that when dealing with potentially removing judicial officers from office a great weight must be attributed to the public interest that is served by ensuring that the step of removal is taken only in the clearest case.

I will be joining with others to try to persuade a majority in this place that this is not the clearest case. It is clear from the previous contributions and the report of the Conduct Division of the Judicial Commission that it is accepted that all of the matters complained of occurred at a time when Magistrate Maloney was unwell. In the mind of the Judicial Commission Conduct Division the issue is whether there was a risk going forward such that "there was an unacceptable level of risk". The view of the Judicial Commission Conduct Division is that there is sufficient material to consider the removal from office of Magistrate Maloney by this Parliament.

Dr John Kaye made the point that it is not the case the Conduct Division has recommended to us that the magistrate be removed. It found only that the material could justify the consideration of his removal. It is value neutral as much as possible in this case. It is properly and uniquely a matter for us. The magistrate's treating doctor, Dr Nielssen, the specialist appointed by the Conduct Division, Dr O'Dea, and a third doctor, Dr Phillips, all concluded that the behaviour complained of was explained by his bipolar condition. With some differences, they all were reasonably confident that the magistrate did have sufficient appreciation or insight into his illness such that he would continue to be treated and the risk of a relapse or further incidences when unwell would be reduced by the treatment.

In the proceedings in the Judicial Commission at least one of the doctors was questioned about the risk of occurrence. Dr Phillips, I believe, said that the risk could not be measured but it would be diminished by the magistrate adhering to ongoing treatment. That is an important issue. The issue before us is whether there is proven capacity. I will refer to parts of the Judicial Commission's Conduct Division report. At paragraph 269 it states that Dr Nielssen considered that the magistrate was unable to perform his duties until he thought him fit to work in July 2010. At paragraph 274 it states that the doctor conceded the magistrate would recognise the return of symptoms. At paragraph 276 it states that Dr O'Dea, the specialist psychiatrist appointed by the Conduct Division said that Magistrate Maloney "is now responding well to treatment". Dr O'Dea went on to say:

> Bipolar disorder can and does respond well to specific and structured psychiatric treatment, and I would remain optimistic that with structured and successful treatment of his condition, Magistrate Maloney should be able to continue to perform his judicial functions and official duties.

At paragraph 282 the doctor goes on to say:

> I would be optimistic that with successful treatment Magistrate Maloney could gain sufficient insight into his illness and the potential problems with incapacity related to his illness, that specific measures could be taken, including sick leave, to adequately and appropriately manage the risk of performing his duties as a judicial officer when incapacitated.

That goes to the issue of insight. At paragraph 287 it states that Dr Phillips, one of the three specialists who wrote the joint report, said:

> Mr Maloney should be able to achieve relatively satisfactory stability of mood. He will then be far less likely to offend in the course of his professional duties. He should be able to continue with his professional life.

At paragraph 290 it states that the joint report authored by the three psychiatric specialists noted:

> We believe that Mr Maloney probably suffers from a bipolar 2 disorder, this being a recognisable and diagnosable psychiatric disorder. Bipolar Type 2 disorder is characterised by one or more episodes of major depression and at least one episode of hypomania that was not severe enough to meet the criteria but the diagnosis of mania.

Their joint report continued:

> We agree it is more likely than not that the greater number of periods of abnormal behaviour occurred at times when Mr Maloney was affected by instability of mood arising from his underlying condition.

They went on to say:

> If properly treated … Mr Maloney is relatively unlikely to experience further episodes of illness. If he were to experience further episodes of illness they are more likely to be mild and less incapacitating as a consequence of his ongoing management.

They are important considerations, particularly when looking at the conclusion of the Judicial Commission's Conduct Division report where it finds in its opinion an unacceptable risk of reoccurrence. The Conduct

Division in its report does not set out the basis for that conclusion. That opinion by the Conduct Division seems to be completely contrary to the opinion of each of the three medical specialists and their joint assessment of Magistrate Maloney. I will come to the issue of Mr Maloney's insight when he is well again.

Dealing with the issue of incapacity at this stage, it clearly calls for a medical assessment. All the medical information that the Conduct Division had and we have suggests that Mr Maloney was unwell and incapacitated but that he is no longer, that he is receiving treatment and as a consequence of that treatment is relatively unlikely to have reoccurring behaviours of the kind that led to this report, and that if the behaviour does reoccur the incidences are likely to be less incapacitating and milder. The Conduct Division conceded that the incidences which it called misconduct were substantially caused by the condition. I do not believe that is cavilled with in any way. At paragraph 344 the Conduct Division report states:

> The relevant capacity is not to be determined by the immediate present but rather with regard to a variable period into the future to be measured in years rather than days, weeks or months.

The magistrate challenged this in the Supreme Court and it said the Conduct Division can still form that opinion. Having regard to the matter before us, the issue is whether there is proved incapacity. Again turning to the medical assessment aspect, there was a period when he was incapacitated. The medical evidence is that is no longer the case. I do not believe that the test the Judicial Commission set for itself is the question we should ask ourselves in this House. For example, at paragraph 350 the Conduct Division report quotes the doctors' joint report:

> Dr Nielsen, who treats Mr Maloney, is of the view that the magistrate had regained capacity for work by July 2010 and is not affected by symptoms that might impair his capacity to perform his duties as a judicial officer.

The Conduct Division states that "Dr O'Dea and Dr Phillips are happy to accept the view of the treating doctor." At paragraph 363 the report quotes Dr O'Dea:

> … the disorder that Magistrate Maloney has been diagnosed with is probably one of the most treatable psychiatric conditions and is very responsive to treatment.

Dr O'Dea observes that all the factors point to:

> … in this case a great deal of optimism regarding his potential to really benefit from the treatment program.

At paragraph 364 the report quotes Dr Phillips:

> The science literature suggests very strongly that the moment a proper treatment programme is put in place the risk of future illness diminishes in its frequency and even when an illness develops in terms of illness intensity. So I agree with Dr O'Dea's view that in many ways bipolar 2 disorder presents an initial challenge for treatment, that is making the diagnosis and urging the person to start treatment, but once treatment is initiated and once there is compliance generally people with a bipolar disorder do very well, and much better than the treatment of people with various other psychiatric disorders.

All the indications are that this illness can be and is being treated. At paragraph 388 the Judicial Commission accepts that the doctors agree in their joint report that Magistrate Maloney's mood state is currently stable and that he is fit to currently perform his duties. It goes on to say that the question arises whether that state of affairs will continue. The commission reviews the material and asserts at paragraph 417 that in their opinion non-compliance with treatment regimes by those suffering with bipolar disorder is "not infrequent". Again, no basis is provided for that view and I do not understand there to be any basis for that view. I cannot accept that part of the Conduct Division's report.

Previous speakers have raised the issue whether or not the Judicial Commission can impose certain treatment conditions on a judicial officer in the same way that the Medical Board can with medical practitioners or the legal services regulators can impose conditions on legal professionals. At paragraph 420 the report says:

> No such body is available in respect of a judicial officer. It is difficult to see how there could be one having regard, among other things, to the principles of judicial independence.

