# LEGISLATIVE COUNCIL

Wednesday 13 June 2012

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

**The President** read the Prayers.

**Pursuant to sessional orders Formal Business Notices of Motions proceeded with.**

## NSW WOMEN OF THE YEAR AWARDS

### Motion by the Hon. MARIE FICARRA agreed to:

1. That this House notes that:

   (a) Ms Fran Rowe, from Tottenham, was announced as the winner of the Premier's Woman of the Year Award, for her pioneering work in establishing one of the first rural financial counselling services which provides voluntary counselling services to farming families facing financial difficulties,

   (b) Ms Yvonne Keane, from Kellyville, was announced as the People's Choice Community Hero winner, the category nominated and voted by the New South Wales public for her outstanding service as Founder of Reach for the Rainbow and dedicated volunteer with Hear the Children, and

   (c) Dr Edith Weisberg, of Vaucluse, was conferred the *Daily Telegraph's* Life Time Achievement Award for her 40-year commitment to research, education and clinical practice in the areas of women's health, reproductive health and family planning.

2. That this House acknowledges and commends Ms Fran Rowe, Ms Yvonne Keane and Dr Edith Weisberg for their outstanding service in the New South Wales community.

3. That this House acknowledges the judging panel for its work, which comprised of:

   (a) Jodie Fox, co-founder of Shoes of Prey and Sneaking Duck, Telstra Businesswoman of the Year 2011, Hudson Private Award,

   (b) David Gallop, Chief Executive Officer, Australian Rugby League Commission,

   (c) Major Paul Moulds, AM, Director of Mission and Resources Social, the Salvation Army,

   (d) Jeni O'Dowd, Editor-at-Large and Saturday Editor for the *Daily Telegraph*,

   (e) Cath Webber, Editor of website *thetelegraph.com.au*, and

   (f) the Hon. Pru Goward, MP, Minister for Women.

## BUDGET DOCUMENTS 2012-2013

### Production of Documents: Order

### Motion by the Hon. Adam Searle agreed to:

That, under Standing Order 52, there be laid upon the table of the House within 14 days of the date of passing of this resolution the following documents in the possession, custody or control of the Treasurer, the Minister for Finance and Services, the Premier, NSW Treasury, the Department of Finance and Services or the Department of Premier and Cabinet relating to the Government's 2012-2013 budget finances:

(a) any document detailing recurrent and capital estimates at agency level for the financial years 2011-2012 to 2014-2015 inclusive; printouts provided from Treasury's Financial Information System should only be the version consistent with the 2012-2013 State budget,

(b) any document identifying uncommitted, unallocated funds or contingencies within those forward estimates; printouts provided from Treasury's Financial Information System should only be the version consistent with the 2012-2013 State budget,

(c) all estimates relating to projects included in the State Infrastructure Strategy, Metropolitan Strategy and the State Plan 2021,

(d) any document showing economic and other assumptions underpinning the estimates for the financial years 2012-2013 to 2014-2015 inclusive,

(e) any document identifying or qualifying risks and contingent liabilities that might impact the financial years 2011-2012 to 2014-2015 inclusive,

(f) any document that relates to the State's future financial position as revealed in the estimates,

(g) any documents pertaining to 2011-2012 actual budget performance not requested elsewhere in this motion,

(h) all documents pertaining to revenue estimates 2012-2013 to 2014-2015 inclusive, and

(i) any document which records or refers to the production of documents as a result of this order of the House.

## BUDGET DOCUMENTS 2012-2013

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(a) all advice, correspondence, briefing papers and documents provided by New South Wales government departments, agencies and public trading enterprise sectors to the Treasurer, New South Wales Treasury or the Department of Premier and Cabinet relating to the 2012-2013 budget, including but not limited to:

(i) any documents that assess the impact of any of the measures outlined in the budget,

(ii) any models or documents that estimate the revenues to be raised as a result of the measures outlined in the budget,

(b) all advice, correspondence, briefing papers and budget kits provided to any members of Parliament relating to the 2012-2013 budget handed down on 12 June 2012, and

(c) any document which records or refers to the production of documents as a result of this order of the House.

## NETBALL NSW STATE CHAMPIONSHIPS

### Motion by the Hon. MARIE FICARRA agreed to:

1. That this House notes that over the Queen's Birthday weekend, New South Wales' most eminent athletes travelled to the 2012 State Netball Championships held at Penrith and officially opened by the Hon. Graham Annesley, MP, with the following districts winning the Championship titles:

(a) Open Championship Winner: Manly Warringah Netball Association, comprising:

(i) Coach: Janene van Gogh,

(ii) Manager: Anka Cveticanin,

(iii) Erin Cordina, Tianna Cummings, Emma Dutfield, Sophie Dutfield, Kristina Janjic, Kayle Leatham, Eliza Long, Kim Murphy, Chesne Stafford, Nicole Stafford and Mikah Van Gogh,

(b) 19U Championship Winner: Newcastle Netball Association, comprising:

(i) Coach: Tracey van Dal,

(ii) Manager: Helen Matthews,

(iii) Claudia Russell, Caitlin Lobston, Yasmin Meakes, Tanisha Stanton, Tara Andrews, Georgia McVey, Maddy Dunn, Karli Ireland, Paige Stevenson, Danielle Van De Verken and Eliza Lewis,

(c) 17U Championship Winner: Liverpool City Netball Association, comprising:

(i) Coach: Jennie Webster,

(ii) Manager: Vicki Elsley,

(iii) Ema Kulanoa, Olivia Doyle, Gloria Masiasomua, Sarah Cook, Jade Riley, Renee Rickard, Kathryn Vukovich, Brittany Kenny, Tamara Lay, Kristiana Manu'a and Chaymber Te Kani,

(d) Over 35 Championship Winner: Manly Warringah Netball Association, comprising:

(i) Coach: Lesley Pagett,

(ii) Manager: Susan Marinan,

(iii) Megan Beale, Cathy Chiddy, Charmaine Commane, Emma Cronin (Pearse), Andette Flynn, Stephanie Harding, Karen Ingram, Fiona Pearse, Kate Perrett and Tanya Russell,

(e) Over 40 Championship Winner: Manly Warringah Netball Association, comprising:

(i) Coach: Karen Avery,

(ii) Manager/player: Linda Patterson,

(iii) Suzie Buttel, Jenny Ekanayke, Jenny Gage, Natalie Harrison, Janelle Mitchell, Ann Raicevich, Julie Ring, Trina Skidmore, Michelle Steanes and Tracey Veale,

(f) Over 45 Championship Winner: Hills District Netball Association, comprising:

(i) Co coaches: Christine Cigana and Steve Barton,

(ii) Primary Carer: Terri Slater,

(iii) Janette Barton, Cherie Bird, Lisa Hedges, Monica Mayo, Pauline McAlary, Denise Slater, Derani Strachan, Joanne Thomson, Jane Williamson and Karen Williamson,

(g) Open Division Two Winner: Orange Netball Association,

(h) 17U Division Two Winner: Lakeside Netball Association,

(i) 17U Division Three Winner: Cessnock Netball Association, and

(j) Pat Weston OAM Country Championship Cup Winner: Hastings Valley.

2. That this House congratulates and commends the teams that won NSW Championship Titles and all players, administrators and officials that participated at the 2012 State Netball Championships.

## GRIFFITH STATE EMERGENCY SERVICE

### Motion by the Hon. SHAOQUETT MOSELMANE agreed to:

1. That this House notes that:

(a) State Emergency Service volunteers from the Griffith State Emergency Service Unit responded to requests for assistance during the major flooding, property inundation, and hail storms in March 2012,

(b) that this was a declared natural disaster,

(c) that the following members of Griffith State Emergency Service volunteered to assist:

(i) Richard Mortlock (Local Controller), 21 days
(ii) Terry Potroz (Deputy Local Controller), 20 days
(iii) Brett Kerruish,12 days
(iv) Kyle Broome, 21 days
(v) Jason Broome, 21 days
(vi) Kadeem Darlow, 21 days
(vii) Stephen Phillpot, 21 days
(viii) Ian Kelly, 18 days
(ix) Scott Norris, 19 days
(x) Bradley Palmer , 21 days
(xi) Tim Milne, 21 days
(xii) Victoria Ervin, 5 days
(xiii) Stephen Jackson, 8 days
(xiv) Lynette Power, 12 days
(xv) Kelvin Suffield, 10 days
(xvi) Robert Molone, 7days
(xvii) Jan Broome, 19 days
(xviii) Peter Broome, 19 days
(xix) Christine Potroz, 15 days
(xx) Michael Barbero, 17days
(xxi) Vanessa Philpot, 9 days
(xxii) Robert Oliver, 5 days
(xxiii) Patrick Jackson, 5 days

(xxiv) Keith Cheetham, 3 days
(xxv) Cindy Daymond, 6days
(xxvi) Julian Daymond, 6 days
(xxvii) Stephen Hodges, 17 days
(xxviii) Tom Pearce, 3 days

(d) that the Griffith State Emergency Service Unit was supported by:

(i) 21 other State Emergency Service units from across New South Wales,
(ii) the Murrumbidgee Regional Headquarters of the NSW State Emergency Service,
(iii) the NSW State Emergency Service State Headquarters in Wollongong,
(iv) adjoining shire councils

(e) that State Emergency Service personnel were also supported by other community volunteers from local community groups, schools, and by residents.

2. That this House congratulates all members of the Griffith State Emergency Service Unit for their tireless service to the New South Wales community.

3. That this House congratulates all other professional personnel and volunteers who assisted.

## YOUNG SHIPPING AUSTRALIA

**Motion by the Hon. JOHN AJAKA agreed to:**

1. That this House acknowledges the dedication of Young Shipping Australia in promoting career progression, industry policy and safety, in the advancement of Australia's shipping industry.

2. That this House notes that:

(a) on Monday 28 May 2012, Young Shipping Australia held the annual Shipping Industry Outlook event at Parliament House,

(b) the event sought to provide young professionals with insight into shipping industry career development and progression opportunities, and

(c) Shipping Australia is an active participant on the Transport and Logistics Workforce Advisory Group.

3. That this House notes that, amongst other things, the work of Young Shipping Australia includes:

(a) providing opportunities for the exchange of information and discussion between various levels of industry,

(b) creating and maintaining contacts between the public, industry and interest groups, and

(c) cooperating with government and relevant bodies in ensuring that Australian legislation impacts positively on the shipping industry.

4. That this House commends Young Shipping Australia for their continuous efforts in the expansion of the invaluable shipping industry, and developing associated career progression and networking.

## UNPROCLAIMED LEGISLATION

**The Hon. Greg Pearce** tabled a list detailing all legislation unproclaimed 90 calendar days after assent as at 12 June 2012.

## AUDITOR-GENERAL'S REPORT

**The Clerk** announced the receipt, pursuant to the Public Finance and Audit Act 1983, of the Performance Audit Report entitled, "Physical activity in government primary schools: Department of Education and Communities", dated June 2012, received and authorised to be printed this day.

## PETITIONS

### Coffs Harbour Koala Population

Petition requesting the protection of the koala population and its habitat in Bongil Bongil National Park, Pine Creek State Forest and surrounding land, the listing of the koala population as an endangered population under the Threatened Species Conservation Act 1995, and the preparation of a recovery plan for the koala population by the Office of Environment and Heritage, received from **Mr David Shoebridge**.

## BUSINESS OF THE HOUSE

### Withdrawal of Business

**Private Members' Business item No. 5 in the Order of Precedence withdrawn by the Hon. Matthew Mason-Cox.**

## BUSINESS OF THE HOUSE

### Postponement of Business

**Government Business Notice of Motion No. 1 postponed on motion by the Hon. Michael Gallacher.**

## SESSIONAL ORDERS

### Budget Estimates and Related Papers 2012-2013

**The Hon. MICHAEL GALLACHER** (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [11.13 a.m.], on behalf of the Hon. Duncan Gay: I move:

That, during the present session and unless otherwise ordered:

1. Each speaker on the motion to take note of the budget estimates is to be limited to 10 minutes.

2. Debate on the motion to take note of the budget estimates for 2012-2013 is to take precedence after debate on committee reports on Tuesdays.

3. The debate on the budget estimates is to be interrupted at such time so that debate on committee reports and debate on the budget estimates does not exceed two hours. The interrupted debate is to stand adjourned and be set down on the business paper for the next day on which it has precedence.

This motion is consistent with previous motions giving members of this House the opportunity to participate in debate on the budget. The Opposition seeks to amend the motion regarding limits on members' speaking time. It proposes to change the limits from 10 minutes to 15 minutes. Given that a short time ago I gave notice of a motion to change sessional orders to adjourn the House on Tuesdays at 7.00 p.m., it simply means that the number of speakers will be reduced if all members take their full 15-minute allocation. Be that as it may, I am happy to accept the Opposition's amendment if it is moved formally.

**The Hon. AMANDA FAZIO** [11.14 a.m.]: I move:

That the question be amended by omitting "10 minutes" in paragraph 1 and inserting instead "15 minutes".

This change will enable members to reflect more comprehensively on the impact of the budget on New South Wales.

**Question—That the amendment of the Hon. Amanda Fazio be agreed to—put and resolved in the affirmative.**

**Amendment of the Hon. Amanda Fazio agreed to.**

**Motion as amended agreed to.**

## NATIONAL ENERGY RETAIL LAW (ADOPTION) BILL 2012

## ENERGY LEGISLATION AMENDMENT (NATIONAL ENERGY RETAIL LAW) BILL 2012

### Second Reading

**The Hon. JOHN AJAKA** (Parliamentary Secretary) [11.16 a.m.], on behalf of the Hon. Duncan Gay: I move—

**The Hon. Luke Foley:** The big guns.

**The Hon. JOHN AJAKA:** I acknowledge the interjection. I move:

That these bills be now read a second time.

The National Energy Retail Law (Adoption) Bill 2012 and the Energy Legislation Amendment (National Energy Retail Law) Bill 2012 establish a national uniform scheme for the regulation of electricity and gas retail markets in New South Wales. The bills will give effect to the national electricity market reform program in this State. The reforms began under the Council of Australian Governments and aim to streamline regulatory requirements for energy retailers across the national electricity market. Accordingly, they will maintain strong consumer protections. In 2004 the Commonwealth, State and Territory governments entered into the Australian Energy Market Agreement. The governments that were party to this agreement included New South Wales, Victoria, Queensland, South Australia, Tasmania, the Australian Capital Territory and the Commonwealth. Together, these jurisdictions make up the national electricity market. The agreement set the agenda for the transition from jurisdiction-based energy regulation to national energy regulation. The 2006 revisions to the agreement underpin this current and final component of the national energy retail market reforms.

**The PRESIDENT:** Order! There is far too much audible conversation in the Chamber. Members should conduct their conversations outside the Chamber.

**The Hon. JOHN AJAKA:** There is a real need for national reform. At present, different regulatory frameworks for energy retailing across jurisdictions are inefficient. For instance, significant costs are imposed on retailers operating across State borders. These costs inevitably are passed on to consumers by way of higher energy prices. Harmonised regulatory requirements will reduce compliance burdens on retail energy businesses. They will also increase competition in the energy market and ultimately place downward pressure on energy prices. These reforms are called the national energy customer framework, which I will refer to as the "customer framework". The customer framework consists of a package of laws, regulations and rules. The key component of the customer framework is the National Energy Retail Law. This law is a legislative base for the customer framework.

The National Energy Retail Law is being implemented across the national electricity market through an "applied laws" model. This means that one jurisdiction enacts the law and all participating jurisdictions then apply that law. South Australia, which is the lead jurisdiction, enacted the National Energy Retail Law (South Australia) Act 2011 in September 2011. The National Energy Retail Law is found in the schedule to that Act. Victoria, the Australian Capital Territory, Tasmania and the Commonwealth have already introduced similar legislation, or will soon do so. New South Wales will implement the customer framework through two cognate bills and subordinate instruments.

The first bill is the National Energy Retail Law (Adoption) Bill 2012, which I will refer to as the "adoption bill." The second bill is the Energy Legislation Amendment (National Energy Retail Law) Bill 2012. I will refer to this as the "amendment bill" in outlining its provisions. The adoption bill will apply the National Energy Retail Law in New South Wales. The amendment bill makes consequential changes to existing New South Wales statutory instruments. The key players in the national energy customer framework will be customers, energy retailers and energy distributors. In order to be supplied with gas or electricity small customers, mostly households, will contract with retailers for the supply of energy. The distributors supply and maintain the poles and wire or pipelines in suburban streets that supply each customer.

I turn first to the adoption bill. The National Energy Retail Law will replace current State-based energy and gas retail licensing with the national authorisation regime. The national regime will be administered by one regulator, the Australian Energy Regulator. Businesses wanting to sell energy in the national energy market will now need to hold only one national retailer authorisation instead of multiple jurisdictional retail licences. This will reduce the compliance costs faced by retailers and increase competition as consumers will have greater choice when it comes to choosing an energy retailer. Further, having a single national regulator will enhance transparency around retailer authorisations and accountability of retailers. Having one national regulator with the power to grant authorisation provides broader market protection. This is because the experience of individual jurisdictions will influence whether a retailer will be granted an authorisation to supply energy in the national energy market.

New South Wales currently has limited access to information about how a retailer conducts its operations in another jurisdiction. It will be unduly erroneous to impose retailer authorisation obligations on those who supply energy when the selling of energy is not their core business. For this reason the National Energy Retail Law includes an exempt selling regime. The aim of the national exempt selling regime is to accommodate business models that do not fit within the national retailer authorisation framework. Good examples of these types of businesses are landlords and residential park proprietors who sell energy to their tenants or residents. The legislation will enable them to do so without the need to hold a national retailer authorisation. They will be known as "exempt sellers." Usually the cost of complying with retailer authorisation obligations would ultimately be passed on to customers. The exempt seller provision means that this can be avoided.

The current New South Wales exempt selling regime will transition to the national regime. However, in moving to the national regime it is important that the protections currently afforded to New South Wales customers are retained. New South Wales will therefore retain the obligation for exempt sellers to comply with the Energy and Water Ombudsman's scheme as there is no equivalent requirement in the National Energy Retail Law. Access to a fair and independent dispute resolution process is an important protection for all small customers, regardless of where they purchase their energy. Small energy customers are defined in the National Energy Retail Law as households or small businesses that consume less than 160 megawatts of electricity or one terajoule of gas per year. When it comes to negotiating the terms and conditions of their energy supply, customers, and in particular small residential and business customers, generally have limited knowledge of their rights and entitlements.

There is a further concern. The monopolistic nature of the electricity and gas distribution networks means customers have limited bargaining power when they enter into a connection contract with a distributor. To avoid this situation the National Energy Retail Law maintains the existing New South Wales approach. This approach ensures that strict rules govern contract negotiations and business disclosure obligations to small customers. Energy is an essential service. The National Energy Retail Law reinforces this by providing that at least one retailer will be obliged to supply each small customer in the national energy retail market. This will eliminate the risk of a customer being refused by all retailers. Importantly, the National Energy Retail Law requires that the terms and conditions of the contract between the customer and a retail or distribution business must be transparent, fair and reasonable. To ensure this, standard contract terms and conditions will be set out in the National Energy Retail Law.

There are three types of contracts that will be available under the National Energy Retail Law. I will describe each one briefly. Under the law small customers will be able to choose between two types of energy offers: a standing offer under a standard retail contract and a market offer under a market retail contract. Currently, New South Wales retailers who do not offer regulated contracts can only offer customers market offer contracts. I will describe regulated offers after standing and market offers. Under the reforms all retailers will have standing and market offers. This will provide for a more competitive retail energy market. The terms and conditions of standard retail contracts will be contained in national energy retail rules. Prices will be set by retailers and can only be changed every six months. Market retail contracts will have negotiable terms and conditions but must still comply with minimum terms and conditions. This is to ensure that no customer is provided with energy under unreasonable conditions. This will enhance current customer protections in New South Wales.

The third type of offer is a regulated offer. Retail price regulation will be retained in New South Wales at least until June 2013. Price regulation ensures that consumers in New South Wales do not have to pay more than is necessary to access electricity and gas. It also provides certainty for retailers. These prices will continue to be regulated by the Independent Pricing and Regulatory Tribunal. The adoption bill provides that retailers who must currently offer regulator prices to small customers will continue to be subject to this obligation in the terms of their standard retail contract. Other retailers will be obliged to notify customers of their entitlements to regulated prices. A further protection is offered to customers. The consumption thresholds currently placed in New South Wales, which determine which customers are entitled to regulated prices, will be maintained. This is in line with the Government's policy that the transition to the customer framework must ensure that all customers will have equal or stronger protections than those available under New South Wales requirements.