At paragraph 421 it says—and this is important to their ultimate conclusion:

> We consider that some of the more optimistic comments of the doctors need to be considered in the light of the precautions and conditions that they consider are at least highly desirable if Magistrate Maloney is to continue sitting as a Magistrate.

At paragraph 425 the report says:

> We are of the view that if Magistrate Maloney continues as a magistrate there is a very real risk that he will suffer hypomanic attacks or other mood changes which will result in events such as those reflected in the complaints we have considered.

Again there is no basis for that conclusion. In fact, that conclusion is at complete variance to the medical material they had before them, and I invite other members of this Chamber to disregard the report. Paragraph 427 states:

> We find that Magistrate Maloney is and will remain incapacitated for the performance of the office of Magistrate.

Again that is again completely at variance. Further than those bald words it is completely unexplained, given the medical evidence, how they get to that conclusion. The report goes on to say:

> We are of the opinion that that incapacity could justify parliamentary consideration of the removal of Magistrate Maloney from office on the ground of proved incapacity.

Again I do not think they get there either, simply because the building blocks they have used to get to that position are completely swept away by the medical material. That is the basis on which the Judicial Commission determined that we in this Chamber, and potentially in the other Chamber, could consider the removal of this judicial officer. Again, looking at just those parts of the medical material extracted from the Judicial Commission report, as far as I can see there is simply no basis for that conclusion.

Some members have said that in his presentation to this Chamber Magistrate Maloney left an impression that he did not fully accept the gravity of what had happened. I note that it was said that his "lack of insight" was not demonstrated in his address to the House, and a number of previous speakers have unfavourably compared his presentation to that of Magistrate Betts. In many ways I think Magistrate Maloney was very unlucky to have followed the motion to remove Magistrate Betts from judicial office. I think perhaps without Magistrate Betts' outstandingly compelling presentation the impression left by Magistrate Maloney on many members of this House would not have been perceived as unfavourably as it appears to have been, simply because I think Magistrate Betts was a very hard act to follow.

I note that other speakers have indicated that Magistrate Maloney did not appear to admit to the seriousness of this conduct, that there was no full and frank exposition of his contrition, that perhaps some of his presentation was either defensive or half-baked, or that one way or another he did not appear to fully accept the seriousness of his conduct and there was a lack of acceptance of what had happened. Having reread what Magistrate Maloney said, I will touch briefly on that aspect. He said that the events that brought him to the Chamber were "important and humiliating", having regard to the complaints made against him, particularly the Kiloh Centre incident. He described himself as "utterly devastated and ashamed". Later in his presentation he said:

> I have done my best to gain a full and comprehensive understanding of my predicament.

I understood that to mean his medical condition, not merely the fact that he was in trouble. He then also said:

> I have done everything the Judicial Commission has asked of me.

That is an important point to recall when we go back to the Judicial Commission saying, "We lack the power to impose a treatment regime because of considerations of judicial independence. We do not have that mechanism". It does not appear to have occurred to the Judicial Commission to have asked Magistrate Maloney to submit to a particular regime, and given what Magistrate Maloney had said to us and the fact that he agreed to be assessed by the Judicial Commission's own appointed psychiatric specialist, there is every reason to expect that if the Judicial Commission had, with medical advice, proposed a particular treatment regime, he would have accepted that and not rejected it. Magistrate Maloney also said:

> I accept my treatment and will continue to adhere favourably to my treatment regime.

He says he "truly regrets" the matters that brought him to this Chamber. He says that where offence was taken as a result of his conduct he apologises. He says that he apologised at the Judicial Commission and that "Again I do so publicly in this Chamber". He says he has done his best to address the problem "and will continue to do so".

It is true that he did not complaint by complaint set out and recite any particular verbal formulation of "I completely and utterly accept everything the Judicial Commission has to say." But when we look at the words he used in this Chamber the observation I made was that he certainly accepted the substance of those matters and did not cavil with them, although I accept that in this difficult matter different members of this Chamber may draw a different conclusion. I believe Magistrate Maloney has demonstrated an acceptance of his illness

and that what he did while he was unwell was not acceptable, such that, at least in terms of his own intention, we can accept that going forward he will do his very best to adhere to treatment. Again, the medical material that we have to go on indicates that there is a very good prognosis for him adhering to the treatment but that if he does get ill again the likelihood is that it will be less severe.

I do not pretend for one moment that this is a matter completely without some element of risk because where any person has an illness of this kind that is being treated—and, again, the medical material is that this will be a lifelong treatment, not merely for a closed period—assuming that he will make all the endeavours that he has said he will, all the material before us is that he does have the insight into his condition to do everything he can to remain on treatment and to remain well. That is not to say it cannot or will not happen but that this is a position that any person living with an illness of this kind would have, and that, to me, does not appear to be a reason sufficient to say that proved incapacity is established, thereby we should remove him. I completely reject that. I do not think that is the correct approach because it is certainly very far from the clearest case in favour of removal, and absent such a clear case we should not vote to remove the magistrate.

Concern has been expressed that in referring to other complaints, or the lack of complaints, that Magistrate Maloney may have misled this House. Again, that is a matter that he addressed in the further submission—to my satisfaction in any case. But I say to other members who remain troubled by this matter—and I do not want to get into an argument about whether when we receive a report that report and its ambit constrains our consideration of matters or whether once the trigger for our consideration of removal is activated we are at large and we can consider all matters. We can have regard to other material, even different material to that which was before the Judicial Commission, but it must all bear on the central issue that we have to consider, which is whether there is incapacity. If members remain concerned that we have been misled, that is an issue of misbehaviour not of incapacity. I do not think that is a matter we are considering. If the House was sufficiently concerned—

[*Interruption*]

I accept that magistrates should not mislead anyone but that is not the conclusion to which I have come. I do not believe that is what happened but if that is what members in this Chamber believe that should form the basis of a further complaint to the Judicial Commission about whether there should be a removal. If under existing legislation a complaint is made and there is a Judicial Commission report, we have to consider that report. If we then become a complainant, an investigator and a decision-maker without establishing any other process that could cause a number of problems. I am not saying that that avenue is not legally available to us but I would feel uncomfortable about acting on our own complaint without that matter being properly investigated separately. But that is not what has happened. I do not think Magistrate Maloney misled us and I accept the explanation he has given of that matter. Leaving aside the medical issues about Magistrate Maloney's health now that he has recovered to a degree, he is well and he is being treated, the last issue on which I will touch is whether, when he reflects on what has happened, he demonstrates the requisite level of insight and we can be confident that he does not lack capacity.