The National Energy Retail Law also introduces additional protections for customers who consume energy without a contract. At present in New South Wales if a customer moves into a residence and does not enter into an energy supply contract then minimal regulatory requirements apply. The National Energy Retail Law introduces deemed customer retail arrangements to deal with this sort of situation. The price that a retailer

can charge in this situation will be capped at the standing offer price. As well, these customers will have access to the protections available under standard retail contracts. No customer in New South Wales will be left without minimum protections or slip through the cracks. In making the transition to the customer framework customers will not face any disruption or be required to do anything to maintain access to their energy. Instead, customers on regulated contracts and market contracts will continue on these contracts.

In fact, the only changes customers will notice will be a new enhanced price comparison service. This will be through a one-stop shop, with information on pricing offers, energy efficiency, market updates and other information. Until the customer framework commences in New South Wales, customers will continue to have access to the Independent Pricing and Regulatory Tribunal's price comparison website. In fact, the price comparison website under the customer framework will be based on the Independent Pricing and Regulatory Tribunal's model. With regard to the strength and protections for customers across the energy chain, the National Energy Retail Law forges direct relationships between distributors and consumers. Distributors will be obliged to offer ongoing energy supplies and to physically connect customers to energy supplies. The National Energy Retail Law will regulate these contracts.

Having contracts in place between distributors and customers provides an important level of consumer protection. Electricity distributors already have contractual relationships with their customers. The National Energy Retail Law will extend these arrangements to gas distributors. Both gas and electricity distributors will be required to offer standard connection contracts. Deemed standard connection contracts will apply between small customers and a distribution network where there is an existing connection. Distributors may also develop standard connection contracts for large customers. The Australian Energy Regulator must approve these contracts to ensure the terms are fair and reasonable.

A further type of contract, a negotiated connection contract, will be available for small and large customers. However, distribution businesses will be required to explain to customers the differences between negotiated connection contracts and deemed standard connection contracts. As well, they will need to explain the implications of these differences. This will help consumers better understand which contract is the most appropriate for their particular circumstances. The National Energy Retail Law creates a robust consumer protection framework with particular protections for vulnerable consumers in financial hardship. Retailers will need to adopt and implement customer hardship policies approved by the Australian Energy Regulator.

These policies will essentially be the same as the current New South Wales hardship charter, allowing the strong protections already afforded to New South Wales customers to be extended to customers in other jurisdictions. The only aspect of the national hardship policy which New South Wales will not be adopting is the requirement for retailers to develop and offer energy efficiency programs to hardship customers. This is because the New South Wales Government already has in place a number of energy efficiency schemes targeting the most vulnerable of customers. One example is the Home Power Savings Program. Imposing regulatory obligations in addition to the existing programs in New South Wales would duplicate these programs and add unnecessary costs to customers.

In recent times, complaints by small customers in relation to the marketing tactics of energy retailers and those acting on their behalf have been increasing. The retail energy marketing rules under the National Energy Retail Law are designed to better regulate energy marketing. The national law includes strong protections to promote transparency and full disclosure in interactions between businesses and consumers. It requires retailers and their marketing agents to obtain explicit, informed consent from small customers before entering into contracts. In this respect the customer framework will complement the Australian Consumer Law and national telephone and e-marketing legislation. It will create a best practice approach to energy marketing. The marketing requirements under the National Energy Retail Law will replace and essentially duplicate the New South Wales Marketing Code of Conduct. This will ensure that New South Wales marketing protections are maintained. At the same time it will reduce duplication and red tape for energy businesses by moving the protections into the national framework.

The National Energy Retail Law puts in place a national scheme for "retailer of last resort" events. The scheme is designed to ensure that there is a "backup retailer" who can take over and supply customers if a retailer fails or exits the market. Retailers will also be able apply to become additional retailers of last resort for certain areas. This will allow for greater flexibility during a retailer of last resort event. This scheme provides important protections by ensuring customers have continued access to energy. It also provides financial security for wholesale energy markets. The National Energy Retail Law sets out the practices and procedures to be followed in the case of a retailer of last resort event. The Australian Energy Regulator will monitor the scheme

and be responsible for registering and appointing "retailers of last resort". The national scheme will ensure greater control over retailer of last resort events, particularly if they affect cross border communities. In the case of a potential or actual retailer of last resort event, the Australian Energy Regulator will work closely with jurisdictions to ensure the transition for customers to the new retailer happens smoothly.

The final matter I wish to address in relation to the National Energy Retail Law is enforcement and compliance. Currently in New South Wales compliance is monitored by the Independent Pricing and Regulatory Tribunal. The Australian Energy Regulator will take over this role when the National Energy Retail Law commences in New South Wales. Under the customer framework, all retailers and distributors in the national energy market will be obliged to provide regular information to the Australian Energy Regulator. Information will be required on matters specific to the customer framework, including performance against hardship program indicators and distributor service standards.

The Australian Energy Regulator will have access to a greater range of tools to enforce compliance, than those currently available in New South Wales. The regulator will be able to revoke authorisations, and impose civil penalties and infringement notices. As well, it will be able to accept enforceable undertakings with energy market participants. This is designed to promote compliance without having to proceed to court action. A national compliance and enforcement regime will reduce duplication of resources, reduce the regulatory requirements for industry, and streamline the compliance and enforcement regime across the national energy market.

The Australian Energy Regulator will be required to publish annual compliance and market performance reports. These will allow all stakeholders in the market to see how effectively it is operating. Having one national regulator monitoring and reporting publicly on compliance increases market transparency and accountability. More information will be able to be shared and compared across the energy market, with best practice initiatives implemented across all of the participating jurisdictions. It will also reduce the duplication of resources as compliance is currently monitored by several jurisdictional regulators.

Each jurisdiction has issues specific to its market. It is not practical for these local issues to be addressed in the national legislation. The National Energy Retail Law (Adoption) Bill therefore includes specific New South Wales provisions. One of the principal objectives of the national energy customer framework is to create a more efficient operating environment for businesses. However, it is critical that the needs of consumers are balanced against those of the market. On this basis, New South Wales will maintain certain specific consumer protections in our State-based legislation. This will require New South Wales to make certain modifications to the National Energy Retail Law. These modifications cover four main issues: the role of the Australian Energy Regulator; the small compensation claims regime and prepayment meters; exemptions for certain businesses from the operation of the National Energy Retail Law; and liability arrangements for distributors. I will deal with each of these issues in turn.

First, New South Wales will modify the role of the Australian Energy Regulator so it is able to deal with some specific New South Wales matters. As I have already told the House, the Australian Energy Regulator will become the regulator for the national energy market. It will also play a role in relation to some aspects of the national distribution market. In addition, the regulator will be responsible for ensuring that retailers comply with the New South Wales-specific regulated price modifications. Further, it will be responsible for ensuring that retailers and exempt sellers comply with decisions of the New South Wales Energy and Water Ombudsman.

The Australian Energy Regulator will also monitor retailer and distributor compliance with the requirements in the National Energy Retail Law. It is therefore reasonable for the regulator to monitor these New South Wales specific matters which will feed back into its annual reporting regime. However, the National Energy Retail Law (Adoption) Bill also provides for the Independent Pricing and Regulatory Tribunal to provide information and assistance to the Australian Energy Regulator. The Australian Energy Regulator will be able to draw on the expertise of the Independent Pricing and Regulatory Tribunal in the New South Wales market.

New South Wales will not be adopting the small claims compensation regime in the National Energy Retail Law or rolling out prepayment meters. At this stage it is unclear what the benefits and costs of these policies will be. The New South Wales Government therefore intends to undertake further analysis of these matters before making a decision on whether they should be adopted. The National Energy Retail Law (Adoption) Bill will enable New South Wales to exempt certain persons from the customer framework. These exempt persons do not fit into the categories of exempt sellers who can apply for exemptions from the Australian Energy Regulator.

The exemption power in the bill is designed to capture two kinds of business activity. First, it exempts firms which sell energy as a key part of their business, but which have inadvertently been captured by the National Energy Retail Law. For example, this could be a generator who makes energy specifically to supply to an aluminium smelter. Imposing the customer framework obligations on these kinds of businesses would be costly and burdensome, and would not deliver any equivalent benefit to their direct customers. The second types of businesses which New South Wales will exempt are cross-border retailers and distributors.

These businesses will include those who operate a minor part of their business in New South Wales and already comply with the customer framework in another jurisdiction. However, these businesses will be required to comply with the customer framework in the other jurisdiction with respect to their New South Wales operations. This exemption will limit the costs faced by such businesses. Requiring them to make significant modifications for a small proportion of their business would otherwise impose unnecessary costs, which would in turn be passed on to their customers.

The National Energy Retail Law (Adoption) Bill will modify the way in which the National Energy Retail Law regulates the liability of distributors. The national law provides that distributors cannot vary or exclude their liability to small customers for failure to supply on the grounds of negligence or bad faith. In addition, liability can be limited in relation to large customers only by agreement. The bill will enable distributors to vary or limit their liability. Restrictions on how they can limit liability will be contained in regulations. If New South Wales applied the approach to liability contained in the National Energy Retail Law, customers would face household energy price increases. That is because businesses would be subject to significantly higher insurance costs, and those would be passed on to households and business consumers. To protect customers from significant, unnecessary price rises New South Wales will maintain existing arrangements.

I have outlined the key provisions of the National Energy Retail Law, which will establish the National Energy Customer Framework in New South Wales. I now turn to the second of the two cognate bills before the House today—the Energy Legislation Amendment (National Energy Retail Law) Bill 2012, or the amendment bill. The Australian Energy Market Agreement requires jurisdictions to repeal and amend existing jurisdictional legislation which is inconsistent with or which limits the operation of the National Energy Retail Law. As the National Energy Retail Law will replace New South Wales regulatory arrangements, consequential amendments to New South Wales energy legislation are required.

The amendment bill will make consequential amendments to the New South Wales Electricity Supply Act 1995 and the Gas Supply Act 1996. The bill repeals the retailer licensing regime, the "retailer of last resort" arrangements and retail price disclosure information, as well as other retail provisions now covered by the National Energy Retail Law. The amendment bill also makes consequential amendments to the Acts which apply the National Gas Law and the National Electricity Law in New South Wales. This will ensure the National Energy Retail Law is consistent with the broader national energy regulatory regime. In addition, the National Energy Retail Law relies upon jurisdictional legislation to give full effect to certain components of the National Energy Customer Framework. Those components relate to guaranteed customer service standards, the operation of the Energy Ombudsman scheme and obligations for retailers to comply with New South Wales social programs. Amendments have been made to both the Electricity Supply Act and the Gas Supply Act so that these matters can operate consistently with the National Energy Customer Framework.

Some matters in the National Energy Customer Framework fundamentally change the way some energy businesses currently operate in New South Wales. To ensure a smooth transition to the National Energy Customer Framework with as little disruption to customers as possible, the amendment bill includes transitional provisions. Further, as New South Wales will be retaining regulated prices, the amendment bill makes provision for the Independent Pricing and Regulatory Tribunal to continue to monitor and report on retailer compliance with regulated offer requirements. This will ensure that customers who are entitled to regulated offers have the opportunity and information available to them to access these prices if they wish.

The National Energy Retail Law (Adoption) Bill and the Energy Legislation Amendment (National Energy Retail Law) Bill will commence on proclamation. On 1 July 2012 a number of significant regulatory changes will come into force, which will have a major impact on the energy industry. Those changes include the Australian Government's carbon tax. Postponing the commencement of the National Energy Customer Framework in New South Wales will ensure the transition to the new rules is as smooth as possible. This will limit the number of changes the energy industry will have to negotiate on 1 July. However, it is important that this legislation is passed now so that industry participants will be clear about the regulatory framework that will apply in New South Wales and will have sufficient time to prepare for its commencement. Residential customers and small businesses should not be unduly affected by a delay.

Consultation at both a national and State level has been a key part of the development of the National Energy Customer Framework. Government officials from all jurisdictions have worked with stakeholders to develop this comprehensive regime which will put in place an efficient national framework while creating strong protection measures for customers. The New South Wales Government released a public consultation paper on proposed policy positions for the National Energy Customer Framework in September 2010. Submissions were received from industry groups, consumer groups and the New South Wales Energy and Water Ombudsman. This feedback and ongoing consultation informed the bills before the House today. In addition, public forums were held throughout the State and stakeholder working groups were convened to canvass different issues. These were an important source of advice in the development of the policy positions which inform this legislation.

This process has been in train since 2006. The National Energy Customer Framework will foster greater competition. Households and businesses in New South Wales will benefit from the entry of new retailers into the market. We can expect to see these new retailers offering new products at lower prices. The two bills before the House deliver on the New South Wales Government's commitment to energy market reform and to maintain best practice consumer protection in the energy sector. The Government is confident that the right balance has been struck in the framework between the interests of consumers and industry. The bills will implement the final stage of this significant national energy reform process—a National Energy Customer Framework. I commend the bills to the House.

**The Hon. LUKE FOLEY** (Leader of the Opposition) [11.44 a.m.]: On behalf of the Opposition I address the National Energy Retail Law (Adoption) Bill 2012 and the Energy Legislation Amendment (National Energy Retail Law) Bill 2012. I indicate at the outset that the Opposition will support the legislation. The principal objective of this legislation is to apply as a law of New South Wales the National Energy Retail Law. Indeed, the enactment of this legislation is part of a uniform scheme of legislation in applying the law which relates to the supply of energy to customers by retailers and distributors in all States and the Australian Capital Territory.

The National Energy Retail Law Scheme provides for a number of matters including the regulation of the supply of energy by retailers to customers; the provision of information about contractual and pricing options for energy supply; the authorisation of retailers to supply energy; the regulation of contracts relating to the provision of connection services by energy distributors; an exempt seller and a retailer of last resort scheme; small compensation claims; rules and regulations for the further implementation of the scheme; and compliance and enforcement of the scheme.

This legislation is the latest exercise in the development of the national electricity market. That market was established in the 1990s and governments on the east coast of Australia and now Tasmania have joined together in the longest interconnected power system anywhere in the world. When it was created in the 1990s the national electricity market was governed by a series of rules. The national electricity objective has two basic concepts: that there should be a secure supply of electricity and that the supply should be efficient. I believe that the time has come to update the national electricity objective to enshrine other concepts, particularly an objective to minimise electricity prices and to generate electricity as efficiently as possible in a manner consistent with ecologically sustainable development. Indeed, the Labor Party asserts that those two concepts do not contradict each other in any way and that both can be achieved.

This morning the Independent Pricing and Regulatory Tribunal has made its final decision concerning electricity prices in New South Wales, which will take effect on 1 July. That final decision allows for an average price increase of 18 per cent across New South Wales and is higher than the 16 per cent price increase indicated in the draft decision of the Independent Pricing and Regulatory Tribunal in April. The reason for that further 2 per cent increase in electricity prices in this State is an increased allowance for financing for electricity generation.

That is further evidence—as if any more were needed—that the way the national electricity market currently works is massively tilted in favour of the electricity companies and against the interests of citizens. Having said that, the National Energy Retail Law is being implemented across the national electricity market. Through this legislation New South Wales is now enacting that law. Having different regulatory frameworks for energy retailing across different jurisdictions is inefficient. Significant costs can be imposed on retailers operating across State borders that can then be passed on to consumers by way of higher energy prices.

The Government says that in making the transition to the customer framework customers will not face any disruption or be required to do anything to maintain access to their electricity. There will be a new price comparison website with information on pricing offers, energy efficiency market updates and other information. Minister Hartcher made strong statements in debate in the other place indicating that the strong existing consumer protections in New South Wales will continue. The consumption thresholds in place in New South Wales that determine which customers are entitled to regulated prices will be maintained. Retailers will need to adopt and implement customer hardship policies approved by the Australian energy regulator.

The National Law puts in place a national scheme for retailer of last resort events to ensure that there is a backup retailer that can take over and supply customers if a retailer fails. The Australian Energy Regulator will also be responsible for ensuring that retailers and exempt sellers comply with the conditions of the New South Wales Energy and Water Ombudsman. Further, because New South Wales is retaining regulated prices the amendment bill makes provision for the Independent Pricing and Regulatory Tribunal to continue to monitor and report on retailer compliance with regulated offer requirements.

The process for transition to the national customer law was well underway under the former Labor Government. Former energy Minister Paul Lynch made it clear to me in discussions I had with him that the former Labor Government was always working to ensure that the consumer protections we have in New South Wales would not be watered down by any move to the national regime. Minster Hartcher's statements indicate that, as Minister, he has pursued the same approach in discussions concerning the implementation of the national customer law.

New South Wales has a strong and effective customer framework that governs how energy retailers treat their customers, and we must ensure that it is retained. That includes rules regarding disconnection procedures, marketing of energy offers to small customers, customer hardship policies, and minimum contract terms and conditions. It also ensures that New South Wales customers have access to a range of government assistance measures to help them pay their bills, including rebates, emergency vouchers and payment plans. The Minister in the other place has made very strong statements to the effect that there is no erosion of consumer protection arrangements for New South Wales customers. The Opposition will hold the Government to account on those commitments. On the basis of the statements made and the legislation before the House, the Labor Opposition is content to support these bills.

**Dr JOHN KAYE** [11.55 a.m.]: On behalf of The Greens I address the National Energy Retail Law (Adoption) Bill 2012 and the Energy Legislation Amendment (National Energy Retail Law) Bill 2012. The Greens will not seek to stop the passage of these bills through the House; however, on behalf of my party I will raise a number of concerns that will play out over the fullness of time and will make some of the changes being contemplated today look less attractive to some members of this House than they presently appear.

I will start with the underpinning of what the transition in the electricity industry will mean at the retail level. I have to admit that I had some role in this as an academic and engineer at the University of New South Wales. Starting in the mid 1980s there was a push to change the pricing basis of the electricity industry away from long-run marginal costs to short-run marginal costs. That is to say, to move it more towards an industry that was based on prices that reflected what would appear in a market. In the early 1990s, under the stewardship of Prime Minister Paul Keating and the Council of Australian Governments, the industry made a transition to a market basis firstly at the generation end with the creation of the national electricity market. That involved all States and Territories except the Northern Territory and Western Australia. That market was based on spot price competition between generators.

The next phase of the project was to introduce competition at the retail end. Competition has been profoundly less successful in that area than it was at the generation end. It has not been as successful because it requires customers to understand what the alternatives are. Markets only work in the context of complex and rich knowledge and most customers do not have that knowledge, or the time, to ensure that they can maximise their outcomes. The Leader of the Opposition stated that his party felt there was a need for an amendment to the objectives of the national energy market. I largely agree with him, although I think we should go further than that. Efficiency should remain an objective; however, it is important that we have a zero carbon objective. We can muck about and groan, but the settled science is that a zero carbon electricity industry is probably the only way to—

**The Hon. Dr Peter Phelps:** The settled science.

**Dr JOHN KAYE:** Tony Abbott, your Federal leader, accepts it so perhaps you should listen to him.

**The Hon. Dr Peter Phelps:** Perhaps you should listen to Lee Rhiannon.

**Dr JOHN KAYE:** Perhaps you should listen to Tony Abbott and you should hear what he has to say about the science. Leaving aside the dinosaurs who do not accept the settled science, those of us who do accept it know that moving to a zero carbon objective is the only sensible thing to do. Ten years ago that would have been completely unrealistic, but advances in technology have created the opportunity for Australia to make that transition in 15 to 20 years without devastating the economy. In fact, it would enrich the economy by creating hundreds of thousands of new jobs.

I do not agree with the third objective of the Leader of the Opposition to minimise prices. I do not think prices are important here. What is important here are the bills that people pay. There is a subtle but extremely important distinction between the bill paid by a consumer and the price paid, and the distinction is the quantity they consume. Reducing the total quantity consumed can compensate for rising prices.

**The Hon. Trevor Khan:** So you want them to sit in the dark.

**The Hon. Dr Peter Phelps:** Rich people can consume more but poor people cannot.

**The PRESIDENT:** Order! I call the Hon. Dr Peter Phelps to order for the first time.

**Dr JOHN KAYE:** The difference is the quantity that is consumed. There are people who presume that reducing the quantity consumed means reducing end-user satisfaction, but largely they are people who have missed the entire debate about energy efficiency, or have chosen to ignore that debate, or are incapable of understanding that debate. But there has been a large amount of work done on improving energy efficiency. For example, light globes that are put into household sockets illustrate the point that it is not about sitting in the dark but, rather, it is about using less energy to achieve the same outcome. The reality is that reducing energy bills is possible, but it requires capital formation. One of the reasons it is important to have the objective of minimising bills in the national energy market is the need to ensure that low-income households in particular have access to capital. Without access to capital, they can be trapped in an environment of rising electricity prices.