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: I return to Magistrate Maloney's address to this House. I understand that the manner of his delivery may have left certain unfavourable impressions on some members. To coin a phrase, while he might not have donned sackcloth and ashes and used fuller language that might have added to the comfort of a number of members, the substance of what he had to say tells me that he has insight, that he fully accepts and understands what has happened and why, and he will endeavour to do all in his power to avoid that happening again by adhering to his treatment. The doctors say there is a good chance that he will continue to have insight into his condition but there are no guarantees. It is possible that persons suffering with this illness could in future have a recurrence of the illness and despite their best endeavours they might not recognise it. The medical evidence we have suggests, at least in this case, there is a good prognosis that this will not happen. Given that medical assessment, I cannot be satisfied—and a high level of satisfaction is required—that there is a sufficient basis to remove this judicial officer.

Obviously no-one in this Chamber wants to remove a person from a position simply because he or she is living with an illness. The real issue is whether the information establishes proved incapacity. The material

suggests that Magistrate Maloney was incapacitated and that gave rise to the behaviours. He is satisfactorily receiving treatment, he has insight and an appreciation of what happened and he will do all he can to avoid that happening in the future. The medical assessment is that the risk of such a recurrence has been lessened. There is no guarantee but at least that risk is being managed. I do not understand how the Judicial Commission then formed the view that there was an unacceptable level of risk. There is no material before the Judicial Commission, or even before us, which specifies how one quantifies that likelihood. Obviously any person living with an illness of this kind faces the risk of recurrence, but I do not believe that should be used as the basis for removing anyone who holds such a sensitive post.

If the prognosis was poor and the indications were that it was likely to recur and that he would have no insight, it would place us in a different and more difficult position. However, that is not the position in which we find ourselves. The position in which we find ourselves is that the illness is being managed, that he does have insight and that there are reasonable prospects he will continue to be able to identify when he is becoming ill again. In that circumstance we cannot be satisfied to the high level required that Magistrate Maloney should be removed. I accept that the evidence we have to consider goes both ways. Given that the nature of the conduct in which the magistrate engaged while unwell was serious indeed, if it had not been properly treated it would be conduct wholly unacceptable of a judicial officer. However, that is not the situation in which we find ourselves.

On the basis of everything I know about this matter from all the material I have received I do not feel satisfied that we should remove the magistrate. I think he deserves another opportunity to continue working in his position. In this case, which is similar to the case of Magistrate Betts, we have a small handful of complaints in Magistrate Maloney's 15-year career in which he would have made thousands of decisions.

Reverend the Hon. Fred Nile: Fifty-five thousand.

The Hon. ADAM SEARLE: He made 55,000 decisions, often in difficult circumstances and under considerable pressure. In those circumstances and assessed from that perspective I do not support the motion to remove Magistrate Maloney. I think he should be given a further opportunity. I earnestly hope that he remains well and that he makes the most of this opportunity should a majority in this place not vote to remove him from office.

The Hon. DUNCAN GAY (Minister for Roads and Ports) [6.37 p.m.]: During my time as a member of Parliament this is the third occasion on which I have been asked to consider a matter such as this. On each occasion the members who addressed those issues pursued their proper role. However, I do not believe it is a role that members of Parliament should pursue. An imperfect system has placed us in this position.

The PRESIDENT: Order! I apologise for interrupting the Hon. Duncan Gay. I have been informed that the member made a contribution to the debate on 22 June. However, I am prepared to entertain a request that leave be given for him to speak a second time. If he contributes to the debate a second time without seeking leave he will effectively close the debate. Does the member seek leave to speak a second time?

The Hon. DUNCAN GAY: I seek leave to speak a second time.

Leave granted.

Members would remember that on the last occasion on which I spoke I dealt with a procedural matter. In general terms I do not believe this is a role that we are properly equipped to carry out. We have heard people with a legal background make very good contributions today—people that I quite often disagree with across the Chamber. I admired the diligence with which they addressed the issues before us. It is a hard decision and one that I have been weighing up in my mind as to which way I should go. As members have said, a man's career is involved. He is a magistrate who has dealt with a huge number of cases and addressed them well. I look at his demeanour and his personality and I think that in outside life he would probably be a friend of mine and I would admire and like his point of view.

There are those that say he should be given another chance because he has been unwell and he is now under medication. The question I ask myself—everyone has a different way of coming to a conclusion about the decision to be made today—is whether I think he would offend again even though he is under medication. He has been given several chances. I do not think the idea of having a second, third or fourth chance comes into it because those chances have already been given. Those are more chances than most people in the community would get in relation to an offence and certainly more than a member of Parliament who offended would be given.

On the balance of what I have seen and read and what I heard in his address and in the House today I am not convinced that he would not reoffend. In fact, from what I have seen I think the balance of probability is that he would reoffend in the same way. I am sorry that I have to make that decision. It is not a decision I want to make but it is not one that I can avoid. Nor is it an opportunity for me to come into this Chamber and vote and not indicate why I made that decision.

The Hon. DAVID CLARKE (Parliamentary Secretary) [6.42 p.m.]: I had not intended to speak on this issue, so I will be brief. I do not want to traverse the facts and the arguments that have already been put. All the contributions have been substantial. I state at the outset that I will be voting against this motion. I do not believe there has been a conspiracy against Magistrate Maloney. I believe the Judicial Commission has acted quite properly. I agree with the Hon. Matthew Mason-Cox that there needs to be a better process in such matters. I do not believe it should be the role of this House to determine matters such as this. Also, I was not impressed by some of the submissions made by Magistrate Maloney. However, I am persuaded on balance by the arguments against this motion.

I agree with the Hon. Matthew Mason-Cox, I agree with Reverend the Hon. Fred Nile and I agree with the substantial arguments put forward by David Shoebridge. I think he analysed this matter very thoroughly and carefully. I especially agree with him that the evidence falls short of what I would require in order to find against Magistrate Maloney. Ultimately he expressed contrition, and the evidence shows that the Judicial Commission found that the conduct proven against him was the result of a medical condition that is treatable and which, if properly treated, will allow Magistrate Maloney to perform his duties properly. In these circumstances I cannot in good conscience vote for this motion. I cannot in good conscience vote to deprive this man of his livelihood. The evidence does not reach the bar level for me to be able to do that. The evidence against him falls short of the level I require. I will be voting no on the question of removing Magistrate Maloney from his judicial office.

The Hon. MELINDA PAVEY (Parliamentary Secretary) [6.44 p.m.]: I agree with the sentiments expressed by most speakers today that this is an issue we would prefer not to be dealing with, but the 1902 Constitution Act requires us to do so. The Judicial Commission has referred the conduct and the future of Magistrate Maloney to us and we have no option other than to deal with what is before us. The Hon. Duncan Gay pointed out that this type of debate brings out the best in us all. I greatly respected and appreciated the contributions by many members today, in particular, the contribution of the Hon. Trevor Khan. Yes, it was pointed out that it may have been the case for the prosecution but it was certainly a well structured, well thought out and well presented argument that dealt with the case before us—that is, the approach taken by Magistrate Maloney during his presentation.

It was also very well and succinctly put by the Hon. Lynda Voltz in her contribution. I do not agree with the comment by the Hon. Adam Searle that it was unfortunate for Brian Maloney that his presentation followed that of Magistrate Betts. That is an unfair thing to do to us all. Yes, Magistrate Betts did show a greater level of contrition. In fact, I think she said on one occasion that her behaviour was horrific. I did not get that same sense of contrition from the presentation to us by Magistrate Maloney. There was one issue in particular that concerned me. I refer to the *Hansard* of his speech in which he said, "There are four complaints against me." I was very concerned about his saying that to us. It turns out that there are another three complaints. Two occurred before he was put on medication and dealt with his diagnosis and the third occurred post-diagnosis and post-medication. Letters have been tabled today from the President of the Judicial Commission, the Hon. Tom Bathurst, dealing with those three complaints. It appears the Judicial Commission has written to Brian Maloney pointing out that there are cases to answer in relation to those complaints. That is worthy of note and consideration.

Like the Hon. Lynda Voltz, I was most concerned about the reference to Dr Bodovitch and the case at Randwick Hospital during the hearing of the psychiatric assessment. It was inappropriate and the Judicial Commission made the point that it found his evidence to be unreliable. Similarly, Magistrate Betts conceded that she was acting in a horrific manner. I do not know whether Brian Maloney admitted that repeating a Joan Rivers joke was inappropriate. He apologised if offence was given but I think telling that sort of joke in those circumstances required an apology not because someone took offence but because it was an offensive thing to do. Post medication and post diagnosis I think there could have been a much more honest account of that event. He did bare his soul to us; there is no doubt about that. I also acknowledge the comments of the Hon. Marie Ficarra: in hindsight his approach might have been better, but it was not. That is the issue before us today.

If this House decides to dismiss the motion, that is the end of the matter—unless and until, as the Deputy Leader of the Opposition pointed out, some other matter is brought before this place. If the House goes

ahead and adopts the motion, it will then be up to our colleagues in the Legislative Assembly to deal with it. Members there may then have access to other information from the Judicial Commission relating to the other three complaints. They may have better information.

Reverend the Hon. Fred Nile: I understand those complaints have been dismissed.

The Hon. MELINDA PAVEY: I have the Judicial Commission letters that were tabled here today, and the Judicial Commission has pointed out that there are concerns about the conduct. This House has to deal with the matter that is before it today. But if the motion is passed the matter will go to the Legislative Assembly for further consideration, and Magistrate Maloney may be able to be accounted for in a more appropriate way than I feel he has been accounted for to this point.

I reject absolutely that this is an issue of punishing someone with a mental illness. My stance on that issue is very firm. The feeling in this Chamber following Magistrate Betts' contribution is that this is not a case about mental illness and a judgement based on it. This is a difficult issue for this House to deliberate on and determine. But in good conscience, having heard the contributions that have been made and based on the information I have read I will be supporting the motion.

The Hon. Dr PETER PHELPS [6.51 p.m.]: I was not planning to speak on this motion, but I have decided to do so because I do not believe anyone's contribution has accurately reflected the views I hold in relation to this matter. We should not pretend to have made a forensic examination of the magistrate. But the Judicial Commission has done so. It assembled the evidence, questioned the magistrate in detail, and came to the view that there was a case for his dismissal because the magistrate would remain in a state of incapacity. We should not confuse our role in this matter. We are not an inquisitorial body—at least not in this case. There are times when this body and the committees that devolve from it are inquisitorial. We were told specifically that when Magistrate Maloney appeared in this Chamber he was to be heard in silence and there were to be no questions.

But there was a body that could question him. That body was the Judicial Commission. It is an expert body. It is not constituted of political staffers, or historians, or telephonists, or plumbers; it is constituted of high ranking, intelligent people who have a direct and proximate relationship with the law. It is an impartial body. It gains no money from finding against a magistrate. It gains no kudos from its determination. Indeed, given the limited and select nature of the legal fraternity in New South Wales, its members may well lose kudos for having determined against the magistrate.

I am not saying that we should be mere ciphers of the Judicial Commission, but our role should be respectful of the body that undertook a comprehensive and inquisitorial investigation of the magistrate. Otherwise, why bother with its existence? While I have read all the material and have spoken to people who have appeared before Magistrate Maloney, for me the question comes down to this: Has such a manifest injustice been done by the Judicial Commission—the chief and, in this case, the only investigative body—against Magistrate Maloney that it requires the Legislative Council to intervene in this matter and halt proceedings? From all I have seen, from all I have read and from all I have heard, the only answer I can come to is no in that regard. For that reason, I will be supporting the Judicial Commission's findings and I will be supporting the motion.

The Hon. PENNY SHARPE [6.54 p.m.]: I, like other members, had not intended to speak to the motion. But given the nature of the discussion and the fact that we will be casting a vote, I wish to place on record what I will be doing in relation to this matter. I will be supporting the motion. I too have read all the material and listened very carefully to the debate this afternoon. I think all members have done a lot of work to arrive at their conclusions on the matter. For me, the threshold question ultimately comes down to whether the person who arrives one day in Magistrate Maloney's court will be dealt with appropriately, and whether I am sufficiently comfortable that the magistrate will have enough insight into his condition to enable him to recognise when he is not able to ensure that. I do not want to take the risk of that person one day turning up in his court and not being dealt with appropriately. For that reason, I will be supporting the motion.

The Hon. JOHN AJAKA (Parliamentary Secretary) [6.55 p.m.]: One of the advantages of speaking towards the end of the debate is that that affords one an opportunity to hear all the contributions made by earlier speakers, whether for the motion or against it. Valid arguments have been put by each and every member who has already spoken. So there is no necessity for me to traverse each and every factual matter, whether it relates to the original four complaints, the additional complaints or the additional information. What I would like to place on record is the conclusion that I have now come to, having heard all the matters raised and listened to all the prior speakers.

At the outset I indicate that I will be supporting the motion. This is not a decision that I have taken lightly. In fact, when this matter was first referred to the House and members had an opportunity to read the initial information provided to them I was probably more in favour of the argument that Magistrate Maloney should retain his office. I was more inclined to give Magistrate Maloney the benefit of any doubt. We then dealt with Magistrate Betts, and it is clear from *Hansard* what I said about that matter and why I voted in favour of Magistrate Betts remaining in office.

One could have assumed it would be an identical outcome with Magistrate Maloney. Of course, that is not so. I became seriously concerned about a number of matters. I should indicate that it is my opinion that I have to weigh up the proposition that Magistrate Maloney is entitled to the benefit of the doubt, that he is entitled to maintain his tenure as magistrate and that he should be removed from that office only in exceptional circumstances, in accordance with the scope, intent and effect of the applicable legislation. But that has to be weighed against the interests of the public. Members have a paramount duty to the citizens of New South Wales to protect their interests, rights and entitlements.

I have a number of concerns that influence my decision. First, I was not impressed with Magistrate Maloney's presentation to this House. That is for a number of reasons, including the fact that I consider he misled this House. First and foremost, he is a very accomplished lawyer. He has been a judicial officer for a number of years. He was well represented by a very well qualified solicitor and very well qualified counsel. To argue that he was in some way unaware that he may have been misleading the House is an argument that I cannot accept. The second reason that I was not impressed with Magistrate Maloney is that he did not demonstrate any serious contrition for the matters about which complaints were received.