Underlying all that remains a profound concern of The Greens that competition may not be the most appropriate way to deliver objectives at the retail end, particularly when people are concerned about low-income households and what happens to low-income households who are living on the edge. The classic case is the single supporting mother with four adolescent children who lives in a west-facing apartment in western Sydney and who does not have access to opportunities to utilise highly energy-efficient air-conditioning and who does not have access to modification of her apartment and does not have access to money to purchase high-efficiency water heating or high-efficiency appliances. Competition between different retailers will not resolve the problems for such people. But we need to adopt an interventionist approach to assist people in those situations to reduce the amount of energy they consume and to reduce their bills.

Turning to the specific framework in the legislation that is before the House, I will not go through the details that the Parliamentary Secretary and the Opposition spokesperson examined. The framework is about transitioning away from the existing State-based regulation to the National Energy Customer Framework specifically for retailing and also for some aspects of distribution. It applies to New South Wales, Victoria, Queensland, South Australia, Tasmania, the Australian Capital Territory and the Commonwealth—the participating jurisdictions within the national energy market. At the end of 2013 it would have caused a substantial transition to the new customer framework away from the existing regulatory arrangements for New South Wales. I said "would have" because, as I will do in a minute, my colleague the very excellent member for Balmain, Jamie Parker, in the lower House during debate on Wednesday 30 May raised a number of consumer protection issues.

*Hansard* shows clearly that at the time the assertions made by the member for Balmain were robustly rejected by the Minister for Resources and Energy, Government members and some Opposition members in the lower House as nonsense. But, interestingly, the very next day the Minister for Resources and Energy, the Hon. Chris Hartcher, issued a media release headed, "National Energy Framework to commence in 2014." It states:

> The NSW Government will defer the commencement of reforms under the National Energy Customer Framework ... to ensure they only commence once the Government is satisfied that consumer information protection measures are satisfactory.

That was indeed a victory for my friend and colleague the member for Balmain, Jamie Parker, who embarrassed the Government into delaying until 2014. Nonetheless, 2014 is still only two years away, rather than one year away for implementation, and that leads to a number of issues that have been raised by The Greens, the Public Interest Advocacy Centre [PIAC], the Park and Village Service [PAVS], which is a branch of the Combined Pensioners and Superannuants Association and which works with older people who live in caravan parks and retirement villages, and the Energy and Water Ombudsman NSW [EWON]. The concerns relate to consumer protections and one of those is the $300 disconnection fee.

Members will recall that on 24 January this year the Australian Energy Regulator [AER] held a consultation session in Sydney at which the $300 figure for a disconnection fee was discussed. The regulator also received submissions. The $300 disconnection fee has substantial impacts on low-income and disadvantaged households in our community. The Greens would like the Parliamentary Secretary to clarify the results of consultations. We note that the $300 disconnection fee is still a live issue, so we request the Parliamentary Secretary to explain to the House exactly what happened in relation to the consultation and why we are still looking at a $300 disconnection fee. One of the features of the National Energy Consumer Framework that will have impacts on a range of small businesses is raising the threshold from 100 megawatt hours of electricity or one terajoule of gas per year to 160 megawatt hours a year at least until June 2013, which I presume will now mean June 2014.

I note that in the second reading speech of the Minister for Resources and Energy he refers to 160 megawatts a year. Of course, that is nonsense. I presume he meant—and I am surprised that a Minister for Resources and Energy would make such a rudimentary error—160 megawatt hours a year. A megawatt is a measure of power. A megawatt hour is a measure of energy. If the House wishes I will be happy to deliver a lecture on the difference between power and energy, but I will not do so now.

**The Hon. Mick Veitch:** Please don't.

**Dr JOHN KAYE:** I have been requested not to, so I will not; but members who wish me to do so should let me know. The issue is that a range of small businesses consume between 100 megawatt hours and 160 megawatt hours a year. Effectively, they will be taken out of the regulated sector of the market and thrown into more competition. Many of them will lose protections. The Greens request the Parliamentary Secretary to comment on the protections that will remain available to small business customers who consume between 100 megawatt hours and 160 megawatt hours of electricity a year, how many of them there are, what will be the impacts, and what studies the department has undertaken to ensure they are protected. The issue of late payment fees was raised by the Public Interest Advocacy Centre. There are real concerns about uncapped late payment fees that would apply from June 2013, but now will apply in July 2014 or when the Minister is satisfied, given the delay in the implementation of the laws.

Nonetheless, once New South Wales protections are lifted, what consumer protections will apply to unrestricted late payment fees in the future? Some households struggle, and indeed some households that do not struggle quite so much have been known to pay their electricity bills just a little bit late, or not quite on time. These things happen in the busy lives of our constituents. Our concern is that with the removal of the cap on late fees, particularly for low-income households, they will be hammered. This could send some households into a debt spiral of greater late payment fees causing a larger amount of money to be owed, creating even more stress on households. We would like the Parliamentary Secretary or any of his advisers to address that issue.

Another issue raised by the Public Interest Advocacy Centre and others is collection cycles. One of the features of the National Energy Customer Framework is shortened collection cycles for customers who are experiencing difficulties paying their bills. Industry and Investment NSW admitted in 2010 that it did not have evidence of the impact of shortened collection cycles on customers. In the absence of such evidence we would like to know from the Minister, given that the Public Interest Advocacy Centre has raised the issue, what he thinks the impact will be and how he will protect customers who are put on shortened collection cycles.

The National Energy Customer Framework discontinues the requirement for retailers to give customers notices that their premises have been or are about to be disconnected, which will have substantial impacts on a number of low-income households. The National Energy Customer Framework changes the provisions that oblige energy retailers to notify customers of upcoming price variations by newspapers and their website in the case of customers on standard contracts, and by individual notification in writing in the case of customers on market contracts. The National Energy Customer Framework moved to a situation where it will be able to comply with its obligations to notify customers about tariff changes by the terms in the customers' contracts.

That is to say, there will be no separate notification. We would like the Parliamentary Secretary to respond to the issue that Victoria and South Australia are not required to give prior notification of price changes via newspapers or individual communications, while both Queensland and New South Wales retailers are currently required to do so. Such absence of notification will impact on low-income households.

The termination of a standard retail contract 10 days after being disconnected if the customer has not met the requirements for reconnection within the National Energy Customer Framework will disadvantage many customers. Many customers who default and breach their contract conditions and are unable to satisfy the retailer within 10 days will lose their contracts entirely and will not have met the conditions for reconnection. This is punitive on households that are struggling to make ends meet. We ask the Parliamentary Secretary to address those issues.

Finally, some issues were raised by Park and Village Service which, as I said before, operates under the auspices of the Combined Pensioners and Superannuants Association of New South Wales. It convenes the New South Wales residential parks forum, which comprises representatives from parks residents groups throughout the State, Aboriginal tenancy advice services, Legal Aid and community workers. The National Energy Customer Framework will dispense with existing provisions contained within the customer service standards for the supply of electricity to permanent residents of residential villages that provide protections for residents in park villages from exempt suppliers, who often offer a quality of supply of energy far below the standard energy retail supplier. Exempt suppliers are often the owners of the village or the park itself who on-retail the energy to the residents.

Our concern is that an exempt supplier should not be able to charge the resident the full availability charges unless the amount is linked to the number of amps or the number of kilowatt hours that the resident is supplied with. If the exempt supplier is also the landlord the matter should go before the Consumer, Trader and Tenancy Tribunal to make an order to permit disconnection. Our concern is that, with the landlord being an exempt supplier, disconnection will happen without appropriate protections for the consumer. In many cases these are consumers who do not have access to a substantial amount of money and who are often vulnerable and trapped within those parks.

The Energy and Water Ombudsman was also involved in the National Energy Customer Framework process since 2005. It has raised a number of concerns including the request that the Government abandon removal of the current protections around the imposition of late fees, post-disconnection notices, the issue of shortened collection cycles and abandoning the limit of 10 days to rectify disconnection. These are important matters in relation to protecting low-income households, who will suffer if they are not rectified. We hope the Parliamentary Secretary in his speech in reply will be able to address the matters I have raised. The Greens do not oppose this legislation; however, we have concerns about the philosophical underpinning and the protections available for consumers and the failure to help low-income households deal with rising electricity prices.

**The Hon. DAVID CLARKE** (Parliamentary Secretary) [12.15 p.m.]: I support the address the National Energy Retail Law (Adoption) Bill 2012 and the Energy Legislation Amendment (National Energy Retail Law) Bill 2012. The overarching aim of the National Energy Customer Framework is to harmonise the licensing arrangements and regulation of electricity and gas retailers operating across the jurisdictions of the national energy market. Harmonisation will mean that there will be one set of rules for electricity and gas retailers across the States and Territories of the national energy market. This includes all jurisdictions other than Western Australia and the Northern Territory. The New South Wales Government has supported streamlining these rules because they will provide benefits to energy businesses and to customers. The benefits for businesses ultimately flow through to consumers as lower costs and increased competition.

The separate regulation of energy retail markets by individual States and Territories is inefficient and imposes costs on retailers operating across State borders. There is duplication of processes and systems, which leads to higher compliance costs for companies and, in turn, energy costs for consumers. As the House will be well aware, the Government is committed to reducing pressure on electricity prices. Electricity prices are a key issue for New South Wales families and we are designing policies that will place downward pressure on electricity prices. The harmonisation of energy regulation will significantly reduce the amount of red tape for businesses and the community. This aligns with the State goal, as outlined in NSW 2021, of increasing the competitiveness of doing business in New South Wales. Currently every State and Territory imposes slightly different conditions and rules on energy companies. These modest differences can create significant costs.

As retailers increasingly operate across a number of jurisdictions their compliance burden also increases as they must comply with the different jurisdictional requirements and State regulators. Higher costs associated with meeting the red tape requirements might prove too costly and stop a retailer from entering the market in New South Wales, and we want as many retailers as possible operating in New South Wales to boost competition and choice for New South Wales residents. The former Government damaged competition in New South Wales with its fire sale that has left this State with three major retailers having the lion's share of customers. A review conducted by the Council of Australian Governments estimated that the different red tape requirements would cost a new retailer entering the market approximately $12 million per year. Harmonisation is likely to reduce these costs and encourage new retailers to enter the New South Wales energy market.

More retailers entering the market will increase competition and keep downward pressure on electricity and gas prices. The New South Wales Government has already been approached by a number of retailers wishing to enter the New South Wales market upon the commencement of the customer framework. This is a positive outcome for New South Wales households and businesses, which have been left with only three retailers after the former Government's sale process reduced competition. I commend the bills to the House.

**The Hon. Dr PETER PHELPS** [12.18 p.m.]: Dr John Kaye's contribution to this debate exemplifies the sort of "let them eat cake" mentality of the bourgeois left elite. I will quote from an earlier statement Dr John Kaye made:

> The new power stations would flood the State with cheap electricity and undermine the viability of renewable energy and energy efficiency.

He said new power stations would flood the State with cheap electricity. What is wrong with that? The Greens hate cheap energy. They hate cheap energy because they are opposed to consumption. They are opposed to consumption because at their very core The Greens are anti-humanity. They do not like the idea of people moving up or bettering their lives. They would like to have a solid-state cyclical arrangement where people live in an almost primitive existence of bare subsistence and no progress whatsoever. That is the anti-humanism that lies at the core of Green ideology. That is why they hate cheap energy.

The second reason The Greens hate cheap energy is that it is unequivocally associated with coal and gas. That points also to the fact that there are very deep links in the green movement with the so-called alternative energy industry. An alternative energy industry is not an energy industry because it is grossly uneconomic; that is the only alternative bit about it. Rather than use the correct title of uneconomic energy industry they choose superlatives such as alternative or green when at the heart of the matter it is simply uneconomic.

What does that mean? It means that The Greens and their friends in the uneconomic energy industry have to compete against the economic energy industry, which has cheap energy available. Dr John Kaye hates cheap energy, but what does that mean for low-income households? It means this: low-income households will have to pay more under a green Utopia—simply no way around it. It is not as if they can easily move to energy-efficient appliances, because that requires a capital outlay. While it is all right for Dr John Kaye living in his nice big air-conditioned eastern suburbs house on $150,000 to spend that sort of capital or more money—

**Dr John Kaye:** Point of order: The member's contribution is interesting; however, I do not live in an air-conditioned house and he should probably confine himself to the facts.

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

**The Hon. Rick Colless:** But he can afford to pay his electricity bills.

**The Hon. Dr PETER PHELPS:** Yes. By way of comparison, someone on $150,000 could easily afford to pay higher electricity costs yet someone on a substantially lower income could not. Fridges still require electricity, and that has to be paid for. Lights still require electricity. Presumably, heating in winter is also required. Perhaps Dr John Kaye believes that poor people should not have any heating in winter because that would mean relying on cheaper electricity. The simple fact of the matter is that coal, which is a very cheap power source, gives us a competitive advantage over the rest of the world. Coal is good. Coal makes us rich. Alternative uneconomic energy industries make us poor. Green schemes impoverish us. Coal makes us rich; green schemes impoverish us. Dr John Kaye and The Greens have, in their own way, adopted the slogan of OmniCorp—your weakness makes my wealth. The weakness of consumers makes wealth for The Greens and their mates in the alternative uneconomic energy industry.

Wealth is okay for the bourgeois left elite, but it is not possible to achieve across all segments of society the same levels of wealth as Dr John Kaye. Year after year we give vast amounts of money to the alternative energy industry and direct subsidies to uneconomic schemes. We give millions of dollars to universities—the foetid rump of green leftism in departments—to try to create economic schemes, which fail. And we give dollars for private firms to try to create efficient economic results. These firms are merely parasites that demand we pay for their business case when they cannot make one themselves. It is all uneconomic. The only way to believe the need to move to these ridiculous schemes is if one believes in the anthropogenic global warming myth. I point out that carbon dioxide is not pollution; it is plant food. Studies at the University of Western Sydney indicate that—surprise, surprise—plants with higher carbon dioxide levels grow bigger and faster.

**The Hon. Rick Colless:** Produce more food.

**The Hon. Dr PETER PHELPS:** And produce more food. Moreover, recently discovered photographs of 1930s Greenland indicate that the diminution of ice cover at that time is the same as the supposedly massive and unprecedented loss of ice cover today. But The Greens do not acknowledge this fact.

**The Hon. Rick Colless:** They deny it.

**The Hon. Dr PETER PHELPS:** They deny it. The Greens are climate deniers.

**The Hon. Rick Colless:** Deniers.

**The Hon. Dr PETER PHELPS:** Climate deniers. The hypocrisy of The Greens goes further and further, but on that point I shall conclude to allow the Parliamentary Secretary to make his speech in reply.

**Reverend the Hon. FRED NILE** [12.25 p.m.]: The Christian Democratic Party supports the National Energy Retail Law (Adoption) Bill 2012 and the Energy Legislation Amendment (National Energy Retail Law) Bill 2012. These bills will establish a national uniform scheme for the regulation of electricity and gas retail markets in New South Wales. They will give effect to the National Electricity Market reform program in this State. These reforms have been underway since 2006 with a great deal of consultation. They began under the Council of Australian Governments. The aim is to streamline regulatory requirements for energy retailers across the National Electricity Market. It is important that they maintain strong consumer protections. One problem the bills seek to address is that each State had different systems and regulations, which increased costs on retailers operating across State borders. Those increased costs then were passed on to consumers by way of higher energy prices.

Hopefully, the legislation will increase competition in the energy market and ultimately place downward pressure on energy prices. Certainly there is a great need for that. We just heard the announcement from the Independent Pricing and Regulatory Tribunal that, contrary to its draft decision last month, electricity prices will rise by an average of 18 per cent from next month—more than anticipated. In the eastern half of Sydney, the Central Coast, the Hunter and Newcastle costs will jump by nearly 20.6 per cent. In the western half of Sydney, Wollongong and the Southern Highlands charges will surge 11.8 per cent. In the rest of the State charges will surge by 19.7 per cent.

The interesting aspect of these increases approved by the Independent Pricing and Regulatory Tribunal is that that tribunal stated that 9 per cent of those average increases is due to the Australian Labor Party-Greens carbon tax, which comes into effect on 1 July. At $23 per tonne—this figure compares with no tax in other countries or a low tax of $1 per tonne in India—the carbon tax puts Australia in an extreme situation that will have a dramatic effect on our economy and industry, and reduce the ability to compete with other nations in supplying manufactured goods, et cetera.

More pressure will impact on various industries in this State, forcing them to close with resultant job losses. I hope that this new legislation will work to reduce increased electricity prices. We have seen much competition between various energy suppliers, some of which amounted to harassment of elderly people to change their supplier and sign a contract. I also hope that these bills will prevent that practice from continuing and provide greater cooperation where retailers will not abuse clients and offer a better deal, perhaps with better prices in the future. The Christian Democratic Party is pleased to support this legislation in the hope that it will foster greater competition and thereby benefit households and businesses in New South Wales. The community will benefit from the entry of new retailers into the market and hopefully those new retailers, in the spirit of competition, will offer new products at lower prices. I commend the bill to the House.

**The Hon. JOHN AJAKA** (Parliamentary Secretary) [12.30 p.m.], in reply: I thank all honourable members for their contributions to debate on the National Energy Retail Law (Adoption) Bill 2012 and the Energy Legislation Amendment (National Energy Retail Law) Bill 2012. The bills apply the national energy customer framework as law in New South Wales and amend seven sets of legislation. The amendments primarily repeal provisions that have been addressed under the national energy customer framework. The bills will regulate the sale and supply of energy to customers. They include strong customer protections and aim to increase the efficiency of the energy market.

In relation to the points raised by the Hon. Luke Foley, I would like to make a number of comments. The Government is greatly concerned about the announcement of price rises in New South Wales. I note that a substantial contributor to these price rises is the Commonwealth green schemes. These schemes will cost households around $315 per annum in 2012-13. I acknowledge it is important that the national electricity objective ensures that consumers are protected appropriately. As members may be aware, the Standing Council on Energy and Resources, which oversees the national arrangements, is undertaking significant work on measures to improve the efficiency of network regulation. The council released a comprehensive management plan last Friday.

I will now address the comments of Dr John Kaye. As I have already mentioned, environmental policies are imposing unsustainable costs on households. I remind members that the Independent Pricing and Regulatory Tribunal advises that green schemes will cost households $315 in 2012-13. That is not acceptable. This Government is working to put downward pressure on electricity prices. It will introduce the Family Energy Rebate on 1 July 2012 and it is working to improve network performance. These are just some of the measures the Government is implementing. Other members have addressed these matters. The issues raised by the member for Balmain were addressed by Minister Hartcher in the other place. The question in relation to the 100 and 160 megawatt hours and the small business customers issue will be examined by the Australian Energy Market Commission as part of the upcoming New South Wales competitive review.

As to the $300 disconnection fee, I am advised that consumer groups were involved in the consultation process and there was general support for the fee. In conclusion, this legislative package is a major step forward in harmonising energy regulation and was developed after extensive consultation with key stakeholders. The package benefits consumers and businesses by putting in place strong consumer protections, reducing red tape and increasing competition. The effects of these reforms are likely to flow on to customers through more competitive prices. I commend the bills to the House.

**Question—That these bills be now read a second time—put and resolved in the affirmative.**

**Motion agreed to.**

**Bills read a second time.**

**Leave granted to proceed to the third reading of the bills forthwith.**

## Third Reading

**Motion by the Hon. John Ajaka, on behalf of the Hon. Duncan Gay, agreed to:**

That these bills be now read a third time.

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

## TABLING OF PAPERS

**The Hon. MICHAEL GALLACHER** (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [12.34 p.m.], by leave: I table correspondence from Carmen Fernando, Michelle Fernando and Dayanthi Bonarius to the Premier, the Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council, together with an irregular online petition from 13,130 respondents concerning the Fernando family's campaign to repeal part 6B of the Firearms Act 1996.

I received this petition of 13,000-plus signatures regarding part 6B of the Firearms Act but was unable to table it as a petition because of the way in which it was formatted. I am taking the step of tabling it today to make it clear that the Government is not deaf to the concerns of these petitioners. At the time of tabling, the matter is subject to further review by the Government. I make it clear that tabling the document does not reflect upon any policy action the Government may take but represents my recognising the efforts of the Fernando family in making their feelings known to me and to the Government.

**Documents tabled.**

## SECURITY INDUSTRY AMENDMENT BILL 2012

**Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Michael Gallacher.**

### Second Reading

**The Hon. MICHAEL GALLACHER** (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [12.37 p.m.]: I move:

That this bill be now read a second time.