It is one thing to say that when the complaints occurred he was suffering a mental illness and sought treatment. That is wonderful. However, the reality is that when he appeared before us he was seeking medical treatment, but he should have had insight into these complaints and shown appropriate contrition. He did not do that. My impression was that he was almost justifying and defending what happened, not accepting many of the allegations, and at the end said, "But if you don't accept what I say, I have a mental illness." That is not contrition and also not the way to present an argument to retain a judicial office.

The next reason relates to his behaviour after his presentation to us. During his address to us he mentioned attacks being part of some sort of agenda against him, and repeated that claim later in various venues. Some people have suggested that this behaviour may have resulted from advice from his legal representatives. I do not accept that. His incredibly qualified legal representatives would not have acted without the instructions of their client, Magistrate Maloney. He would have been well aware of the process and those lawyers would not have acted outside their instructions. My next concern is that if Magistrate Maloney is prepared to deal with these serious circumstances without showing contrition in this Chamber, mislead us and try to justify what occurred, I have serious concerns about his continued behaviour towards the public when he presides on the bench.

I am not satisfied that he will not continue to display that same inappropriate behaviour. Members of the public, the citizens for whom we have a paramount duty to protect, should not be subjected to the possibility of being ridiculed, being subjected to racial prejudice or having some sexist comments made to them. Not one single person should be subjected to that type of behaviour. I do not agree that we should not determine this issue. Nor do I agree that Magistrate Maloney should be given another opportunity or chance on the basis that if he again does something wrong in that simplistic form he can be brought back before us for another determination. The public should not be subjected to that possible recurrence. For that reason I support the motion.

The Hon. CATE FAEHRMANN [7.02 p.m.]: I had not intended speaking on this difficult issue but I have been listening to everyone's well-considered and thoughtful contributions to this debate. Given that we all must vote on this motion, it was only appropriate that I put my views forward. We all know that we have been accorded an extremely important responsibility, that is, the ability to remove the holder of a judicial office on the ground of proven misbehaviour or incapacity. Many members already have addressed the latter ground and most agree that Magistrate Maloney should not be removed on those grounds. Like other members, I too have received correspondence from groups such as SANE Australia and the Schizophrenia Fellowship urging me to not vote to remove Magistrate Maloney.

The psychiatrists' joint report into Mr Maloney's mental capacity states that he is presently properly treated without symptoms and as such is unlikely to have any further occurrence, but any recurrence would be

mild and that Magistrate Maloney wants to be properly treated. This is a persuasive argument for not supporting the motion. His treating psychiatrists state that his condition is at the milder end of the bipolar spectrum. Bipolar disorder affects 1 per cent of the population, as we have heard today in this place. Therefore, it is important that, knowing this, we send a strong message to the community that mental illness can be treated, that people diagnosed with a mental illness can lead fully functional and successful lives, and that we recognise that people with a mental illness can be awarded important work responsibility as long as they can be treated successfully.

The criticisms of Magistrate Maloney were about his manner and not his legal decisions—a point raised by the Hon. Shaoquett Moselmane and which has swayed my decision not to support the motion. Four instances have been partially, or perhaps wholly, explained by his bipolar condition. While I do not agree with or condone the behaviour of Magistrate Maloney, which has been outlined in the debate many times, I do not believe that his behaviour is grounds for dismissal. His behaviour was not corrupt or serial to any extent; nor has he engaged in gross misconduct. Critically, he is now receiving treatment for the bipolar disorder that was the substantial reason behind his behaviour. However, no doubt people felt degraded by his behaviour in the court, and it was inappropriate behaviour.

However, many of those who contacted me and other members in this place, urging our support for Magistrate Maloney speak of him with great respect and admiration. They write that he is a hardworking magistrate and members today have spoken of the many tens of thousands of cases he has presided over. Other members, including my colleagues Mr David Shoebridge and Dr John Kaye, as well as the Hon. Adam Searle, spoke of the blurred nature of the complaints. I am sure everyone agrees with that, as I do. The offences are not of a nature to require this House to take the extraordinary step of removing a holder from judicial office. The ramifications of our supporting this motion would be far greater than those to retain Magistrate Maloney in office—for Magistrate Maloney, for the community more importantly and for the precedent it would set.

I thank members for their valuable and considered contributions, particularly those members with legal backgrounds. These contributions, in the main, support my decision to not support this motion. I echo Dr John Kaye's closing statement by saying that I respect the way in which every member in this place is arriving at this most difficult decision. I also respect everyone for whichever way they choose to vote.

The Hon. MICHAEL GALLACHER (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [7.07 p.m.], in reply: I thank all members for the earnest and thoughtful way they have upheld their constitutional responsibility to consider this matter. When speaking to the motion I stated that we are constitutionally bound to consider such matters. I have been incredibly impressed and proud of the depth of debate and consideration of all members on this issue. Members have given a great deal of consideration to the matter for 3½ months outside this Chamber and had many discussions. This was borne out in the level and depth of the debate.

I am incredibly impressed with everyone who participated in this debate. Members will have a conscience vote on the matter but, unlike other conscience votes, this vote will not be taken on a legal or moral issue; this conscience vote relates to an individual's suitability to hold a position as a magistrate in New South Wales. All members who have contributed to this debate have realised the seriousness of the decision they have to make. All members of this House have considered the evidence put to them and I am satisfied that whatever decision the House makes in the division will be the one that truly projects and represents the will of this House. I commend the motion to the House.

Question—That the motion be agreed to—put.

The House divided.

Ayes, 15

Mr Ajaka	Mrs Mitchell	Mr Veitch
Mr Blair	Mrs Pavey	
Mr Colless	Dr Phelps	
Mr Gallacher	Mr Primrose	*Tellers,*
Mr Gay	Mr Secord	Mr Khan
Mr MacDonald	Ms Sharpe	Ms Voltz

Noes, 22

Ms Barham	Mr Foley	Reverend Nile
Mr Borsak	Miss Gardiner	Mr Searle
Mr Brown	Mr Green	Mr Shoebridge
Mr Buckingham	Dr Kaye	Mr Whan
Ms Cotsis	Mr Lynn	
Mr Donnelly	Mrs Maclaren-Jones	*Tellers,*
Ms Faehrmann	Mr Mason-Cox	Mr Clarke
Ms Ficarra	Mr Moselmane	Mr Roozendaal

Question resolved in the negative.

Motion negatived.

ADJOURNMENT

The Hon. MICHAEL GALLACHER (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [7.20 p.m.]: I move:

That this House do now adjourn.