The Security Industry Amendment Bill 2012 will achieve significant improvements to the current regulation of the security industry. There has been extensive consultation with industry, and the issues raised are reflected in the reforms contained in this bill. The amendments will enhance the NSW Police Force's regulation of the security industry. Through this bill and associated reforms the fragmentation and lack of coordination identified by the Independent Commission Against Corruption in its Operation Columba will no longer exist. The Independent Commission Against Corruption report demonstrated that more work needs to be done to ensure ongoing compliance with the regulatory regime for the New South Wales security industry. The need for these amendments has grown out of the identification of growing risks surrounding the industry.

In 2009 the Australian Crime Commission [ACC] completed a two-year investigation into the private security industry nationally. The commission found that organised crime groups and outlaw motorcycle gangs have moved into the security industry in all mainland States, and are involved in illegal practices. The evidence of organised crime in the security industry further highlights the need to ensure that regulatory standards are enforced within the industry. The security industry plays a vital role in a wide range of businesses and government agencies throughout New South Wales. There are approximately 4,000 security firms of various sizes operating in the New South Wales security industry across different sectors and occupations. Master licensees range from large multinational companies, such as Chubb Security, to sole traders providing a limited range of services. The conduct of compliance audits on these businesses will be based on risk assessments and intelligence reports gathered and held by the NSW Police Force. The bill supports the conduct of these compliance audits through the insertion in the Act of new part 3B, which deals with enforcement.

Clause 39 of the Security Industry Regulation 2007 and sections 42 and 42A of the Security Industry Act provide for powers of inspection and seizure for police officers or other authorised persons in relation to inspections of security firms. Currently, the power is aimed at ensuring that compliance can be accessed only by sworn police officers. The bill expands legislative powers of enforcement to encompass civilian staff of police who have been authorised by the Commissioner of Police to exercise the functions of an enforcement officer under the Security Industry Act.

The bill further provides that for the purposes of conducting compliance auditing or generally administering the legislation at premises at which a security activity is being carried on no search warrant is required to enter. This aligns with the way compliance auditing is conducted by a range of other New South Wales government agencies. For example, the Gaming and Liquor Administration Act 2007 provides for power of entry without a warrant and powers of inspection and seizure for civilian inspectors. As with similar compliance inspection regimes, the bill limits the power of entry without a warrant to exclude entry into premises or part of premises that are used only for residential purposes. The bill also provides that entry must take place at a "reasonable time".

In addition to the power of entry without a warrant, the bill provides for application to be made for a search warrant for entry to premises. Search warrants can be applied for in cases where an enforcement officer believes on reasonable grounds that any provision of the Security Industry Act or the regulations is being or has been contravened on any premises. New section 39K of the bill outlines the powers that may be exercised by an enforcement officer following lawful entry to premises. These powers include requiring production of, examining and making copies of and seizing registers, books or other records. New Section 39M provides that civilian enforcement officers will be required to carry identification cards issued by the Commissioner of Police to demonstrate their status and will be required to produce these cards on request.

The provisional licensing scheme was introduced in New South Wales in 2007 to provide a pathway for new persons to enter the manpower sector of the security industry and work under supervision. The scheme was endorsed by the Council of Australian Governments in 2008; however, New South Wales remains to date the only State that has fully implemented such a scheme. The need to provide direct supervision together with the associated compliance costs has led to a widespread reluctance by master licensees to employ provisional licensees. This has motivated many new entrants to obtain interstate security licences and exploit the mutual recognition scheme to bypass the New South Wales provisional licensing scheme. For example, last year 50 per cent of applications for new New South Wales security licences were made under mutual recognition.

Five years of industry and regulator experience indicates that the provisional licensing scheme has not achieved its objectives, and has created more problems than it has solved. A number of stakeholder submissions to me highlighted this as a problem following a forum that I held with the security industry in August 2011. The bill therefore abolishes the scheme by repealing sections 12A and 38B. It is envisaged that this is likely to lead to a significant reduction in the number of mutual recognition applications for licences. A new provision for the grant of conditional class 1 licences is included to ensure that New South Wales continues to meet the Council of Australian Governments agreement to "introduce a provisional, probational or conditional licence in the manpower sector for a duration of not less than six months." The provisional licensing scheme was also used to impose restrictions on new entrants to the armed guarding sector.

While there is a sound argument for abolishing the current provisional licensing scheme there is still a need to maintain a provisional system for armed guards. Therefore, the Firearms Act 1996 is being amended to create a new provisional pistol licence and to make new armed guards subject to supervision and training requirements. Armed guards will be required to have a firearms licence under category H with the genuine reason of "business/employment" under the Firearms Act 1996 in addition to a class 1F security licence. Class 1F applicants will be able to move beyond working in the cash-in-transit companies to work as employees or appropriately trained and supervised volunteers in the area of static guarding of approved premises. The police commissioner will have the approval power to accept or reject an application.

The Commonwealth National Vocational Education and Training Regulator Act 2011 commenced on 1 July 2011. This Act established a national regulator—the Australian Skills Quality Authority [ASQA], which replaced State-based regulators in New South Wales through a referral of powers to the Commonwealth. The Commonwealth Act renders inoperative the legislative provisions that support police regulation of security industry training. This was an unintended consequence, as training of the security industry is only one of the many industries to be regulated by the Australian Skills Quality Authority. It is proposed that a declaration as per sections 10 and 11 of the Commonwealth Act be made in relation to security industry training so that the Security Industry Act 1997 powers of the NSW Police Force to oversight registered training organisations [RTOs] in New South Wales may be retained. This will mean that the NSW Police Force can regulate registered training organisations alongside the national regulator. Advice from the Commonwealth indicates that it supports this approach.

The Act currently provides for master licences to be classified into subclasses, with authority conferred to each subclass based on the number of persons carrying on security activities on behalf of the master licensee. New master licence subclasses will be created for businesses employing one to three persons, four to 14 persons and 15 to 49 persons. Subcontracting is a significant problem within the security industry. Currently a business that secures contracts to provide security services and entirely subcontracts that work out is not required to hold a master licence, as the business is not employing any person to carry on security activities. This means that directors, shareholders and managers of the business are not subject to probity checks.

In addition, the subcontractor needs to deliver the security services with a lesser profit margin than would be the case if it were contracted directly to the client and this, in turn, leads to problems endemic in the industry of non-compliance, low wages and labour exploitation. The amendments to section 10 provide that a master licensee's authorisation to supply persons to carry on security activities is irrespective of whether those persons are employees or are provided through subcontracting. Submissions from industry following the August 2011 stakeholder forum were unanimous in the call for stronger measures to regulate subcontracting arrangements. New section 38A of the bill prohibits unauthorised subcontracting by master licensees.

The Act currently provides for restrictions on granting a licence on the basis of criminal and other related history of applicants. The bill strengthens these provisions by amending section 16 so that if a person has ever been found guilty or convicted of a serious offence for which the conviction can never be spent, the Commissioner of Police will have the discretion to refuse the licence application. Industry consultation has revealed the need to address situations where master licensees have one-off spikes in employee numbers during major events. For instance, a company that regularly employs two guards might have to temporarily employ 30 guards for a New Year's Eve event. To address this situation, a provision is included in the bill for master licensees to apply for a temporary permit to exceed their authorised employee numbers.

The bill will also reduce red tape and gain efficiencies in the licensing process, which is of benefit to those working in the industry as well as to those regulating it. Under the Act, an application for a licence must be accompanied by two written references. Operational experience indicates that these provisions add significant time and cost to the making and processing of applications while not enhancing the quality or probity checking of applications. Therefore, section 14 (3) (b) will be repealed to remove this requirement. In addition, licensing processes will be streamlined. The bill will amend section 24 to provide for a licence renewal process, which will include the continuation of the authority of the old licence being renewed subject to any further particulars required by the commissioner and a provision for a penalty for late renewal.

A number of miscellaneous technical improvements that clarify the intent of the Act will also be implemented by the bill. Section 18 will be amended to extend the power to require fingerprints in connection with a licence application so that palm prints may also be required. This amendment will rectify an anomaly identified in the New South Wales legislation and will amend the Act by inserting "palm print" after "fingerprint" in section 18. The Security Industry Council was established as an advisory body for the then Minister for Police. The council's specific functions are currently outlined in section 43A of the Act. The council has not fully carried out the statutory role envisaged for it. With the police assuming the role of the principal regulatory body, there is no longer a requirement for the Security Industry Council to facilitate co-regulation in the way that was envisaged.

With the expansion of the Security Licensing and Enforcement Directorate [SLED] there will be a greater capacity to liaise regularly with industry associations and representatives and to ensure that communication and consultation occur. It is proposed that a non-statutory group called the Security Licensing and Enforcement Directorate Advisory Council under the police's State Crime Command be established to provide a forum for the regular exchange of information between the industry and the regulator. The industry has responded positively to that proposal. Therefore, the bill will repeal section 43A to abolish the Security Industry Council. The changes proposed in this bill will further strengthen the regulation of the security industry in New South Wales. I commend the bill to the House.

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

## MOTOR ACCIDENTS AND LIFETIME CARE AND SUPPORT SCHEMES LEGISLATION AMENDMENT BILL 2012

### Second Reading

**Debate resumed from 30 May 2012.**

**The Hon. ADAM SEARLE** (Deputy Leader of the Opposition) [12.51 p.m.]: I lead for the Opposition in debate on the Motor Accidents and Lifetime Care and Support Schemes Legislation Amendment Bill 2012. The Opposition supports the bill in principle, although we have concerns about some of the details contained within it. We have amendments that will deal with at least some of those concerns. The primary object of the bill is to clarify the operation of the Lifetime Care and Support Scheme under the Motor Accidents (Lifetime Care and Support) Act 2006.

In particular, the bill makes it clear that while a person who is a participant in the scheme is entitled to have certain expenses relating to treatment and care needs met by the Lifetime Care and Support Authority, the authority is obliged to pay only for assessed treatment and care needs. It is not obliged to pay for certain treatment, care, support or services provided on a gratuitous basis or by a person who is not an approved provider, or for any treatment, care, support or services of a kind declared by the regulations to be excluded treatment and care needs. The bill also makes it clear that participation in the scheme abolishes a participant's right to claim damages for economic loss or to receive payment under chapter 3 of the Motor Accidents Compensation Act 1999 in respect of their treatment and care needs.

As I indicated, the Opposition supports those aspects of the bill that arise from a decision of Justice Garling last year in the case of *Thiering v Daly* which has caused perhaps unintended consequences for the scheme. The Lifetime Care and Support Authority was established by the former Labor Government under the Motor Accidents (Lifetime Care and Support) Act 2006. It was intended to have a self-contained scheme to provide for all the treatment and care needs of persons who had been catastrophically injured in motor vehicle accidents in New South Wales, regardless of fault. Prior to the introduction of this scheme injuries in all motor vehicle accidents were dealt with under the green slip scheme and its costs were increasing at a level deemed to be unsustainable. The Lifetime Care and Support Scheme introduced a regime where levies would be collected as part of the green slip costs—that is, when you paid for your green slip you also paid a levy on the slip, that levy was remitted to the scheme and the scheme would pay all costs for the lifetime of the injured person or participant in the scheme.

Another focus of the scheme was to address difficulties that judges and courts had in adequately predicting and providing for the costs of ongoing treatment and care needs, particularly for young seriously injured persons who, in all likelihood, would need ongoing care for some decades. In addition, the need to establish the fault of another driver to obtain an award had the potential to disadvantage persons who were unable to conclusively establish fault of another driver, but who nonetheless were catastrophically injured and in need of care. In those situations the burden simply fell upon the New South Wales health system. The introduction of the Lifetime Care and Support Scheme was, in my view, a major achievement of the previous Labor Government. When the Hon. John Watkins, the then Deputy Premier and Minister for Finance, introduced the bill in the other place in 2006 he said:

> The bill clarifies that for a participant in the scheme the CTP insurer dealing with the claim is no longer required to meet any of the person's treatment and care expenses as those expenses are now required to be met solely by the Lifetime Care and Support Scheme. The Motor Accidents Compensation Act is also amended to exclude a lifetime participant in the scheme from recovering economic loss damages for any treatment and care needs.

The Lifetime Care and Support Scheme was calculated to ensure that the Lifetime Care and Support Authority was always in a position to meet all reasonable expenses of an injured person's treatment and care needs. As I indicated, the recent decision of Justice Garling in the matter of Thiering has now left open the possibility for injured persons in New South Wales to claim for gratuitous care—that is, care provided by family and friends—outside of medical and rehabilitative care otherwise envisaged by the Lifetime Care and Support Scheme. The decision has also left open the possibility that the compulsory third party insurers may, despite the original intentions of the legislature in the scheme, be liable in damages for the cost of some of the injured person's future treatment and care needs. In addition, Justice Garling pointed out a shortcoming in the legislation in that the Act does not oblige the Lifetime Care and Support Authority to provide or pay for all the needs of the participant.

If those anomalies are not remedied there is the potential to place a significant burden on the current level of both the compulsory third party premiums collected and the lifetime care and support levies collected through the green slip process. That is contrary to the original intention of the legislation. The bill will ensure that compulsory third party insurers are not exposed to the obligation to pay damages, and the Opposition supports that objective. The bill will also ensure that all reasonable and necessary treatment and care expenses of a participant or injured person in the Lifetime Care and Support Scheme are paid for from the levies collected from motorists, which was the original intended purpose of the legislation. The Opposition supports that objective also.

New section 141A of the bill clarifies that the authority is solely responsible for paying the expenses of all treatment and care and makes it clear that participation in the scheme abolishes an injured person's right to claim damages for economic loss for treatment and care needs payable under the Motor Accidents Compensation Act 1999. The Opposition also supports that objective. The bill also specifically lists the types of care and treatment needs that will be payable as those assessed by the authority under the Act. Furthermore, it

allows the Minister to make a regulation in the event of extraordinary circumstances such as if a person in remote or regional Australia is unable to access conventional medical care as set out in the bill. The bill sets out that the Lifetime Care and Support Authority is not required to make a payment for any treatment, care, support or service that is provided to participants on a gratuitous basis. As I indicated, we support that aspect of the bill.

However, we have concerns with some aspects of the bill, which I will list briefly. We understand the need to address the two issues arising from the Thiering case, and we support that action. But we have some concerns about the authority being able to determine what the treatment and care needs are or what treatment and care needs should be met from the scheme. We also have some concerns about the capacity by regulation to exclude certain care and treatment needs, as provided for in new section 11A (2) and (3). There is reference throughout the bill to assessed treatment and care needs, and I understand that the legislation proposes that the authority assess treatment and care needs.

I do not believe the need has been established for the authority to determine what is necessary or reasonable or what treatments should be excluded, and I believe to allow the authority to do so would be problematic. If there are unexpected developments in the scheme from time to time, such as occurred with Thiering, it should be a matter for Parliament to determine the appropriate changes. As we understand it, no case has been made for this level of change. I suspect that in drafting legislation to give effect to the Government's policy intention the Parliamentary Counsel may have simply gone a bit too far.

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

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

## QUESTIONS WITHOUT NOTICE

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### WORKERS COMPENSATION SCHEME

**The Hon. LUKE FOLEY:** My question is directed to the Minister for Finance and Services. Will the Minister tell the thousands of workers who rallied in the cold and wet outside Parliament House today whether the recommendations of the WorkCover report have already been incorporated into legislation? When will the Government make public its plans for the Workers Compensation Scheme?

**The Hon. GREG PEARCE:** I thank the Leader of the Opposition for that question. It is apparent that his counting skills have not improved since yesterday, because I had a good look at the group—

**The Hon. Greg Donnelly:** You were out there?

**The Hon. GREG PEARCE:** Of course I was out there. In fact, I posed for a photograph for the Hon. Walt Secord because he does not have enough photographs of me. He is not satisfied with the lovely photographs of me in the *Australian*, the *Sydney Morning Herald*, the *Daily Telegraph* and country media, so he took another one. I thought the Opposition was going to accuse me of misleading the House because I was wrong yesterday when I spoke about 400 people voting in the Sydney preselection for the Labor Party. Apparently it was 4,000. I was contacted by a woman who told me the tactics. She said she had been called on no less than eight occasions by some paid firm to try to get her to enrol to vote in the Labor Party preselection. Opposition members should check with some of their friends.

**The Hon. Luke Foley:** Point of order: My point of order is relevance. Mr President, I refer to your rulings yesterday that references in the Minister's answer to party preselections cannot be relevant to the question.

**The PRESIDENT:** Order! I uphold the point of order.

**The Hon. GREG PEARCE:** The Leader of the Opposition asked me about the rally. I tried to count the people in attendance and I got to about 300 umbrellas, although there might have been two or three people under some of them. To the extent that this is a serious question, the chairman is not here but I understand that the committee met on Monday, a public holiday.

**The Hon. Trevor Khan:** All day.

**The Hon. GREG PEARCE:** Committee members, including the Hon. Adam Searle, met all day on Monday to consider their report. I commend all of the committee members, particularly the upper House members, for being so committed. They were almost as committed as the O'Farrell Cabinet, because we also met on Monday. The Labor Party Cabinet would not meet on a public holiday or even on a Saturday or a Sunday unless they got penalty rates. They would want triple time and a half to meet on a Sunday.

As I understand it, the fantastic work of the committee is being compiled and I believe that the report is due to be provided to the Parliament today. I do not know whether it has already been provided. Has it been tabled? No. I probably should not ask questions of the Clerk. Nevertheless, as it has not been tabled it would be extraordinary if Parliamentary Counsel had been able to incorporate the report's conclusions. But I hope the report is tabled today. If it is, I assure the Leader of the Opposition that the Government will act quickly. I have to make a determination for workers compensation premiums to apply from 1 July—and most members know that 1 July is not far off. The Leader of the Opposition can expect prompt action on this matter.

## STATE EMERGENCY SERVICE

**The Hon. NIALL BLAIR:** My question without notice is directed to the Minister for Police and Emergency Services. Given the tragic flood events in eastern Australia over the past 18 months, will the Minister advise the House on what the Government is doing to ensure that the New South Wales State Emergency Service is adequately resourced?

**The Hon. MICHAEL GALLACHER:** It was only 18 months ago that Queensland was devastated by flooding of historic proportions. That flooding caused the deaths of 33 people and a further three people are still missing. Thousands were evacuated. More than 78 per cent of that State was declared a disaster zone, and the damage bill was in excess of $5 billion. Of course, the waters continued downstream and affected communities in north-western New South Wales, with Victoria also subject to its own flooding event.

Only months ago I stood in this place and informed the House of the Government's response to the most significant flooding in a generation that was being experienced in inland New South Wales. Approximately 70 per cent of New South Wales was flood impacted or at risk of being impacted earlier this year which, as I indicated to the House, is an area equivalent to the size of Spain. During the height of that emergency approximately 20,200 people were evacuated from communities, including Wagga Wagga, Forbes, Gundagai, Yenda, Urana, Barellan, Darlington Point, Cowra and Hay.

The New South Wales State Emergency Service undertook more than 175 flood rescues during this event and deployed more than 3,000 volunteers who were tasked with a range of important roles, including swift water rescue specialists, flood boat teams, aviation, community engagement and logistical resupply of multiple isolated communities throughout the State. The Government recognises the critical importance of being prepared for such natural disasters. That is why it has included the specific goal of ensuring that New South Wales is ready to deal with major emergencies and natural disasters in "NSW 2021: A plan to make NSW number one". Today I am pleased to inform the House of the significant investment the Government is making into our State Emergency Service to do just that.

Following the Queensland floods a commission of inquiry was established into the circumstances of the event. In August 2011 the commission handed down an interim report with 175 recommendations. A final report, which contained a further 177 recommendations, was handed down by the commission in mid-March this year. New South Wales agencies, led by the New South Wales State Emergency Management Committee, examined each of the recommendations in depth and determined that our State complied or exceeded compliance with most of the recommendations. Nevertheless, to ensure New South Wales has a strong position in relation to resourcing of the State Emergency Service and the changing nature of emergency management, the Government has decided to bolster the resources of the New South Wales State Emergency Service to ensure our State remains ahead of the game.

I am pleased to inform the House that as part of this year's budget $19 million will be invested in the State Emergency Service as part of a five-year, $96 million strategic disaster readiness package designed to help the New South Wales State Emergency Service prepare for, prevent and respond to flood and storm events. The package includes around $1 million a year to recruit an additional eight expert staff, such as flood engineers and planners, who will work towards maintaining and producing the hundreds of plans that assist our volunteers and our emergency service workers on the ground when it comes to major flood.