NATIVE VEGETATION LEGISLATION

The Hon. SCOT MacDONALD [7.20 p.m.]: I wish to speak on the Native Vegetation regulations 2005 review announced by Minister Parker and Minister Hodgkinson on 13 September 2011. The Minister for the Environment and Heritage, the Hon. Robyn Parker, outlined a year-long review that will address some of the over-prescriptive elements of the current regulations and ensure positive environmental outcomes for all the community. I take this opportunity to correct a couple of assertions made by the Leader of the Opposition in this House on Wednesday. First, the regulations are being reviewed, not the Native Vegetation Act 2003. Second, the Hon. Luke Foley failed to mention that the review was triggered by the normal statutory requirement, not, as he alleged, by one particular stakeholder. Nevertheless, this is an opportunity to improve those aspects of the regulations that are an impediment to the efficient and timely management of native vegetation.

I have taken an interest in this issue for some time. I mentioned it in my inaugural speech. I recall attending a fiery meeting in Glen Innes in 1995 when the Act's predecessor, State environmental planning policy 46, was announced. On Wednesday last week I attended the Native Vegetation Forum in Moree, held by the NSW Farmers Association, to gauge the direction of the debate in an area that has long been regarded as a hot spot on vegetation issues. Contrary to the Hon. Luke Foley's comments in his adjournment speech, there is still palpable anger amongst many farmers about the native vegetation laws. I was struck by the fact that most, perhaps not all, of those in the room that day acknowledged we could not return to the bad old days. Broadscale, unplanned clearing was no longer defensible. However, most of the dissatisfaction was about interaction with the department and the complexity of the programs.

I was surprised to hear of very few accredited property vegetation plans. The Border Rivers-Gwydir Catchment Management Authority board, which was present, said only 45 existed. That surprised me because the catchment management authority is quite large at 24,000 square kilometres and contains hundreds of farms. Clearly, we can do better than to have one of the most important stakeholders in native vegetation disengaged and distrustful of the policy. I commend the NSW Farmers Association for promoting credible, workable improvements to the regulations. Probably the most important is the ability for farmers to work together to develop local landscape plans. The scale of these plans would be large enough to include complete ecosystems but small enough to enable true ownership of the plan by participating farmers. The standard would retain, improve or maintain environmental outcomes, but farmers would have increased flexibility to manage their property.

However, as I said in Moree, I am not a supporter of stewardship payments. As the Leader of the Opposition mentioned, successive governments, including ours, have provided targeted assistance to promote conservation. But that is very different from enshrined, ongoing payments for preserving vegetation. I believe that landholders have a duty of care. While the burden may fall on an individual property owner, we have to recognise that while land ownership licences have benefits they also come with responsibilities. Of course,

general stewardship funding would have significant implications for the State's finances. I look forward from this review to measured improvements in the administration of the regulations, greater understanding from departmental officers, more flexibility with offsets, and simplification of tools such as property vegetation plans. The Liberal-Nationals Government should be commended for listening to the community and ensuring regional New South Wales continues to be both productive and protective of its wonderful, unique environment.

I echo the comments of the Hon. Steve Whan, who yesterday wished all Higher School Certificate students well. I wish them well as they embark on their examinations, including my middle boy James.

CARBON TAX

Reverend the Hon. FRED NILE [7.24 p.m.]: Tonight I speak on the passage of the carbon tax legislation through the Federal Parliament, which brings in a new tax of $23 per carbon tonne. The *Daily Telegraph* in reporting this historic event focused on a photograph of Prime Minister Julia Gillard kissing her rival, the Minister for Foreign Affairs, the Hon. Kevin Rudd, in the Federal House of Representatives as they celebrated the passage of this controversial legislation. The *Daily Telegraph* called it the "Judas kiss", referring to the betrayal of Jesus Christ by his traitor disciple Judas Iscariot. As I have said previously in the House, the legislation is based on a fallacy. Those in favour of carbon tax legislation have argued that Australia is one of the greatest polluters in the world. This argument is based on per capita rather than the actual rate of pollution in Australia.

The figures for CO_2 emissions of countries show that Australia is one of the smallest polluters in the world. Our current level of carbon dioxide emissions is only 1.3 per cent. China is 22.3 per cent; the United States, 19.91 per cent; and Europe, 14.04 per cent. The Australian Climate Change Commission, led by Professor Tim Flannery, has recommended a 5 per cent reduction in our emissions through a carbon tax of $23 per tonne even though, according to him, it would not reduce the world's temperature for 1,000 years. The carbon tax means a massive disruption to our economy, industries, families and jobs in order to reduce our 1.3 per cent by 5 per cent.

That microscopic reduction would have no effect on the world's pollution or sensitive areas such as the Great Barrier Reef. Prime Minister Julia Gillard promised, "There will be no carbon tax under the Government I lead." She did not say that without hesitation; she said it in a clear-cut way. Treasurer Wayne Swan repeated the theme when he said, "Certainly what we reject is this hysterical allegation that somehow we are moving towards a carbon tax from the Liberals and their advertising. We certainly reject that." Both those statements have proved to be false.

On examination of emissions from other countries we find that Australia is way down the list at number 15. After the major countries I have referred to, the figure for Russia is 5.5 per cent; India, 5.24 per cent; Japan, 4.28 per cent; Germany, 2.69 per cent; Canada, 1.9 per cent; the United Kingdom, 1.8 per cent; South Korea, 1.7 per cent; Iran, 1.69 per cent; Saudi Arabia, 1.61 per cent; Italy, 1.56 per cent; South Africa, 1.48 per cent; Mexico, 1.37 per cent; and then at number 15 Australia at 1.35 per cent. After that comes Indonesia, Brazil, France and so on. A scare campaign has been run to promote the carbon tax by claiming Australia is one of the greatest polluters in the world. It is not true—it is a hoax. I hope, as I believe the majority of Australians do, that when Tony Abbott becomes Prime Minister he will fulfil his promise to repeal the carbon tax legislation.

MANUFACTURING

The Hon. PETER PRIMROSE [7.28 p.m.]: Manufacturing employs more people than the capital intensive resources sector, roughly a five to one ratio, and can continue to provide employment long after our natural resources have been extracted from the ground. Put simply, Australia, and New South Wales in particular, needs manufacturing jobs if we are to maintain an economic base that provides a high standard of living. Any plan that focuses on assisting our manufacturing sector must first address the crisis in demand that is currently being experienced.

Governments at all levels can take practical steps to give local manufacturers the chance to compete on a level playing field with international competitors, including increased transparency on the use of local content and accelerated depreciation. In the long run Australian manufacturers will need to innovate significantly through the introduction of low-carbon and energy-efficient technology and making improvements to management skills and systems. On an international scale Australia must exercise a robust anti-dumping regime, consider options to stress the importance of a flexible exchange rate to the global economy and closely consider future free trade agreements.

In relation to local content, Australian manufacturers are facing a crisis of demand. A decrease in price competitiveness due to the high exchange rate has caused firms to lose access to export markets or has them being undercut by import competition. It is clear that the work exists in Australia to provide near-term relief for local manufacturers. In Australia there is $200 billion of planned investment in the resources sector, with a further $400 billion projected in the investment pipeline. Currently Australian domestic manufacturers are receiving as little as 10 per cent of the work being undertaken in the construction and expansion of the resources sector. That figure is far too low and must be increased.