There will also be an investment of more than $2 million over four years to fund new wetsuits, rescue equipment and specialist flood rescue boats, as well as training courses for more volunteers to become expert flood rescue operators. The Government will also provide more than $500,000 a year to recruit additional specialist community engagement officers who will be located throughout New South Wales to provide information and education services to the community. The Queensland Floods Commission of Inquiry recommended that agencies examine social media use and the community's increasing dependence on using social media to seek information about current emergencies. [*Time expired.*]

**The Hon. NIALL BLAIR:** I ask a supplementary question. Could the Minister elucidate his answer in relation to State Emergency Service resources?

**The Hon. MICHAEL GALLACHER:** I thank the Hon. Niall Blair for his question. Nearly $150,000 a year will be made available to establish a new social media capacity for the New South Wales State Emergency Service. The Government also recognises the importance of the State Emergency Service maintaining adequate numbers of volunteers to respond to emergencies right across New South Wales. Approximately $150,000 a year will be provided to the service to develop a new dedicated resource and program to recruit and retain volunteers. The Queensland commission of inquiry also made specific recommendations to ensure that rescue vehicles have children's personal flotation devices, not just adult sizes, so $150,000 will be invested to purchase brand new personal flotation devices for children.

Importantly, more than $46 million over four years will be invested to standardise and centralise the State Emergency Service operational vehicle fleet, which currently is 533 vehicles strong. This will ensure that the service, like other emergency services, has a standard vehicle design and consistent operational usage of vehicles across the State. The Government also recognises the importance of supporting our front-line State Emergency Service volunteers in 228 units across the State. That is why up to $6 million a year will be made available directly to support local units in their day-to-day running costs, ensuring local units have appropriate training facilities available to support them in their emergency operations and training.

It is an important recognition of the role that the State Emergency Service plays that this contribution has been made by Government. Quite simply, the contribution is long overdue. I am sure all the members of this House will congratulate the State Emergency Service on the fine work it has done. The contribution by Government has been made as a result of the submission by the State Emergency Service to government. This excellent package will be well received by volunteers throughout the State.

## WORKERS COMPENSATION SCHEME

**The Hon. ADAM SEARLE:** My question is directed to the Minister for Finance and Services. Will injured workers be required to bear the whole brunt of changes to workers compensation in New South Wales while insurance companies continue to collect hundreds of millions of dollars in revenue from the scheme?

**The Hon. GREG PEARCE:** No.

## CULTURAL INSTITUTIONS FUNDING

**The Hon. JEREMY BUCKINGHAM:** My question is directed to the Minister for Roads and Ports, representing the Minister for Primary Industries.

**The Hon. Trevor Khan:** Is that a new haircut?

**The Hon. JEREMY BUCKINGHAM:** Mr President—

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

**The Hon. JEREMY BUCKINGHAM:** How will the funds from $185 million in operating grants to cultural institutions to "help them enhance cultural, creative and recreational opportunities", as announced in yesterday's budget, be allocated? Can New South Wales taxpayers be confident that those operating grants will not operate as a fund for pork-barrelling for The Nationals?

**The Hon. DUNCAN GAY:** That is a shameful slur. My answer is that they will be thoroughly, fairly and properly allocated. I remember when the Labor Party had a member representing Broken Hill, the former member for Murray-Darling. We all remember him.

**The Hon. Michael Gallacher:** He had an intoxicating personality.

**The Hon. DUNCAN GAY:** He certainly did have an intoxicating personality.

**The PRESIDENT:** Order! I cannot hear the Minister because of the noise being made by Government backbench members.

**The Hon. DUNCAN GAY:** I remember when Peter Black used to travel to the shires association's conferences.

**The Hon. Jeremy Buckingham:** Point of order: My point of order relates to relevance. I asked a question about $185 million that the Government has allocated as pork-barrelling, not about Peter Black.

**The PRESIDENT:** Order! I call the Minister for Finance and Services to order for the first time. There is no point of order.

**The Hon. DUNCAN GAY:** This is an important lesson for the Hon. Jeremy Buckingham and for The Greens. It is about communicating with people. Peter Black was not the best communicator during certain hours of the day but he had a statement he used to make to the shires association's conferences about RONPIs. For a while we were not sure what he meant. RONIs are roads of national importance. He used to talk about RONPIs. He meant roads of National Party importance. He used to think that we would not like that, but we certainly did—because all the roads in New South Wales are roads of The Nationals importance. The direct answer is that it will be done appropriately and it will be done fairly, unlike the treatment of the Pacific Highway by the Federal infrastructure body.

**The Hon. JEREMY BUCKINGHAM:** I ask a supplementary question that also is addressed to the Minister for Roads and Ports. Who will be allocating the funds?

**The Hon. DUNCAN GAY:** Mr President, is that a question within the standing orders?

**The PRESIDENT:** Order! Is the Minister taking a point of order?

**The Hon. DUNCAN GAY:** I am taking a point of order.

**The PRESIDENT:** Order! The question did not seek to elucidate an aspect of the answer. The supplementary question is out of order.

## PORT KEMBLA PRIVATISATION

**The Hon. JOHN AJAKA:** My question is directed to the Minister for Roads and Ports. Will he update the House on Port Kembla?

**The Hon. Sophie Cotsis:** Shame.

**The Hon. DUNCAN GAY:** Mr President, don't you love it? Opposition members boo and carry on like prize chooks. They are the ones who are saying that somewhere, somehow, we have to find the $2.31 million that Anthony Albanese cut New South Wales out of, but they do not want us to do anything about it. They live in a time warp and have not learned any lessons from the past. The Government plans to refinance State-owned assets at Port Kembla to fund priority infrastructure projects across New South Wales, including in the Illawarra. After a decade and a half of underspend on infrastructure by Labor we are facing an immense challenge to fund the backlog of critical infrastructure across our State; yet Opposition members want to stand arm in arm with their union mates and oppose plans to deliver more funding for infrastructure.

**The Hon. Steve Whan:** You mean the workers.

**The Hon. DUNCAN GAY:** Some of your union mates are not workers. Some are, but there is a lot who are not. The Leader of the Opposition and the member for Wollongong made it clear that they plan to stand in the way of the Illawarra receiving another $100 million for local infrastructure.

**The Hon. Steve Whan:** No, they did not.

**The Hon. DUNCAN GAY:** They did. The scoping study for the long-term lease of Port Botany has revealed strong bidder interest. In addition, the advisers have highlighted the significant value that Port Kembla could bring to the transaction.

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

**The Hon. DUNCAN GAY:** That prompted the Government to undertake additional scoping work to review its potential inclusion in the Port Botany transaction. Despite claims made by Opposition members, it is clear that in August and September last year when the Opposition asked me questions in this place we had no plans to refinance Port Kembla. For the benefit of Opposition members who are hard of hearing and slow to learn let me again make it clear that when I was asked on 4 August 2011 whether there were plans to privatise ports in New South Wales I had no plans, as I said in the House.

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

**The Hon. DUNCAN GAY:** What I said then was a statement of fact. Thereafter the Government developed a plan to refinance Port Botany. I thank the Hon. Eric Roozendaal for asking such a pertinent question and for planting the idea in the Treasurer's head. Thanks, Eric. On 13 September 2011 Opposition members went on a fishing exercise. They asked me about plans to privatise Port Kembla and the port of Newcastle. I gave a clear response: "... there are no plans before me to privatise Newcastle or Port Kembla".

I make it clear for those opposite that there were no plans. It was advice from the Port Botany scoping study advisers that prompted the Government to consider plans to refinance the State-owned assets at Port Kembla. This advice was only received shortly before the budget. I add, over the loud noise opposite, that this was good advice. There is strong private sector interest in quality infrastructure assets in New South Wales, and we think that both Port Kembla and Port Botany can deliver significant value for New South Wales taxpayers.

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

**The Hon. DUNCAN GAY:** Not only will releasing the value held in these businesses increase— [*Time expired.*]

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

**The Hon. DUNCAN GAY:** I add for the benefit of those opposite that if they stopped interjecting we could get through these answers in the allotted time. There is strong private sector interest in quality infrastructure assets in New South Wales and we think that both Port Kembla and Port Botany can deliver significant value to New South Wales taxpayers. Not only will releasing the value held in these businesses increase the Government's capacity to invest in priority infrastructure, private-sector involvement in the ports also has the potential to enhance efficiency of port operations down the supply chain, which will provide a broader benefit for the economic development of our State and the region. As with the proposed Port Botany transaction, additional scoping work will be undertaken which will provide recommendations on the best way forward and ensure clear public interest outcomes are protected.

Proceeds from the transaction will be invested in Restart NSW, with 30 per cent of funds reserved for projects in regional areas, while $100 million is earmarked for infrastructure projects in the Illawarra which will be determined by Infrastructure NSW later this year. It is a good win for the region. Unfortunately, all we hear from those opposite is carping and whining. They do not want us to get on with the job of building infrastructure. They yearn to go back to the bad old days of Labor where there was a severe underinvestment in infrastructure. It is time for those opposite to get on board and say yes, we support greater investment in infrastructure. They should say yes, we want more money to be invested in the Illawarra. They should say yes, we want more money to be invested in the Princes Highway. [*Time expired.*]

## SOUTHERN RIVERINA TOURISM PLAN

**The Hon. ROBERT BORSAK:** My question without notice is directed to the Minister for Finance and Services, representing the Minister for the Environment. Can the Minister inform the House about what progress has been made in establishing cycling and walking tracks around the Moira Lakes and the development of a Murrumbidgee and Yanga Lakes kayaking tour, which were the centrepieces of her $1.5 million funding announcement in Mathoura in March this year?

**The Hon. GREG PEARCE:** I am sure the Minister for the Environment has made considerable progress in those important activities. I hope she has been able to keep the member for Sydney away from them, particularly the cycling tracks. If Clover Moore got anywhere near them we would be in a great deal of trouble rather than having an important addition to facilities which will enable people to use our State. I will get the member a detailed answer on progress and I hope we will all be able to visit at some stage and take in some canoeing down the creek.

## SPEED CAMERAS

**The Hon. STEVE WHAN:** My question is directed to the Minister for Roads and Ports. Yesterday the Minister told the House during question time that he would be happy if he did not raise one dollar from speed cameras. Given that the Minister has just increased fines by 12.5 per cent and doubled the number of speed cameras on New South Wales roads—and in light of Andrew Stoner's comments on speed cameras in December 2010 that they were Government grabbing money from motorists at any and every opportunity—does the Minister not think his comments are insulting the intelligence of New South Wales drivers?

**The Hon. DUNCAN GAY:** What insults the intelligence of people in New South Wales is to have a member like that parroting what happened in the past. He has not realised that things have changed. It is not the same old, same old.

**The Hon. Steve Whan:** Totally inconsistent.

**The Hon. DUNCAN GAY:** If the member just listened he would learn, and I will help him to not make the same mistake again. This will be a good lesson for all those opposite.

**The PRESIDENT:** Order! I call the Hon. Steve Whan to order for the second time. I call the Hon. Melinda Pavey to order.

**The Hon. DUNCAN GAY:** Had we gone ahead with where members opposite were and where they wanted to be his question would have some validity, but what we have done and what we have put forward are entirely different from what he supported and what he okayed in Cabinet. He okayed 12,500 hours for mobile speed cameras. We reduced that by 40 per cent. He okayed the duplicitous signing on safety cameras, cameras that were really speed cameras and red light cameras. We re-signed them so they say what they are and we have made the signs twice as big. When the Hon. Steve Whan was a Minister he ticked off on a single small sign as you approach the mobile camera that quite often had fallen over or had grass growing in front of it. We have large signs higher off the road.

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

**The Hon. DUNCAN GAY:** We have two signs in front of those speed cameras. The speed camera has a range of 70 metres. We have signs out to 250 metres. I am the motorists' friend. The member should be congratulating me as the motorists' friend. I am helping them to protect their licences but, more importantly, I am helping them to slow down so they not only keep their licences but also keep their lives and we reduce the toll on the roads. We pulled out 31 of 38 cameras—

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

**The Hon. DUNCAN GAY:** We pulled out 31 of 38 cameras because they were doing exactly what we thought they were doing—raising revenue more than contributing to road safety. My marks are good. There is a big tick for what I have done. The member is just jealous that he did not do it. Members opposite have the hide to raise the issue of revenue raising from speed cameras. I suggest that the member look at the last budget when he was in Cabinet and he ticked off what he and Eric wanted to do to the people of New South Wales. There is a huge reduction in what we are doing from what they wanted to do. People in glass houses should not throw stones.

## STATE BUDGET AND EMERGENCY SERVICES

**The Hon. CATHERINE CUSACK:** My question is addressed to the Minister for Police and Emergency Services. Will the Minister update the House on the progress of the review of the emergency service contributory funding system, as highlighted in this year's budget?

**The Hon. MICHAEL GALLACHER:** Yesterday the Treasurer delivered the second Liberal-Nationals Government budget, for 2012-13, a budget that, as he said, builds on our first year in office and builds for the future of our great State. During his address the Treasurers spoke of this Government examining the efficiency of our own taxes and reviewing the funding arrangements for fire and emergency services. He is entirely correct in stating that the current levy is one of the most inefficient taxes in the State. The Liberal-Nationals Government is committed to a review of the funding arrangements for emergency services. As a part of this review we have committed to consulting all stakeholders across New South Wales.

Currently the budgets of Fire and Rescue NSW, the Rural Fire Service and the State Emergency Service are funded by the insurance industry, local governments and the State Government. The insurance industry is required to contribute 73.7 per cent; local governments contribute 11.7 per cent and the State Government contributes 14.6 per cent from consolidated revenue. The total amount of funding is determined through budget processes each year and is based on the cost of service provision. Of course, many local governments go above and beyond their statutory contribution and provide facilities, in-kind support and other discretionary funding which assists in the day-to-day running of local brigades and units. I thank and recognise all those councils that do exactly that. However, at the same time there has been a longstanding need to review these statutory funding arrangements for our emergency services. This Government is delivering on this commitment.

Last year a steering committee for the review of the emergency services contributory funding system was formed comprising representatives from Treasury, Ministry for Police and Emergency Services officers, and senior representatives from Fire and Rescue NSW, the Rural Fire Service, the State Emergency Service and the Division of Local Government. Initial data analysis and background research was undertaken as part of the review to examine a number of different possible funding models. The Government's commitment to stakeholder consultation remains unchanged. I can advise the House that an announcement is expected shortly regarding public consultation.

Given that each of the three fire and emergency service agencies uses a different methodology to determine the amount to be contributed by individual local governments, a review clearly was needed. Different methodology is unnecessarily confusing for local government and imposing levies increases the paperwork involved for all parties. No changes to the current funding arrangements will take place without stakeholders first being consulted. I look forward to hearing the community's views as to how we should fund our emergency services as the consultation process progresses. Again I take the opportunity to thank all involved in this process to ensure that at the end of the day we get a fairer outcome for the community and for our emergency service personnel.

## WILD DOG CONTROL

**The Hon. ROBERT BROWN:** My question without notice is directed to the Minister for Finance and Services, representing the Minister for the Environment. Is the Minister aware of calls by the New South Wales Farmers Association for more government money to be spent controlling the State's wild dog population, particularly those emanating from national parks? How much money has been reallocated within the trimmed national parks budget—perhaps from the enlarged component that pays for locks and gates—to address this specific wild dog issue?

**The Hon. GREG PEARCE:** I am aware of those concerns, as I am sure is the Minister for the Environment. I will have to get the member the detail of the actual allocation. I will do that as soon as I can.

## PUBLIC SECTOR EMPLOYMENT

**The Hon. SOPHIE COTSIS:** My question is directed to the Minister for Finance and Services. Given that the Government's labour expense cap may result in fewer part-time positions or hours for part-time workers in the New South Wales public sector, how will the Government guarantee that women are not disproportionately disadvantaged by the Government's labour expenses policy, given that 87 per cent of part-time New South Wales public sector workers are women?

**The Hon. GREG PEARCE:** Congratulations on one member of the Labor Party actually understanding the truth about the budget and the labour expenses cap. Congratulations to the shadow Minister for not—

**The Hon. Sophie Cotsis:** Point of order: I ask that the Minister be directed to make his answer relevant to the question.

**The PRESIDENT:** Order! There is no point of order. It is too soon for the Chair to make a judgement about relevance. Ministers are permitted some generality without falling foul of the relevance rule.

**The Hon. GREG PEARCE:** I was being directly relevant because I was saying that I am very pleased that one member of the Labor Party actually listened to the Government's budget and actually understands that what we have introduced is a cap on labour expenses and that that cap is to be met—

**The PRESIDENT:** Order! I remind the Hon. Sophie Cotsis that she is on two calls to order.

**The Hon. GREG PEARCE:** That cap is to be met by individual directors general looking at their employment bill and working out how they can make a saving within their agency without diminishing services and without necessarily having to remove jobs. This again exposes the lie that those opposite have been perpetrating for the past two days, that the budget anticipates 15,000 job losses. That is simply a lie. I suggest that each member of the Labor Party actually listen to the Treasurer—

**The Hon. Duncan Gay:** Some remedial reading.

**The Hon. GREG PEARCE:** And do some remedial reading. That is if they can read at all. Remedial reading anticipates that they can read it. Perhaps what those opposite should do is invite the Hon. Sophie Cotsis to run some seminars for the other members of the Labor Party so they can understand what a cap on labour expenses is.

**The Hon. Sophie Cotsis:** Point of order: I ask that the Minister answer the question. Can he guarantee the positions and hours for women who are part-time workers in the public sector?

**The PRESIDENT:** Order! In accordance with longstanding practice, I cannot direct the Minister as to how he answers a question. The Minister was being generally relevant. I cannot uphold the point of order.

**The Hon. GREG PEARCE:** The shadow Minister asked a question about the labour expenses cap and then does not like the answer because it is not a spin answer; it is not a Labor Party lie. She does not like that. What does she do? She takes repeated points of order to try to prevent my answering the question she asked. This is the Labor Party at its worst. The shadow Minister asked the question but she does not get the lies she expects, because I am not on their side; instead she gets a real answer. The shadow Minister does not like my suggestion to organise some seminars for the rest of the Labor Party to explain the cap on labour expenses because that would involve extra work. We rarely hear from the shadow Minister for Industrial Relations. I cannot remember the last time she asked me a question on industrial relations.

**The Hon. Luke Foley:** Point of order: If the Minister wants to make a commentary on the Hon. Sophie Cotsis he should do so in accordance with the standing orders by way of substantive motion rather than attacking the member during questions.

**The PRESIDENT:** Order! The Minister was reflecting on the Hon. Sophie Cotsis, which is contrary to the standing orders. The Minister's time has expired.

## ST HILLIERS CONSTRUCTION PTY LIMITED

**The Hon. MATTHEW MASON-COX:** My question is addressed to the Minister for Finance and Services. Will the Minister update the House on progress in completing social housing projects affected by St Hilliers' decision to enter voluntary administration?

**The Hon. GREG PEARCE:** I thank the member for that very important question. The Government has maintained a strong commitment to seeing the completion of the properties. Today I can advise members that progress on 13 social housing sites is well underway since St Hilliers entered voluntary administration on 16 May 2012. The priority of NSW Public Works is to ensure that work at these sites resumes as soon as possible. I am happy to advise that work has now commenced on nine of the 13 sites. In some cases work restarted only a week and a half after it was suspended, and only a day following St Hilliers signing novation deeds. Three sites based in Warrawong, Tarrawanna and Towradgi had workers back on site on 25 May. Another site in Coffs Harbour was up and running on 1 June. Five more sites in Orange, Casula and Campbelltown were restarted between 5 and 8 June and work at Caringbah restarted yesterday.

Through the novation deeds NSW Public Works obtained information from the administrator regarding subcontractors and suppliers who had worked on these sites and ensured their income. With information provided by the administrator, NSW Public Works was able to organise deeds of novation for approximately 120 small businesses around New South Wales whose livelihood relied at least in part on the income for work undertaken on these sites. To date more than $2.2 million has been paid to subcontractors and suppliers across New South Wales. The response from subcontractors has been overwhelming, and I should like to read a few quotes verbatim that were received by departmental officers. One subcontractor remarked, "This has made my day." Another said, "This is the best exercise in efficiency in both the public and private sectors."

One contractor drove from Corrimal to Sydney to pick up the cheque personally and to thank Public Works for its efforts. Another kissed the cheque, smiled and shook hands profusely with Public Works officers. However, as great as these stories are, we must not rest on what has been achieved in the short term, as much remains to be done. Work continues with the administrator to complete the novation contracts in order to recommence work at the four remaining suspended sites. With the contracts coming under the management of Public Works these sites will reach completion within the shortest possible time frames.

I particularly thank the Public Works officers for dealing with this unique situation. They provided a strong and effective response to ensure the best outcome for all involved. I thank the administrator and the subcontractors who have been adversely affected in these circumstances and who have shown patience and a willingness to recommence work.