The resources sector is uniquely placed to ensure that the current macro-economic structural pressures in the Australian economy are smoothed out. It is incumbent upon the resources sector to provide greater opportunities for Australian manufacturers to provide local content for resource projects. The Australian manufacturing sector also requires greater access to resources sector projects and government procurement in order to boost demand. The commodities boom will not last forever. To secure the gains from the boom for the next generation of working Australians and to prosper in a climate-constrained world we need to put long-term sustainable job creation at the centre of our economic policy at all levels of government. Secure jobs that pay decent wages and have workplace rights can be built on our economic strengths.

An action plan for jobs therefore should include a number of things. First, it should include an audit and independent review. Government should commission an independent review, led by representatives from unions, employers and key government departments, that is charged with identifying the scope that presently exists for all levels of Australian government to promote jobs in procurement practices and other forms of expenditure including grants and other programs. As part of its work the review should also audit the extent to which local trade-exposed industries currently benefit from public contracts.

Secondly, an action plan for jobs should include government funding for public projects and services. For example, the minimum local content for spends should be defined by jobs created rather than money spent and granting price preference to Australian companies based on the whole of cost where the project is located in regional areas. Thirdly, the procurement practices of private companies within Australia should be included. For example, all firms engaging in an Australian resources project should be required to provide information on how local manufacturing firms will be given a fair opportunity to participate and how they will become part of the supply chain.

A number of other initiatives include job loss assistance and tracking, paying for quality care, offshoring, skilled migration, anti-dumping and fair trade, and effective labour rights. All Australian trade agreements should include a comprehensive commitment to the core labour standards embodied in International Labour Organisation conventions.

COFFS HARBOUR CITY COUNCIL

Mr DAVID SHOEBRIDGE [7.33 p.m.]: Mark Graham is a councillor at Coffs Harbour City Council and has been since 2008. He has recently experienced a series of code of conduct complaints which appear to be directed at limiting his ability to exercise his independent role as an elected councillor in holding the council to account. The matter in question concerned the termination of the general manager of Coffs Harbour council, who was terminated with a very substantial notice payment, as specified in his contract. The termination follows serious questions about financial regulation in the council. Councillor Graham received materials concerning this matter by council delivery. Those materials did not include the standard accompanying letter setting out any basis for confidentiality. It was Councillor Graham's opinion that these materials gave rise to real concerns about the circumstances of the dismissal and, as a result, he raised these concerns publicly.

A code of conduct complaint was then made about Councillor Graham discussing these materials. In response to this complaint a sole conduct reviewer was brought in to investigate Councillor Graham's actions. The conduct reviewer was not from the panel of three people who had previously been chosen by council to form the review panel. She had previously also had a contractual relationship with the council. When Councillor Graham questioned the appropriateness of this process, the council resolved to adopt an additional step whereby the initial findings would go through a process of nominal review. This has resulted in a process that is both ad hoc and of questionable legitimacy. As the matter is continuing and is still the subject of further submissions by Councillor Graham, it is not appropriate to consider this issue any further. However, this is not the first time that Coffs Harbour City Council has had code of conduct complaints. In 2008-09 there were 27 complaints and in 2009-10 there were 18. In fact, across the State there are many hundreds of complaints per year.

These incidents demonstrate some of the reasons we need to make substantial changes to the way that code of conduct complaints are considered by local government in New South Wales. In July this year the Division of Local Government commenced a review of the model code of conduct dealing with local government councillor complaints. My office worked with more than 70 Greens councillors across New South Wales to prepare a submission to the review. Changes to the code are required to remedy a deficit in procedural fairness and accountability in the current code. To this end, an independent adjudicator should be appointed by the Division of Local Government as the gatekeeper in determining complaints under the code, rather than the general manager, as in the current model.

The conduct review committees must also not be dominated by or appointed by the general manager and the mayor. Instead, the conduct review committee should include a locally appointed independent representative and be appointed well in advance of any complaint being heard. Code of conduct breaches must not be used as political tools to silence or intimidate minority councillors. The operation of the current system is such that the dominant group in council can use a code of conduct in a way that effectively oppresses or intimidates minority council members. A more neutral panel could protect against this. It is also desirable that conduct reviewers have the training and qualifications necessary to carry out this role, including some understanding of the requirement for councillors to be bold and independent advocates for their community.

The code of conduct must ensure that the democratic rights and responsibilities of elected councillors are not subordinate to corporate management interests. Specifically this means that councillors who take strong positions advocating matters they believe to be in the best interests of the community or a sector of the community must not be in breach of the code of conduct merely because the public position adopted by the councillor is contrary to the public position adopted by a majority of councillors. The code must also clearly provide that participating in public interest campaigns or activities does not, in itself, create a private interest or the basis for a conflict of interest in determining matters of council. It should also have a positive function in encouraging and protecting the rights of the councillors to both provide information to the public and to participate in public interest campaigns and activities.

The ability of councillors to reject or ignore the findings and recommendations of any conduct review committee should be limited. If the conduct review is genuinely impartial then there must be established special circumstances for a council to reject the findings, and a review mechanism should be considered in any further review of the Act. Equally, in the interests of open decision-making, confidentiality should only be applied in those matters where there are clear formal grounds for confidentiality under the Local Government Act. This should ensure that confidentiality is not misused to prevent the disclosure of public interest information. In fact, the misuse of confidentiality requirements to withhold information from the public should itself be considered to be a breach of the code of conduct.

There are clearly flaws in the current model code of conduct that have allowed it to be used to attempt to silence councillors such as Councillor Graham and other minority councillors in councils across New South Wales. The importance of strong independent voices in local council should not be underestimated and we should be prepared to take all necessary steps to protect that.

RONA TRANBY TRUST

The Hon. WALT SECORD [7.38 p.m.]: In early September I had the honour of attending the twentieth anniversary of the Rona Tranby Trust. I take this opportunity to note the important contribution the trust makes to diversity and tolerance in New South Wales. Established through the bequest of Tom and Eva Rona, who were killed in car accident near Taree in September 1987, the trust preserves oral Aboriginal history. As Holocaust survivors, the Ronas were not only great social justice advocates but also understood the vital importance of preserving history through firsthand accounts. There is the telling of history and then there is the voice of history itself.

The Ronas felt so strongly about preserving Aboriginal culture that they left instructions in Tom Rona's will for an Indigenous project. Since then, the Rona Tranby Trust has been overseen by the Ronas' solicitor, Mr Roland Gridiger. In 1991 the Rona Tranby Oral History Project—a joint initiative with the Aboriginal Tranby College in Glebe and the New South Wales Jewish Board of Deputies—was established. The Rona Tranby Trust brings together two great cultural traditions: one that is more than 3,000 years old and the other that is at least 50,000 years old. While patterned on the Australian Institute of Holocaust Studies' Twelfth Hour oral history projects that recorded the testimonies of Holocaust survivors, it also reflects the great tradition of storytelling that is an essential medium of Aboriginal culture.

The twentieth anniversary held at the Sydney Jewish Museum was attended by the Minister for Aboriginal Affairs, Mr Victor Dominello; the Deputy Leader of the Opposition, Linda Burney; senior members of Tranby Aboriginal College, including its program manager and lecturer, Darryl French; and the New South Wales Jewish Board of Deputies, including its president, Yair Miller, its current chief executive officer, Vic Alhadeff, and its previous chief executive officer, Ms Margaret Gutman. For the past 20 years Rona Tranby has funded the recording of numerous oral histories that are integral not only to Indigenous culture but also to our national history. Over the years it has supported more than 10 different projects.

In 2006 Rona Tranby preserved the recollections of Aunty Beryl Carmichael. Aunty Beryl is the last fluent speaker of her language and the sole custodian of the last four songs and dances performed in 1946 at the Menindee Mission. Without Rona Tranby, her language and her culture would pass with Aunty Beryl herself. Rona Tranby has preserved the history of Queensland's famous Indigenous brass bands, it has captured the stories of the children of the Emerald River Home in the Northern Territory and documented the witness of homeless Aboriginal men at the Mac Silva Centre in Redfern. In assessing the importance of such projects it is important to note that previous efforts to record Aboriginal oral history, particularly such personal and emotional stories, had limited success because they were conducted by non-Aboriginals. With Aboriginal people now recording the testimonies, this has changed.

I was honoured to be invited to the Rona Tranby event. Twenty years ago I was a young journalist who attended the launch of the Rona Tranby Trust and awards. At the time I covered it for the *Australian Jewish News* and the *Koori Mail*. I was moved by the sincerity of those from the Tranby Aboriginal College and the New South Wales Jewish Board of Deputies, who took these steps to allow two great cultures to work together. Looking back on the two decades of national debate and gradual steps to reconciliation, we can see that those behind the Rona Tranby Trust were clearly ahead of their time. Indeed, at first blush, members may find this partnership between our Aboriginal and Jewish communities an unusual match.

If so, then I am pleased to note that in mid November the Sydney Jewish Museum intends to mark an historic protest against Nazi German persecution of Jews. It is a protest that remains unique in world history. While I need not detail to members of this Chamber the significance of the Kristallnacht pogrom of November 1938, members may be interested to hear that the only formal demonstration against Kristallnacht ever recorded anywhere in the world occurred in Australia. On 6 December 1938, 77-year-old Aboriginal leader, William Cooper, marched on the German consulate in Melbourne to protest in the wake of the Kristallnacht. In December 2010, Yad Vashem, the world centre for Holocaust education and research in Jerusalem, recognised Mr Cooper's protest as a world first.

While the rest of the world stayed silent, it was Indigenous Australia that stood up at a time when Indigenous people themselves were denied basic human rights. William Cooper spoke up because he knew what it was to be oppressed. Hence, we see how the co-support of these two great ancient cultures was not only understandable but noble and historical. Sadly, both the Aboriginal and Jewish communities have witnessed persecution, expulsions and dispossession. This heritage they share, but both have survived and the community of New South Wales only stands to be stronger and fairer by knowing their stories. [*Time expired*.]

MOTHERS MILK BANK

The Hon. MELINDA PAVEY (Parliamentary Secretary) [7.43 p.m.]: Sometimes politicians have days when they meet people who amaze them by their passion and high standards as they work within the community for the betterment of the society in which they live. Yesterday I had the privilege of meeting Marea Ryan, a director of the Mothers Milk Bank program in the Tweed region. The meeting was facilitated by passionate local member Geoff Provest. Marea had sought to meet with the Minister for Health, Jillian Skinner. It was my privilege to step in for the Minister and to take the meeting. I heard about an incredible program that has been driven by Marea over many years. Marea was a midwife at the Mater Hospital in Sydney. She then headed the maternity ward at John Flynn Hospital on the Gold Coast. Now she has created and opened a milk bank with the support of her community and other volunteers. The milk bank provides breastmilk to babies whose mothers cannot provide it.

The Mothers Milk Bank receives donated milk from lactating mothers who have more than enough milk for their own child. These women may offer a one-off donation of their surplus stored breastmilk, or they may choose to express regularly for the Mothers Milk Bank. It was my pleasure to learn that over the past two years the milk bank at Banora Point has helped 62 babies. There is no doubt that breastmilk is the best thing for a child if it is available. Through this milk bank 62 children have been provided with breastmilk when their

mothers could not produce it for various reasons. Sometime the babies are preterm and the mother is not able to produce her own milk. Mothers who have breast cancer, who have cardiac conditions or who suffer from iodine exposure may not be able to produce milk. This milk bank has stepped in in a whole range of cases and provided the colostrum and nutrition contained in breastmilk in this amazing way.

It has been amazing because the regulatory processes and hurdles that Marea and her group have had to jump over to provide this unique service to the people of the North Coast have been exceptional. It has been a difficult area to navigate because I am advised by the Department of Health that over the past 18 months the Australian National Breastfeeding Strategy has been under an implementation plan that was endorsed by Health Ministers in April 2010. The New South Wales Department of Health supports the strategy and its implementation plan. It is represented on a jurisdictional senior officers group to progress implementation.

This group is working in a cross-border area without any formal Federal approach to this policy area, which makes it difficult for it to expand and to seek appropriate funding. As the Parliamentary Secretary for Regional Health, I intend to do what I can to encourage that process to its finalisation so that more than 62 babies in one region of New South Wales can benefit from this process. It is extraordinary to think that through groups such as Lioness the milk bank has been able to raise hundreds of thousands of dollars over these past few years. I commend them. It is the policy of our Government to commend and support local initiatives such as this milk bank because they are providing an enormous service.

There is no doubt about the evidence of the incidence of inadequate nutritional intake for babies up to six months of age in New South Wales. It is policy of the Department of Health to encourage that babies be given breastmilk for as long as possible. The population health survey shows that 8.9 per cent of babies are not receiving breastmilk at birth. At three months of age that figure rises to 50 per cent and to 83.3 per cent at six months of age. It is a difficult thing and not everyone can do it, but where it can be done and where the mother is motivated this is a model worth replicating.

AUSTRALIAN ITALIAN COMMUNITY

The Hon. MARIE FICARRA (Parliamentary Secretary) [7.48 p.m.]: It is my great honour to welcome to the Legislative Council many members of Sydney's Australian-Italian community. I congratulate them on their work for a variety of charitable organisations they have represented over the years they have made Australia their home. They have been brought here tonight by Teresa Restifa, who is a wonderful friend of mine. She and her husband, Sam, organised for them to come in tonight for a tour of Parliament House to see democracy in action. I thank them on behalf of the Italo-Australian community based in Sydney and the many Australians of non-Italian background who value the contribution they have made to society over many years by providing community services and aged care. Many organisations are represented here tonight. On behalf of the New South Wales Parliament and the community, I thank them very much for their contribution to our society.

[*Time for debate expired.*]

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

Motion agreed to.

The House adjourned at 7.50 p.m. until Friday 14 October 2011 at 9.30 a.m.