## METGASCO LIMITED

**The Hon. JEREMY BUCKINGHAM:** My question without notice is directed to the Minister for Finance and Services, representing the Minister for the Environment. What action will the Government take against Metgasco Limited for the illegal dumping of 1.36 million litres of coal seam gas waste water at the Casino sewage treatment facility as acknowledged in a letter from the Environment Protection Authority to local residents on 7 June 2012?

**The Hon. GREG PEARCE:** I have not seen the letter so I cannot comment on the quote attributed to the Environment Protection Authority or any of the circumstances alleged by The Greens.

**The Hon. Jeremy Buckingham:** You don't know what is going on.

**The Hon. GREG PEARCE:** I am not the environment Minister and I am not the Environment Protection Authority. How could anyone believe the Hon. Jeremy Buckingham anyway? He is wearing a maroon tie on State of Origin day. He is a Queensland supporter.

**The Hon. Jeremy Buckingham:** Point of order: The Minister is making a reflection on me and my attire that is inappropriate.

**The PRESIDENT:** Order! I can understand the member feeling that way, given it is State of Origin day. The Minister should cease reflecting on members and continue with his answer if he proposes to provide more information.

**The Hon. GREG PEARCE:** I can see my reflection in the member's suit. I do not have any detail of the matters referred to by the Hon. Jeremy Buckingham. I am loyally wearing a blue tie because I support the New South Wales Blues. If the Hon. Jeremy Buckingham can prove to me that he is not supporting Queensland tonight then I will be happy to retract my comments. But at the moment I cannot as he is wearing a maroon tie.

**The PRESIDENT:** Order! Unless the Minister has further information he will resume his seat.

## STATE BUDGET AND DEPARTMENT OF FINANCE AND SERVICES

**The Hon. MICK VEITCH:** My question is directed to the Minister for Finance and Services. In light of statements made by the Treasurer about the need for belt-tightening and $1.24 billion due to be cut from government programs as a result of yesterday's budget, can the Minister explain to the House why funding has been increased by $27 million for the policy and strategy branch in the Minister's department?

**The Hon. GREG PEARCE:** I welcome the member's question on belt-tightening. Today is a happy day. We have had a party out the front of Parliament House, it is raining and we want to entertain ourselves. The position with the budget is very clear. The Government was faced with a $5 billion plus gap in the goods and services tax going forward—

**The Hon. Mick Veitch:** So you increase your department's spending.

**The PRESIDENT:** Order! I remind the Hon. Mick Veitch that he is already on a call to order. He should not interject on the answer to his question.

**The Hon. GREG PEARCE:** The people of New South Wales have taken a $5 billion plus hit to goods and services tax revenues but, notwithstanding that, Australia and New South Wales are standing up pretty well following the global financial crisis and the ongoing problems in world financial circles. New South Wales is also experiencing a continuing decline in other revenues and has had to engage in a belt-tightening process. The Government has had to do a number of things that it otherwise would not want to do. That is what a responsible government does, and I am pleased to be part of a responsible government.

Somebody has written the question for the Hon. Mick Veitch. That person has pored through the budget papers and found that it contains numbers that go up and numbers that go down. Goodness gracious me: What an astonishing thing! The Government makes savings in some places and spends money in others. The Government wants to spend an extra $100 million on infrastructure in the Illawarra, but that is contingent on the Government being able to go through the process of investigating whether Port Kembla should be included in the long-term lease of Port Botany. If that is in the interest of the people of New South Wales the Government will proceed and gain access to extra borrowing to provide the additional $100 million.

## INFRASTRUCTURE INVESTMENT

**The Hon. NATASHA MACLAREN-JONES:** My question is addressed to the Minister for Roads and Ports. Can the Minister for Roads and Ports update the House on infrastructure investment to support housing and employment growth?

**The Hon. DUNCAN GAY:** I thank the honourable member for her question. Once upon a time that would have been the sort of question that one could expect to receive from a Labor Party that represented western Sydney. The New South Wales Liberal-Nationals Government is delivering the infrastructure needed to support employment growth and housing supply in western Sydney. Not only is the Government delivering support for the construction industry and encouraging growth in the housing industry; it is also delivering the necessary infrastructure to go along with that support and encouragement. That is something Labor has never understood. Western Sydney is a key growth area and this investment represents a strong commitment to build for the future while also improving the road network for the thousands of motorists who travel the area every day.

In 2012-13 the Government is providing $25 million to start work on the upgrade of Schofields Road between Windsor Road and Tallawong Road. The sum of $2.5 million will also go towards continued planning for the future extension of Schofields Road from Tallawong Road to Richmond Road. The upgrade of Schofields Road is vital to help unlock new dwellings in the north-west growth centre. The Government has fast-tracked the upgrade of Richmond Road. In 2012-13 the Government will provide $20 million to invite tenders and start construction of the upgrade of Richmond Road to four lanes between Bells Creek and Townson Road.

The Government is delivering funding also to get on with the job of upgrading Richmond Road North from Townson Road to Grange Avenue. It is a crucial piece of supporting infrastructure for the Marsden Park employment area, which is already under construction and has the potential to accommodate 10,000 jobs. In addition to this, the Government is providing $25 million to complete the Erskine Park Link Road to service the western Sydney employment area and $3 million to continue planning for the upgrade of Old Wallgrove Road between the M7 and the Erskine Park Link Road. The western Sydney employment area is expected to hold approximately 40,000 workers—

**The Hon. Penny Sharpe:** They are $300 million down on what they said they would spend last year on the Pacific Highway.

**The Hon. DUNCAN GAY:** Just listen to the Labor Party. It now wants the Government to take money out of western Sydney to replace the Pacific Highway money that was withdrawn by their friends in the Federal Labor Party. The Hon. Penny Sharpe, the shadow Minister for Transport, is asking us to remove money from western Sydney to replace the money that Albo—the Hon. Anthony Albanese—stole from the people of New South Wales. What a disgrace!

**The Hon. Amanda Fazio:** Point of order: The Minister is making an adverse reflection on the shadow Minister for Transport by verballing the member. He was commenting on interjections that the Hon. Penny Sharpe simply did not make.

**The PRESIDENT:** Order! I have the gist of the member's point of order.

[*Interruption*]

**The PRESIDENT:** Order! I call the Hon. Penny Sharpe to order for the first time. The Hon. Penny Sharpe was being disorderly by constantly interjecting during the Minister's answer. The Minister should not have responded to the interjections. However, I will not take any further action. Constant interjections during answers make it difficult for the Minister not to respond. I note that the Minister's time for speaking has expired.

## TILLEGRA PRECINCT LAND USE PLAN

**Dr JOHN KAYE:** My question without notice is directed to the Minister for Finance and Services. Is the Minister aware that Hunter Water has advertised on its website for tenders to prepare a land use plan for the Tillegra precinct landholdings? Given the undertaking of the Minister for Planning and Infrastructure that these lands will be sold through a whole-of-government process with stakeholder involvement, has the Minister approved of this process being conducted by Hunter Water, and will the Minister provide an assurance that an agreed stakeholder reference group will be established immediately to guide the sale of all Hunter Water landholdings in the Tillegra precinct, as Dungog Shire Council and environment and community groups have repeatedly asked for?

**The Hon. GREG PEARCE:** I am glad the member has raised the issue of the Lower Hunter Water Plan and Hunter Water landholdings. I want to start by reiterating—because the member was not in the Chamber yesterday at the appropriate time—that I have announced the membership of an Independent Water Advisory Panel.

**Dr John Kaye:** I did not raise that issue.

**The Hon. GREG PEARCE:** I want to talk about it for a moment. That panel will advise on the process of delivering the new Lower Hunter Water Plan and oversee the review—

**Dr John Kaye:** Point of order: As interesting as the Minister's answer is, it is not anywhere near relevant to my question, which has nothing to do with the Lower Hunter Water Plan but is to do with stakeholder involvement in the disposal of lands around Tillegra—a separate process, and a separate issue.

**The Hon. GREG PEARCE:** To the point of order: The issue of the land that was acquired by the previous Labor Government for the cancelled Tillegra dam is absolutely what the question is about.

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

**The Hon. GREG PEARCE:** What I was addressing first of all was the process for the Lower Hunter Water Plan, which relates to Lower Hunter land use. As I said—and I was concerned about this—whilst we have announced the panel, which combines local knowledge, leading industry expertise and a balance of academic achievement and expertise, it is very disappointing that the member has gone out and defamed two members of the panel.

**The PRESIDENT:** Order! The Minister is now saying that the member has defamed two members of the panel. The Minister should be careful about reflecting on members in his answer. The Minister has been warned once about this in question time already.

**The Hon. GREG PEARCE:** Given that I have not practised law for a while, I suppose I should not voice a legal opinion about the member's press release in which he attacked two eminent members of the expert panel. My concern is that these are not members of Parliament, and this is not a legitimate attack—

**Dr John Kaye:** Point of order: A media release that I put out last week in respect of a panel appointed by the Minister is not relevant or related to the sale of Lower Hunter lands. The Minister is straying a long way from a specific question about stakeholder engagement in a process of land planning. The issue is not a statement I may or may not have made in respect of two appointments to the Lower Hunter water panel.

**The Hon. GREG PEARCE:** To the point of order: The member wants to know about stakeholder engagement. I am talking about what the member does when we have an expert panel engaged to look into land use.

**The PRESIDENT:** Order! I remind the Minister of the need to be generally relevant in his answers.

**The Hon. GREG PEARCE:** As I was saying about consultation, what we have done is appoint an expert panel. The members of this panel are people with experience who are prepared to give of their time in public service, for very little pay, to provide the Government and the community with input. Part of their role, and one of the panel's first objectives, is to work out the consultation process for the Lower Hunter Water Plan. That process is similar to the process that we are looking at for the lands. If The Greens are going to go out and slander people who have put their hands up and participate— [*Time expired.*]

**Dr JOHN KAYE:** I ask a supplementary question. Can the Minister elucidate his answer?

**The Hon. GREG PEARCE:** I reflect on the fact that Hunter Water owns 46 properties in the Williams River valley that were acquired over a 30-year period for the Tillegra dam project. I actually met with local landholders last year, and also directed Hunter Water to offer land back to 11 former landholders who had first right of refusal clauses in their contracts. Hunter Water is now in discussions with those 11 former landholders regarding the re-purchase of their former properties. In conjunction with those proceedings, Hunter Water has indeed called for tenders for development of a land strategy that will focus on Hunter Water's remaining landholdings in the valley. As part of the strategy, consideration will be given to regional issues and options to optimise value of the land before a decision is made on how and when to sell. The strategy will take into account relevant land use information and planning instruments.

I have instructed Hunter Water to maintain genuine engagement with the local community, Dungog Shire Council and other relevant government planning agencies to ensure a whole-of-government approach is taken. The process is expected to take around 12 months to complete, and a staged release of land over the long term will be considered as part of the strategy. In the meantime, properties continue to be leased to either former owners or new tenants, to be utilised for agricultural purposes, as these properties were prior to their purchase by Hunter Water. To go through this sort of process, to have genuine engagement, one cannot have a situation where members of Parliament are attacking individual participants because of their willingness to participate in a process that the member himself called for. He is usually better than that. I suggest the member apologise to them.

## HUNTING IN NATIONAL PARKS

**The Hon. GREG DONNELLY:** My question is directed to the Minister for Finance and Services, representing the Minister for the Environment. What is the Minister's response to the calls from the Hon. Catherine Cusack to exclude Nightcap National Park, Richmond Range National Park, Yabbra National Park and Dorrigo National Park from the list of national parks in which the hunting of animals will be allowed?

**The Hon. GREG PEARCE:** My good colleague and friend the Hon. Catherine Cusack has not asked me that at all.

**The Hon. GREG DONNELLY:** I ask a supplementary question.

**The Hon. Duncan Gay:** You will be hard pressed to base a supplementary on that answer.

**The PRESIDENT:** Order! The Hon. Greg Donnelly can try.

**The Hon. GREG DONNELLY:** I will try. Will the Minister elucidate his answer with respect to explaining what disciplinary action he will take over the principled stand being taken by the Hon. Catherine Cusack? What is the Minister going to do about this matter?

**The PRESIDENT:** Order! It was a good try, but it did not come anywhere near the criteria required for a supplementary question.

## UNPAID FINES

**The Hon. SCOT MacDONALD:** My question without question is addressed to the Minister for Finance and Services. Will the Minister inform the House what steps the Government is taking to recover money that is owed in unpaid fines?

**The Hon. GREG PEARCE:** The Liberal-Nationals Government is determined to reduce the unsustainably high level of outstanding debt that is owed in overdue fines levied by the State Debt Recovery Office, including speeding and parking infringements. The Government has put in place a moratorium on enforcement costs for people who have overdue fines, allowing them to avoid costly late fees for a limited time. The moratorium does not remove the liability for the fine itself. The moratorium will only apply to those who either pay their overdue fines in full or register to enter into an arrangement to pay by instalments by 31 July 2012. In return the Government will waive any late fees they might have incurred. People who make arrangements with the State Debt Recovery Office to pay their fines in instalments will also get the benefit of the moratorium.

In addition, from 1 July 2012 the late fees on most fines, called enforcement costs, will increase from $50 to $65. Enforcement costs that will increase include the making of enforcement, garnishee or property seizure orders, charges on land, the issuing of examination summonses, and warrants of apprehension for failing to comply with an examination summons. To maximise efficiencies in debt recovery functions in New South Wales the Office of State Revenue has introduced a central debt management division and has recently appointed a Chief Recovery Officer to oversee the division.

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

**The Hon. GREG PEARCE:** The New South Wales Government has also introduced a trial use of debt collection agencies to try to reduce debt and collect revenue without significantly increasing Office of State Revenue staffing levels or costs. The agents have been contracted for a period of two years and will perform a controlled range of activities as agents for and under the management of the Office of State Revenue. They will have the tasks of locating and contacting people with outstanding fines to encourage them to settle their debt and issuing statements of demand. People will still use the Office of State Revenue to make payments, to lodge inquiries and to get payment options. Most people pay their fines. Individuals and corporations who do not pay on time or refuse to pay should not receive an advantage. The moratorium will assist people with overdue fines to avoid paying additional enforcement costs before the increase.

**The Hon. DUNCAN GAY:** Regretfully, I advise that the time for questions has expired. If members have further questions, I suggest that they place them on notice.

## FIREARMS MODERATOR PERMITS

**The Hon. DUNCAN GAY:** On 9 May 2012 I was asked a question by the Hon. Robert Borsak about firearms moderator permits. The Minister for Police and Emergency Services has provided the following response:

> The NSW Police Force has advised me that one firearms moderator permit has been issued so far in 2012. Two such permits were issued to government agencies involved in feral animal control in 2011, five in 2010 and none in 2009. One of these firearms moderator permits was issued for scientific research and the others were for feral animal control.

## FLOOD RELIEF

**The Hon. DUNCAN GAY:** On 9 May 2012 I was asked a question by the Hon. Steve Whan about flood relief for potato farmers in the Crookwell area. The Minister for Primary Industries has provided the following response:

The NSW Government is aware of the damage caused by recent flooding to potato crops in the Crookwell area, and the consequent financial difficulties this will cause to individual producers in that area. As a result the Government made the area eligible for Natural Disaster assistance within days of the flooding occurring. This provides the availability of long-term loans of up to $130,000 to repair damage and meet carry-on expenses. These loans are interest and repayment free for two years, after which interest is fixed at a highly concessional rate of 2.67 per cent.

The Department of Primary Industries also conducted surveys of damage caused by this widespread flooding event, which affected most of southern New South Wales. The activation of Category C grants requires widespread and severe damage to have occurred across whole communities. Following the assessment of damage, 14 local government areas have been declared eligible to receive these Category C grants.

The Crookwell potato growers are located in the Upper Lachlan local government area. Although the potato growers suffered damage, unfortunately the total damage suffered in the shire did not reach the threshold required for activation of Category C grants. The arrangements for reviewing applications for these grants are unchanged from the previous government.

## POWER STATION PROJECTS

**The Hon. DUNCAN GAY:** On 9 May 2012 I was asked a question by the Hon. Robert Brown about the new Bayswater B power station in the Hunter Valley and the Mount Piper extension near Lithgow. The Minister for Resources and Energy, Special Minister of State, and Minister for the Central Coast has provided the following response:

Power station proposals at Bayswater in the Hunter Valley and Mount Piper near Lithgow were granted concept approval in January 2010 valid for 10 years.

Economic and social impacts show that the Bayswater project (at an estimated value of $2 billion) will bring to Muswellbrook/Singleton:

- direct employment for a construction workforce of up to 950 people and operational workforce of up to 160 people;
- indirect employment during the construction phase, resulting from increased demand for goods and services; and
- significant capital investment during the construction phase.

The Mount Piper extension project (estimated to be valued between $2.6 and 5 billion) will bring to the Lithgow area:

- direct employment for a construction workforce of up to 950 people; and
- an operational workforce of up to 50 people with indirect employment and capital investment during the construction phase.

Both projects are proposed as coal or gas fired base load plant, and a decision on fuel is a matter for the project proponents.

The Australian Energy Market Operator [AEMO] produces an annual forecast of future electricity demand and the supply/demand balance. In 2011, the findings of the Australian Energy Market Operator were that, under the most likely scenario, no new coal fired generation would come on line in the period to 2030 but 7,600 MW of new gas fired base load generation would come online in New South Wales. Both these proposed plants could contribute to that level of expected new gas fired generation.

The Government is committed to providing the people and businesses of New South Wales with a reliable and secure supply of electricity.

The Greens should acknowledge that if these proposed projects were not allowed to proceed, then there would be less approved generation able to meet forecast future demands which would lead to higher prices for New South Wales households and businesses.

The Greens should also outline how they intend to fund the move to 100 per cent renewable energy by 2020, which has been estimated by Beyond Zero Emissions to cost $370 billion; how they plan to deliver this without any increase in New South Wales consumer electricity bills; and in the absence of nuclear power, how they will guarantee a reliable supply of electricity without any baseload generation.

**Questions without notice concluded.**

## TOBACCO LEGISLATION AMENDMENT BILL 2012

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

**Motion by the Hon. Duncan Gay 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.**

## MOTOR ACCIDENTS AND LIFETIME CARE AND SUPPORT SCHEMES LEGISLATION AMENDMENT BILL 2012

### Second Reading

**Debate resumed from an earlier hour.**

**The Hon. ADAM SEARLE** (Deputy Leader of the Opposition) [3.34 p.m.]: As I said earlier, the Opposition has some concerns that the drafting of this bill may have unintentionally gone beyond addressing the issue thrown up by the Thiering case. A scheme participant presently has the option of arguing through an administrative appeal in the Supreme Court that an assessment by the authority as to what is reasonable and necessary treatment and care is incorrect. I am not aware of any cases of that kind, and that is probably because the authority is aware that its decision making is ultimately subject to judicial review if it should restrict care and treatment in a way that is patently unreasonable. Such a decision would presently be amenable to judicial review in the Supreme Court.

The amending bill, as I understand it, proposes to give the Lifetime Care and Support Authority absolute power to determine what is reasonable and necessary. Proposed section 5A (2) provides that despite the claimant being entitled to his or her treatment and care needs the Government shall have the power to make regulations and to declare by regulation that any form of treatment or care is to be excluded. I am not aware of there being a practical problem of a general nature in that area. If particular kinds of treatment or care are to be excluded, the Opposition believes that that should be dealt with by way of substantive legislation made by the Parliament and not by the Executive and at a bureaucratic level.

The Opposition believes that the temptation over time to restrain or reduce costs could lead to decisions that are short-sighted in relation to the medical care and support that is necessary for scheme participants and could thereby work a significant injustice. The only solution is to disallow regulations, and that is a very difficult process because regulations often deal with a range of matters that, if annulled, could well undermine the operation of the scheme. We do not think that would be a satisfactory solution. We say that the power to exclude treatment by regulation should not be in the legislation.

Proposed section 11A (1) refers to assessed treatment, and proposed section 11A (2) refers to assessed treatment and care needs. Proposed section 11A (3) provides that no expenses are payable in respect of excluded treatment and care needs and those that are not assessed as being treatment and care needs. We believe that certainly proposed subsection (3) should be omitted because it has the same vice as proposed section 5A (2), that is, it permits the exclusion of treatment by regulation only. I note that section 23 of the principal Act provides for the authority to make an assessment of what are reasonable and necessary treatment and care needs. I am uncertain why there needs to be the definition in proposed section 11A (2) of assessed treatment and care needs, which is also referred to in the definitional section of the bill.

On one view it seems to presage what is in section 23 of the principal Act, but when one reads the wording carefully I apprehend—and I am sure it is unintentional—that the drafter has unwittingly created a situation whereby the authority would be empowered by this provision to itself define what is reasonable and necessary. New subsection (2) states that the assessed treatment and care needs of a person who is a participant in the scheme are those treatment and care needs that are assessed by the authority to be reasonable and necessary. It appears to say not that the authority must make an assessment of the treatment and care needs that are reasonable and necessary, but in effect that the authority, by declaring these things and only these things as reasonable and necessary, makes them so. There is circuitousness in the drafting that I do not think is intended in a policy sense. I hope that we will be able to move an amendment to address this significant concern.

As I said, the authority is already required to make an assessment of the care needs and treatments that are reasonable and necessary, and of course in a judicial review proceeding there is a relationship between that assessment and what is objectively reasonable as a matter of law. That can currently be subject to judicial review. But my concern is that the way this provision is drafted would enable the authority to define the boundaries of what is reasonable and make such a determination more difficult to challenge on review. In effect, the authority may try to fireproof its decision even when it is patently unreasonable and would presently be amenable by judicial review. Again, I do not think it is intentional and it should be addressed by way of an amendment if possible, time permitting.

If I am correct, the effect of this change would be to give the authority the power to effectively declare what is reasonable and necessary. For example, it would be able to decide, flying in the face of all medical evidence to the contrary, that a wheelchair for a paraplegic was not reasonable or necessary. It may decide that a particular piece of equipment that medical evidence clearly suggests would be necessary is not necessary. At present decisions that are clearly irrational or illogical or fly in the face of medical evidence would be amenable to judicial review. I am concerned that would not be the case if new section 11A (2) is enacted in its present form. It would go way beyond the Thiering problem. As I said, I think it is probably unintentional and I am hopeful that this House may be able to remedy the situation.

Certainly no administrative authority should be given that kind of power. Those are matters for the Parliament and for the courts, rather than for an administrative authority. That is because administrative authorities of this kind operate not only under the legislation but also in sometimes very difficult circumstances. Sometimes there is the tendency, particularly at a bureaucratic level, to restrain or reduce costs in a way that in its own terms may be understandable but can lead to injustice if done in a particular way. As I indicated earlier, similar to the power to exclude certain kinds of medical care and treatment, that should not be done at an administrative level or with the stroke of a pen. If necessary, it should be done clearly and expressly by the Parliament. The Opposition has significant concerns about this aspect of the bill.

I turn now to new section 11C on page 5, which again restricts care, support or services to only those that are supplied by an approved provider. In a sense, new section 11C partly reflects current section 10. The bill proposes on page 4 at clause 5 to omit current sections 6 to 10 and appears to replace the current section 10. But the current section 10 does a number of things through guidelines. As I read it, new section 11C does not require the making of those guidelines and makes it much more explicit that only approved providers can provide services that can be paid for by the scheme. My concern is that this section is not merely replicating the present section 10 and may—I stress "may"—go further and do things that are unintentional. Thus it may have the effect of automatically excluding the provision of all services other than those offered by an approved provider.

First of all, that is unduly restrictive. I am not aware of any pressing concern or need in an evidentiary sense to suggest there is a practical problem with the operation of the scheme that would require a provision of this kind or one that goes this far. In addition, such a restriction may be unduly harsh—particularly outside the city in rural and regional locations—and have further unintended and unjust consequences for those who need the care and support available through the scheme. I note that new section 11B provides for payment for certain services in special circumstances, but I understand that to be limited to overriding, as it were, the restriction of treatment, care and support that is provided on a gratuitous basis.

The bill excludes those payments from having to be paid by the scheme but, as it were, has a safety valve, as outlined in new section 11B. That new section states that, despite the general prohibition on having to pay for gratuitous care and support, if the authority determines that there is a special circumstance it can do so. This recognises that there may be emergency circumstances and, although the bill does not say this, I apprehend that that would certainly be more likely outside the city and urban areas. However, in the approved providers category in new section 11C I do not think there is any such safety valve or safety net. Although I am sure that the intention of the drafter in creating this new section was to replicate or re-enact section 10, again I think unintentionally they have gone further. They have certainly gone further than the problems identified in the Thiering matter.

Cost is always a factor in these schemes, which are complex and involve sometimes detailed and problematic care and support needs. There is a need to address consequences of the legislation where things occur that are not expected or are not intended to be met by the scheme. As I indicated, the Opposition supports the amendments to the law to address the Thiering problem. However, the Opposition thinks that in trying to prevent a reoccurrence of the problem the drafter has unintentionally gone further and created the potential for grave injustice. That may be the result of the drafter coming at the problem not just once or twice but in three or four different ways.

I have indicated the concerns of the Opposition. I foreshadow that we will move amendments to address those concerns, and I invite members to consider them with an open mind. I have not addressed those concerns in a partisan fashion—hopefully, the reverse—in an attempt to improve the bill and ensure that it fulfils its stated intention, which is to resolve the Thiering problem, but goes no further. If there are other problems in the scheme of the type to which I have adverted, I ask the Minister and the Government to bring forward information regarding those additional problems so that, if they exist, we can reflect on the need for additional measures to address them.

**The Hon. JOHN AJAKA** (Parliamentary Secretary) [3.50 p.m.]: I support the Motor Accidents and Lifetime Care and Support Schemes Legislation Amendment Bill 2012 and congratulate the Minister on bringing it to the House. The object of the bill is to clarify the operation of the Lifetime Care and Support Scheme under the Motor Accidents (Lifetime Care and Support) Act 2006 in relation to the treatment and care needs of participants in the scheme. The bill makes it clear that, while a person who is a participant in the scheme is entitled to have certain expenses relating to treatment and care needs paid for by the Lifetime Care and Support Authority, it is noted that the authority is obliged to pay only for assessed treatment and care needs, and is not obliged to pay for either certain treatment, care, support or services provided on a gratuitous basis or by a person who is not an approved provider, or any treatment, care, support or services of a kind declared by the regulations to be excluded treatment and care needs.

The bill also makes clear that participation in the scheme abolishes a participant's right to claim damages for economic loss, or receive payment under chapter 3 of the Motor Accidents Compensation Act 1999 in respect of treatment and care needs, including those treatment and care needs that are not assessed treatment and care needs, or in respect of which the authority is not required to make a payment. The bill also provides that the amendments are to operate from the date of introduction into Parliament of the bill in relation to claims made on or after that date. I note that the Opposition supports the bill in principle, which is only proper since its purpose is to preserve and enhance the statutory scheme for the treatment and care of all people, regardless of whether they can prove fault, who are catastrophically injured in motor vehicle accidents, and since the legislation was initiated by the Opposition when in government.

I was pleased to have the opportunity to serve on the committee overseeing the scheme and to observe the number of examples in which it was appropriate for the scheme to operate. I am now pleased that the Government will ensure that appropriate action is taken to protect the continued operation of the scheme and that there will be no hindrance to continuation of the scheme. Nevertheless, the Opposition suggests that Parliamentary Counsel has gone too far in seeking to provide the Government—not, it should be noted, the authority—with the power to make a regulation to exclude the possibility of some forms of treatment and care not yet thought of from the ambit of the Motor Accidents Compensation Scheme and the Lifetime Care and Support Scheme. I do not see where the Opposition is coming from in relation to that, nor do I understand the Opposition's concern. To put it simply, the Opposition's proposition is just not correct.

The bill has been drafted in accordance with the Government's instructions, including in relation to the regulation-making power. Those instructions were provided for the good reason that the Government wishes to ensure that, should questions arise about the scope of treatment and care for which the schemes are responsible, the Government will be able to act in a timely and prudent manner to preserve the viability of both schemes and allow private citizens to comprehend their rights without resorting to costly litigation. This is fundamentally at the heart of this legislation. The Government does not want to see participants being forced to enter into costly litigation, usually in circumstances where they do not have the funds to do so or the time to await results of court decisions. We want a scheme that can be acted on immediately, if and when the participants' need arises.

The Opposition's suggestion—that the regulation-making power will improperly vest powers that should reside with Parliament—is simply not valid. Again, the Opposition is advancing an incorrect proposition. As the Opposition is well aware, regulations must be within the scope of the Act that grants the power. Regulations are subject to parliamentary oversight and may be disallowed. The power to make a regulation that excludes any form of treatment and care will not be undertaken lightly. It will be properly considered and will be the subject of consultation. I urge all members to support the legislation. I congratulate the Minister on introducing the bill, which I commend to the House.

**Mr DAVID SHOEBRIDGE** [3.55 p.m.]: On behalf of The Greens I indicate that we are not opposed to some of the principles of the Motor Accidents and Lifetime Care and Support Schemes Legislation Amendment Bill 2012. One principle is ensuring that the Lifetime Care and Support Scheme is financially stable and financially robust. The Greens understand that principle. There are really two aspects to this bill, and I will deal with each aspect separately. The first is the legislative overturning of the Thiering case that allowed, in

limited circumstances, the argument to be advanced that carers of catastrophically injured participants in the scheme may in certain circumstances be able to access damages for gratuitous care. In other words—and to give a concrete example—the scheme applies to catastrophically injured children. If a child is catastrophically injured in a motor vehicle accident, regardless of fault, the scheme will cover the reasonable and necessary treatment needs of that catastrophically injured child. That could well and truly include covering night nursing for the child during evenings, for example.

In some cases, parents, because they love and are attached to their child, may provide night nursing and night care for the child. In some circumstances, those parents may be able to claim for the time they spend caring for their child as a form of gratuitous care for which, if it was an at-fault motor accident outside the Lifetime Care and Support Scheme, they would be able to be recompensed at the rate of ordinary weekly wages for the time they are required to look after their catastrophically injured child. The same principle applies to a partner—for example, a wife—looking after a catastrophically injured husband who was made a quadriplegic in a motor vehicle accident. If the claim was being dealt with in the at-fault normal third party scheme, to the extent that the partner was required to provide gratuitous care they could be recompensed at ordinary weekly wages for the time spent looking after their catastrophically injured partner.

Because it is envisaged that the Lifetime Care and Support Scheme will be in a position to provide 24-hour care, if necessary, there is no capacity—and there was not intended to be capacity—for gratuitous care to be recompensed under the scheme in the legislation that is before the House. In the course of a very lengthy hearing before the Standing Committee on Law and Justice, it became apparent that failure to provide for gratuitous care, particularly in regional and remote parts of the State, meant that some claimants under the scheme were being disadvantaged. For example, it is very hard to find a night nurse seven days a week in places such as Brewarrina or Bourke or in other remote areas. In those cases, sometimes the only care that reasonably can be provided is the care given by a loved one.

I understand that the bill allows for some gratuitous care payments to be made in exceptional circumstances. I note that the Minister is nodding. That provision is intended to cover the types of instances in which there is an inability to provide professional care under the scheme. In exceptional circumstances the Lifetime Care and Support Scheme can extend payments for gratuitous care to partners and loved ones. The case of Thiering potentially opened up gratuitous care around the State. If money were no object, I think it would be fair to provide for gratuitous payments regardless of where the care is being provided and regardless of whether professional care could be provided. But The Greens understand that that part of the bill is consistent with the original intent of the Lifetime Care and Support Scheme when it was established. For those reasons, The Greens do not oppose those aspects of the bill.

The second aspect of the bill is vastly more troubling. That is found in new section 5A in schedule 1 [3] to the bill. This section enumerates what treatment and care needs are. That list is not objectionable. However, subsection (2) says that despite that long list:

> … the treatment and care needs of a participant do not include any treatment, care, support or services of a kind declared by the regulations to be ***excluded treatment and care needs.***

In other words, the section gives a regulation-making power to simply exclude whole classes of treatment from recovery under the Act. It may well exclude night nursing in certain circumstances where the parents are in a position to provide care for a catastrophically injured child. It may well exclude, for example, certain expensive prostheses. Prostheses have become incredibly expensive, with significant advances being made in medical technology primarily as a result of the enormous number of amputees who have been treated through the American military hospital system following the Iraq and Afghanistan wars. Never has the world seen such a large number of catastrophic lower limb injuries being treated by First World medicine. This means that prostheses that used to cost maybe $20,000 or $30,000—which was considered expensive—may now cost in the order of a quarter of a million dollars. That is what top-shelf prostheses cost.

Such prostheses provide a far superior outcome for the patient or the claimant—that is their purpose. However, it is concerning that this new section would give a regulation-making power to government simply to exclude those kinds of top-class prostheses from being provided to claimants under the scheme because bureaucrats believe they are not reasonable or necessary. Once that regulation is made—excluding, for example, night nursing for catastrophically injured children or expensive prostheses for people who have suffered multiple amputations in a motor vehicle accident—claimants will not have any capacity to challenge it. That is the nub of the second part of the bill. I fully accept that it was not the Government's intention to overextend and

go beyond dealing with the problem of gratuitous care raised in Thiering. I accept that in many ways the breadth of new section 5A and its ability to exclude whole classes of treatment care through regulation is not some form of intentional attack on rights by the Government. I think in large part this bill has been drafted as a bit of a catch-all and extended beyond the original ambit of the problem that the Government was dealing with.

By granting this regulation-making power to exclude treatment we are putting at risk the ongoing treatment of some of the most vulnerable people in our community. We are talking about children and adults suffering utterly catastrophic injuries—double amputations, significant brain trauma and impairment, quadriplegics and paraplegics. They are the most vulnerable people in the community. To allow bureaucrats to determine what is or is not reasonable care for them, without giving them the capacity to challenge that determination—which is exactly what this bill will do—subjects these vulnerable people to the whim of bureaucrats.

The Government says we can challenge regulations if they come before the House. I have spoken with a number of lawyers and families who have been the subject of these kinds of claims. I sat in the committee meetings and heard a number of claimants tell of their experiences in this scheme. It was clear from the committee hearings that, on the whole, the scheme is working very well. However, clinicians in the brain trauma unit at Westmead said they were having difficulties dealing with the bureaucrats. The clinicians said there was sometimes tension between what they believed was appropriate and what the bureaucrats were willing to approve. On the whole, they were trying to work through those tensions.

Members who have read the committee report will know there seems to be goodwill on the part of the bureaucrats and the clinicians at the brain trauma unit at Westmead in working through those problems. But if they cannot be resolved—if a bureaucrat simply determines that such and such a treatment is not reasonable or necessary but the clinician, the family and the claimant believe they absolutely need it—surely we should not preclude their right to go to court and challenge that determination. Claimants would rather be able to appeal a bureaucrat's determination before an impartial judge. We are talking about only a small number of cases. I am not aware of many cases having been run challenging a determination. Thiering is the only reported case I know of that challenged a determination in the four years the scheme has been operating. But having the legal capacity to challenge what a bureaucrat does keeps that bureaucrat honest. Being able to take bureaucrats to court and expose their thinking to some cold, hard, clinical analysis before a judge means that they will take greater care when making a determination and ensure that it is defensible if challenged in court.

The Greens have foreshadowed that we will move a number of amendments, which are mirrored by Opposition amendments, to limit the operation of the bill to dealing with the issue of Thiering. As I said before, in the spirit in which the Minister introduced this legislation, we support those aspects of the bill and we understand where they come from. But the broader regulation-making power simply to exclude treatment and to do so in a manner that prejudices the most vulnerable people in our community is a bridge too far. We ask members of the House to support the amendments and to limit the operation of the bill to deal with the known difficulty in Thiering but not with the further matters that were never raised in any previous review, which were not raised in the most recent parliamentary review and which will prejudice the most vulnerable in our community.

**The Hon. PAUL GREEN** [4.07 p.m.]: On behalf of the Christian Democratic Party I support the Motor Accidents and Lifetime Care and Support Schemes Legislation Amendment Bill 2012. The overview of the bill states:

> The primary object of this Bill is to clarify the operation of the Lifetime Care and Support Scheme (***the Scheme***) under the *Motor Accidents (Lifetime Care and Support) Act 2006* in relation to the treatment and care needs of participants in the Scheme.
> In particular, the Bill:
>
> (a) makes it clear that while a person who is a participant in the Scheme is entitled to have certain expenses relating to treatment and care needs paid for by the Lifetime Care and Support Authority, the Authority is only obliged to pay for assessed treatment and care needs and is not obliged to pay for:
>
> (i) certain treatment, care, support or services provided on a gratuitous basis or by a person who is not an approved provider, or
>
> (ii) any treatment, care, support or services of a kind declared by the regulations to be excluded treatment and care needs, and
>
> (b) makes it clear that participation in the Scheme abolishes a participant's right to claim damages for economic loss, or receive payment under Chapter 3 of the *Motor Accidents Compensation Act 1999*, in respect of treatment and care needs (including those treatment and care needs that are not assessed treatment and care needs or in respect of which the Authority is not required to make a payment).
>
> The Bill provides that the amendments are to operate from the date of introduction into Parliament of the Bill.

The Lifetime Care and Support Authority was established by the Motor Accidents and Lifetime Care and Support Act 2006. The main purpose of the authority was to establish and operate a scheme to provide all the treatment and care needs of those who have been catastrophically injured in a motor vehicle accident in New South Wales, regardless of fault. Since its inception participation in the scheme has grown steadily. It is noted that as at 30 April 2012 there were something like 638 participants in the scheme—564 adults and 74 children. Of course, of those children participants, 66 suffered a traumatic brain injury and seven suffered a spinal cord injury. Of the adult participants, 419 suffered a traumatic brain injury and 134 suffered a spinal cord injury, as well as three amputations and two serious burns injuries.

The Christian Democratic Party congratulates the Government on moving down this track to tighten up the anomalies that have been tried and tested through the courts. No doubt these loopholes need to be closed, but we are concerned about new section 5A, which was raised by Mr David Shoebridge and to which the Deputy Leader of the Opposition spoke significantly and clearly. After sorting out some thoughts about excluding treatment and care, and having a slight pass in the health area, the proposal probably is astute to some degree given that technology improvements double every five years—probably quicker than the statistic with which I am familiar. Certainly in medicine and science time passes incredibly quickly, research advances virtually daily and discoveries are amazing. However, discoveries, research and development come at great cost. Therefore, being aware of the expensive costings associated with these super findings, especially in health and science, people and organisations are entitled to payment for their intellectual property.

That brings me to my concern: I do not believe it is good for any family to be excluded from treatment and care. However, I see the Government's point of view in that the system cannot be set up to keep signing a blank cheque. The bill is a wise move, given the potentially unknown research regarding spinal cord injuries. However, it acknowledges the already remarkable treatment for these injuries, as well as brain injuries. Earlier I was reflecting about my brother who was knocked over by a car, suffered a brain injury and to this day remains in a nursing home. From the payments he received a home was bought for him and my mum looked after him for quite a few years, before her capacity was exhausted. The care then passed to my little brother, who looked after him for quite a few years. That was all good and clearly was the epitome of the way in which tragic family circumstances are meant to work when a loved one is being compromised heavily or catastrophically, as noted in the bill.

The systems are in place, but I realise that some treatments we could have undertaken for my brother in the initial months, which are critical to brain and spinal cord injuries, had massive price tags. Of course, for people who have that kind of money it is okay. However, the situation should never arise when treatments can be signed off just because a flow of funds is available but access leads to people's health being compromised. I merely make that note and hope that situation never arises with regular treatment and care that one should expect from the health system to look after a loved one. Mr David Shoebridge asked: What does one remove from the treatment clauses? Perhaps a top-shelf prosthesis, some of which cost a lot of money? I do not believe that is the intent of this legislation. Rather, I believe it to be along the lines of unseen research and development, which should be scrutinised by those for and on behalf of the New South Wales taxpayers. If that is the intent of the legislation, then it is a wise approach.

The second part of the debate deals with approved providers, about which the Deputy Leader of the Opposition spoke rather well and concisely. The Minister noted in his second reading speech that remote and regional areas will have little or no access to approved providers and, therefore, provisions exist to make sure those people have that access. Certainly, my family was not closely located to regular specialised health care. Quite often mum travelled to Sydney for such health care. It is a mammoth effort to put your loved one in a wheelchair when they do not understand what is happening to them and take them 400 kilometres from their home when you are 60-plus years of age and probably not in the best health. I urge the Government to be aware that at the grass roots of looking after a loved one with a brain or spinal cord injury the last thing one wants to do is chase approval for a provider when there jolly well is limited or no access to such providers.

I urge the Government to be mindful that in remote regional Australia access to such providers will be very limited. The clause should not really shut down the opportunity for those looking after ill people to get quick and appropriate access to the health treatment and care they need to see their loved one treated as humanely as possible and alleviate any distress they may, and quite often do, face with catastrophic injuries. In saying all this, the Christian Democratic Party supports the bill and urges the Government to be mindful of the comments of the Deputy Leader of the Opposition, Mr David Shoebridge and me in this debate.

**The Hon. GREG PEARCE** (Minister for Finance and Services, and Minister for the Illawarra) [4.16 p.m.], in reply: I thank the representatives of the various parties who spoke in the debate. It is common ground that everyone in this Chamber believes that this scheme is important and is performing well, but agrees also on the principal objective to close an unintended loophole and ensure that in doing so any other changes to the legislation improve the administration of the scheme. I repeat the words of the Minister in 2006 when the Act was introduced. The Hon. John Watkins, the then Deputy Premier and Minister for Transport, said:

> The bill clarifies that for a participant in the scheme the CTP insurer dealing with the claim is no longer required to meet any of the person's treatment and care expenses as those expenses are now required to be met solely by the Lifetime Care and Support Scheme. The Motor Accidents Compensation Act is also amended to exclude a lifetime participant in the scheme from recovering economic loss damages for any treatment and care needs.

When the Act was introduced in 2006 downward adjustments were made to motor vehicle insurance premiums and a levy was raised on motorists to fund the Lifetime Care and Support scheme. The compulsory third party insurance premium was reduced because insurers believed that the legislation ensured they would not be liable to indemnify motorists who were at fault in a motor vehicle accident for the costs of care required by people who were so badly injured in those accidents that they required compensation for the ongoing costs of their constant but changing and lifelong treatment and care needs. That is what the Lifetime Care and Support levy was designed to ensure. It is intended that the Lifetime Care and Support Authority always is in a position to meet these needs.

As a number of members indicated, the Government is cognisant of the potential circumstances where—for reasons of distance, time, special circumstances, et cetera—there should be an exception, and we support that. The one not quite significant point of difference relates to the regulation-making power regarding issues identified by Mr David Shoebridge and the Hon. Paul Green. The Hon. Paul Green outlined the compelling circumstances that families find themselves in when having to deal with someone injured in this way.

The discussion about the regulation of power will take place during the Committee stage. In essence, as Mr David Shoebridge has pointed out, medical and technology changes are occurring fast and there are potentially circumstances where there may be a need for the exclusion of certain care and other treatments because of the cost. The Government has taken note of the judgement of Justice Garling, who was critical of the Government allowing the matter to be resolved through the court system instead of doing what governments should do: make a decision and ensure that the community understands it.

The regulation power anticipates that there will be consultation with relevant persons before any decision is made. Certainly I, as Minister, will ensure that takes place if there is any proposal to use the regulation-making power. It also allows for the normal disallowance process, where this House would have to decide whether a regulation would be allowed to stand. That would be under the full glare of public scrutiny and ensure an opportunity for the community to have a say on whether what was proposed was fair and just in the circumstances.

The alternative, which is generally put forward by other members of the House, has the potential for the authority to make a decision through a guideline or administrative act, and the family and the disabled person are required to go through court to establish their position. That involves expenditure of considerable sums of money, and also the stress and strain of managing a court case for those families. On balance the Government's view is that the regulation process which allows for consultation with relevant people before a regulation is made, followed by the accountability of a full public debate if a regulation is made, is the better way to proceed. I commend the bill to the House.

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

**Motion agreed to.**

**Bill read a second time.**

**In Committee**

**Clauses 1 and 2 agreed to.**

**The Hon. ADAM SEARLE** (Deputy Leader of the Opposition) [4.26 p.m.], by leave: I move Opposition amendments Nos 1 to 8 on sheet C2012-095C in globo:

No. 1 Page 3, schedule 1 [1], lines 7 and 8. Omit all words on those lines.

No. 2 Pages 3 and 4, schedule 1 [3], proposed section 5A (2), line 31 on page 3 to line 2 on page 4. Omit all words on those lines.

No. 3 Page 4, schedule 1 [6], line 11. Omit "**Assessed treatment**". Insert instead "**Treatment**".

No. 4 Page 4, schedule 1 [6], lines 13–27. Omit all words on those lines. Insert instead:

(1) The Authority is to pay for all of the reasonable expenses incurred by or on behalf of a person in relation to the treatment and care needs of the person, assessed in accordance with this Act, while the person is a participant in the Scheme.

No. 5 Page 8, schedule 2 [2], proposed section 43A (1), lines 14 and 15. Omit ", or any excluded treatment and care needs,".

No. 6 Page 8, schedule 2 [2], proposed section 43A (3), lines 29–31. Omit all words on those lines. Insert instead:

(3) In this section, **treatment and care needs** has the same meaning as it has in the *Motor Accidents (Lifetime Care and Support) Act 2006*.

No. 7 Page 9, schedule 2 [7], proposed section 141A (1), lines 16 and 17. Omit ", or any excluded treatment and care needs,".

No. 8 Page 9, schedule 2 [7], proposed section 141A (3), lines 30–32. Omit all words on those lines. Insert instead:

(3) In this section, **treatment and care needs** has the same meaning as it has in the *Motor Accidents (Lifetime Care and Support) Act 2006*.

The eight amendments are interrelated. They deal with each of the matters I raised during the second reading debate. I do not propose to recite them again. The drafting of the bill goes further than is necessary to deal with the Thiering case. That overreach is unintentional. The draftsman has unintentionally gone further than is necessary to identify the two key matters arising from the Thiering decision. The amendments proposed by the Opposition are largely coterminous with the amendments that have been circulated in the name of The Greens.

Other than Opposition amendments Nos 3 and 4, they cover the same ground and seek to achieve the same objectives, which is simply to make sure that the authority does not have the power, in essence, to define the boundaries of its own capability; that judicial review remains meaningfully available where there is an administrative error or overreach beyond the powers given to the authority to determine care and support that is reasonably necessary; and to remove the definition of assessed treatment and care as provided for in proposed section 11A (2). It is unnecessary because the assessment power and authority is already reposed in the authority by existing section 23. Proposed section 11A (2), as it is currently drafted, has the power to enable the authority to define the limits of its own power and authority. That is the view of the Opposition. While I have identified other concerns, I will not go into the detail because they were elaborated upon fully during the second reading debate.

**The Hon. GREG PEARCE** (Minister for Finance and Services, and Minister for the Illawarra) [4.28 p.m.]: The Government does not support the Opposition's amendments. In essence, the amendments would have the effect of removing the power to make a regulation to exclude certain treatment and care needs from the ambit of treatment and care needs available under the lifetime care and support scheme and the motor accident compensation scheme. There are good reasons for providing this power in the Act. First, the Thiering litigation arose because of uncertainty about whether the lifetime care and support scheme was at risk for the provision of gratuitous care. The scheme meets all of the reasonable care and treatment needs of participants in the scheme. In the Thiering case Mr Justice Garling was critical of the Government for allowing the matters raised in the case that have led to this bill to be adjudicated by the court rather than addressing the policy matters involved directly. Allowing matters to be determined by costly litigation in the future, particularly in light of these comments, is not desirable.

Second, it is possible that advances in medical science and technology will result in the expenses of some experimental and new treatment and care needs available to lifetime care participants being beyond the scope of either scheme to meet. Third, there is potential for developments in the common law to allow damages for new types of treatment and care needs not yet contemplated by the Legislature. Fourth, the proposed regulation-making power will put the Government in a position to make timely and cost-effective decisions about these matters in conformity with the objects of the schemes to provide just compensation and access to treatment and care for those injured in motor vehicle accidents. It would be only in an extreme situation that I will be advised to make such regulations. For instance, if there were likely to be litigation with a similar outcome to that in the Thiering case.

If such a regulation were made it would be subject to parliamentary scrutiny and disallowance pursuant to provisions of the Interpretation Act. This is an appropriate course and would allow for public scrutiny of any such proposal. In particular, it would allow for proper consultation of all the relevant interested parties before the regulation was adopted. The alternative—that the authority could exclude treatment through a guideline or administrative action—is not desirable. Certainly the families and injured people who will be affected by that are probably least able to meet the costs of legal action; notwithstanding that I am sure there are many lawyers who would undertake this case on a pro bono or other cost recovery basis.

But it is not just the cost; it is also the strain and concern that people who are least able to spend time managing a legal case would be put to if they had to pursue their issues in that way. In circumstances where the authority intends to exclude particular types of care, certainly I as Minister would expect the authority to consult widely on such an exclusion; and I would expect any future Minister would hold the authority to the same standard. In relation to amendments Nos 3, 4 and 5, I am advised that the issue being addressed is the criticism raised by Mr Justice Garling that the Act does not require the authority to pay expenses assessed by the authority as reasonable and necessary. The amendments proposed by the Government are framed specifically to address that concern raised by His Honour. Accordingly, the Government cannot support these Opposition amendments.

**Mr DAVID SHOEBRIDGE** [4.31 p.m.]: The Greens support these Opposition amendments. As the Deputy Leader of the Opposition indicated, in large part they mirror the amendments circulated by The Greens. Indeed, I concede they are an improvement on the amendments circulated by The Greens because they pick up the other issue about limiting the entitlement to recovery of only the assessed treatment and care needs. So not only do the guidelines allow for the exclusion of certain treatment and care needs, but these changes to the legislation will limit claimants to recovery of only those assessed treatment and care needs. True it is that the Act should very explicitly say that the authority is bound to pay all of those assessed treatment and care needs.

But the Act has a further element—which I do not think the Minister addressed in his response—that the new section 11A (3) provides that "no expenses are payable in respect of excluded treatment and care needs"; that is, the treatment and care needs that can be excluded through the regulation-making power. It also provides that "no expenses are payable in respect of treatment and care needs that are not assessed treatment and care needs". In other words, if the bureaucrat has not included a particular form of treatment and care in the assessment, even though a judge or an independent third party might think it is both reasonable and necessary, claimants have no entitlement to recover expenses that they incur, and are not entitled to receive payment for the treatment they need.

One other class of potential excluded care that comes to mind in terms of future attacks on the scheme is, for example, if someone is visiting New South Wales from the United States of America, where medical treatment is very costly. If that person has a catastrophic injury in New South Wales, there is the potential—in fact, I understand a very live potential—for the scheme to say that it will only pay costs at Australian medical rates. So when catastrophically injured persons return to the United States of America, where care is vastly more expensive—say a child who goes back to live with his or her family, or a partner who goes back to live with his or her family—they will have only a capped amount of payment, and that will not go anywhere near covering the actual costs that they occur in their home country.

Equally, in one of the examples I gave before, if someone has a series of amputations to both lower limbs and believes they require an expensive top-shelf prosthesis to greatly improve their mobility, if that is not picked up in the assessment by the bureaucrat, the person will have no capacity to challenge the assessment; they will have no capacity to go before an independent judge and say, "Can you have a good look at this, Your Honour, because I can't get the bureaucrats to see reason, and I cannot live with what they are providing me." Or a carer will say, "I can't go on like this; I can't continue providing the night-time care; it is driving me and my family close to dissolution; can you review this and consider providing this reasonable and necessary care?"

These people will have no capacity to make those arguments before an independent judge. What the bureaucrat says will be final. The Opposition's amendments seek to allow that independent third party review. It really is no answer to say that the regulations can be reviewed by this House, because the House will not have all relevant information before it, all the expert medical witnesses and all the wealth of knowledge that is required to determine in an instant case whether or not particular treatment is both reasonable and necessary.

**Reverend the Hon. FRED NILE** [4.35 p.m.]: On behalf of the Christian Democratic Party, I was very pleased when the Lifetime Care and Support Scheme was originally introduced, and I am very pleased that it has been working successfully. It is important that the House ensures that the scheme remain viable. There was quite a bit of controversy at the time the scheme was introduced, and there is a delicate balance to be achieved in ensuring the treatment and care needed is provided. That is spelt out in the categories provided for in the legislation. It provides that individuals shall receive treatment and care needs such as medical treatment, dental treatment, rehabilitation, respite care, attendant care services, education and vocation training, home and transport modifications, et cetera. The bill provides in new section 5A (1) (l) an open section—that is, "such other kinds of treatment, care, support or services as may be prescribed by the regulations under this paragraph". So any regulation may not be negative; it could actually be positive. We believe it is best to maintain the balance currently in the scheme to ensure its continued success.

**The Hon. GREG PEARCE** (Minister for Finance and Services, and Minister for the Illawarra) [4.37 p.m.]: I thank Reverend the Hon. Fred Nile for pointing out the provisions of subclause (l) of new section 5A (1): the regulation gives us capacity to add extra and new kinds of treatment, care and support services by way of regulation, without the need to amend the scheme.

**Question—That Opposition amendments Nos 1 to 8 [C2012-095C] be agreed to—put.**

**The Committee divided.**

**Ayes, 18**

| | | |
|---|---|---|
| Mr Buckingham | Mr Primrose | Ms Westwood |
| Ms Cotsis | Mr Roozendaal | Mr Whan |
| Mr Donnelly | Mr Searle | |
| Ms Faehrmann | Mr Secord | |
| Mr Foley | Ms Sharpe | *Tellers,* |
| Dr Kaye | Mr Shoebridge | Ms Fazio |
| Mr Moselmane | Mr Veitch | Ms Voltz |

**Noes, 20**

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

**Question resolved in the negative.**

**Opposition amendments Nos 1 to 8 [C2012-095C] negatived.**

**Schedule 1 agreed to.**

**Schedule 2 agreed to.**

**Title agreed to.**

**Bill reported from Committee without amendment.**

### Adoption of Report

**Motion by the Hon. Greg Pearce agreed to:**

That the report be adopted.

**Report adopted.**

### Third Reading

**Motion by the Hon. Greg Pearce agreed to:**

That this bill be now read a third time.

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

## JUDICIAL OFFICERS AMENDMENT BILL 2012

### Second Reading

**Debate resumed from 23 May 2012.**

**The Hon. DAVID CLARKE** (Parliamentary Secretary) [4.50 p.m.], in reply: I thank honourable members for their contributions to the debate on the Judicial Officers Amendment Bill 2012. I will address some matters that members raised. It has been argued that this bill compromises the independence of the judiciary. The Government rejects that argument. Judicial independence is, of course, an essential part of the justice system and the rule of law. It is important that the Judicial Commission is completely independent in its role of receiving and considering complaints about judicial officers. The proposed amendment does not impinge on this independence, and the commission's ability to deal with complaints under the Act will be unaffected. The commission will continue to conduct its preliminary examinations and inquiries in private as far as practicable. The commission will not be required to provide the Attorney General with details of the examination or investigation of a complaint.

The commission will only be required to provide limited information to the Attorney General. The Attorney General will only be able to request information regarding whether a judicial officer is the subject of any complaint, when the complaint was made and when the alleged matter occurred, the subject matter of the complaint, and the progress or outcome of the complaint or referral. If the complaint or referral has not been referred to the Conduct Division for examination, the commission will have discretion not to disclose information about the complaint or referral to the Attorney General if it considers that it is not in the public interest to do so. If misrepresentations have been made in the media or elsewhere about complaints against judicial officers the Judicial Commission may believe it is in the public interest for these misrepresentations to be corrected. The Hon. Adam Searle raised the issue of consultation with the Judicial Commission. I can confirm to the House that the Chief Justice of New South Wales was consulted regarding this bill and he has no concerns. Members should also take note of the Legislation Review Committee's statement in relation to this bill, that:

> ... the information required to be provided to the Attorney General is limited and does not prevent the Judicial Commission from discharging its functions under the Act independently.

The type of provision proposed by this bill is not unprecedented. The Legal Profession Act 2004 enables the Legal Services Commissioner, the Bar Council, the Law Society or an investigator to disclose information obtained in the course of a trust account investigation or examination, a complaint investigation or a compliance audit to the Attorney General. The Act also requires the commissioner and the councils to submit to the Attorney General, at the times and in respect of the periods required by the Attorney General, reports on their respective handling of complaints. These reports deal with matters specified by the Attorney General and can include other matters the commissioner or councils consider appropriate.

I do not believe that Labor or The Greens have ever argued that the independence of the commissioner or the relevant councils is threatened in any way by these provisions. The impetus for this amendment came when Magistrate Brian Maloney provided a written response to a Conduct Division report. The report expressed the opinion that the matters referred to in the report could justify parliamentary consideration of the removal of

Magistrate Maloney from office on the ground of proved incapacity. Magistrate Maloney's written submission to the Conduct Division report stated that since treatment of his bipolar II disorder had begun in February 2010 there had been no further aberrant behaviour or any evidence of the hypomanic episodes he had suffered that resulted in events such as those reflected in the complaints.

The submission also stated that the Conduct Division did not give significant consideration to the fact that Magistrate Maloney had worked for 10 months without any complaint or suggestion of recurrence of symptoms. This claim could not be easily verified and only very limited information could be legally provided after certain processes were followed. This resulted in delays and media speculation. Mr Maloney was then afforded the opportunity to address these additional matters. The inability of the Attorney General to obtain information about complaints before the commission hindered the ability of Parliament to deal with the report of the Conduct Division and to finalise consideration of Magistrate Maloney's possible removal from office.

It also causes difficulties where the existence of a complaint about a judicial officer is already in the public domain and the media are speculating about the outcome. As the commission also cannot respond to such media reports, public confidence in the judicial system can be undermined. This bill preserves the independence of the commission while allowing the Attorney General access to basic information about the existence of complaints to the commission, their progress and outcomes. It should be supported by all members. I commend the bill to the House.

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

**Motion agreed to.**

**Bill read a second time.**

**Consideration in Committee set down as an order of the day for a later hour.**

## JOINT SELECT COMMITTEE ON THE NSW WORKERS COMPENSATION SCHEME

### Report: New South Wales Workers Compensation Scheme

**The Hon. Robert Borsak**, as Chair, tabled the report entitled "New South Wales Workers Compensation Scheme", dated 13 June 2012, together with transcripts of evidence, tabled documents, correspondence, submissions, and answers to the questions taken on notice.

**Report ordered to be printed on motion by the Hon. Robert Borsak.**

**The Hon. ROBERT BORSAK** [4.58 p.m.]: I move:

That the House take note of the report.

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

## JUDICIAL OFFICERS AMENDMENT BILL 2012

### In Committee

**Clauses 1 and 2 agreed to.**

**Mr DAVID SHOEBRIDGE** [5.00 p.m.]: I move The Greens amendment No. 1 on sheet No. C2012-080:

No. 1 Page 3, schedule 1 [1]. Insert after line 5:

(1) This section only applies in relation to:

(a) a judicial officer in respect of whom the Conduct Division has presented a report to the Governor under section 29, and

(b) complaints made against that judicial officer after the report was presented to the Governor.

This amendment is limited to correcting the evil that the Parliamentary Secretary indicated this bill was designed to remedy. For example, in a case that is highly politicised and comes before this House, such as the Magistrate Maloney case, in those circumstances, and only in those circumstances, the Attorney will have the capacity to request the Judicial Commission to provide material relating to any other complaints about the magistrate. As I indicated during the second reading stage, The Greens fully understand the difficulty the Attorney got into in the Maloney case. During submissions to this House the magistrate indicated that he was clear of any other charges and never had any other complaint made against him, yet there were suggestions in that wonderful rumour mill which is the legal profession that found their way into the media. The suggestions were that the magistrate had in fact been the subject of yet further complaints after the complaints that were the subject of proceedings in this House.

It was very unclear how the Attorney could get that information from the Judicial Commission. In the end result direct requests were made by the Attorney to the Judicial Commission seeking the information. Some form of information was provided, but it was a very second-rate manner of putting information before the House. There was a strong suggestion that the Attorney, having made the request, had undertaken an inappropriate political intervention in the case of Maloney. The Greens can very clearly see how this bill should be crafted to allow the Attorney to obtain that information in circumstances in which there is a complaint before the House, when the matter is already in the political realm and it is necessary to obtain information to determine whether or not there are other or more serious complaints against a magistrate or a judicial officer who is the subject of consideration of a motion in this House to remove them from office. But this legislation should not be extended to allowing the Attorney to simply obtain information from the Judicial Commission about any judicial officer at any level of complaint.

There can be no rational public policy reason to allow a partisan politician, which is what the Attorney always will be, to have privileged access to information about complaints relating to judicial officers whose status, even under our muddied separation of powers, is quite distinct from that of the Executive or the Parliament. There can be no reason why the Attorney should have privileged access to quite damaging material about judicial officers when the matter is not otherwise the subject of a political debate in this House. We have the Judicial Commission in place for a very good reason: to ensure that its judges are independent of politicians and determine conduct matters. There is no reason at all for the Attorney General to meddle in that process, obtain information and potentially use it for party-political reasons. Members should bear in mind that there is no restraint on what the Attorney can do with information. He potentially can use it for party-political reasons, not to remedy the narrow and difficult circumstances that confronted the Parliament in the Maloney case.

The Greens amendment will limit the operation of the legislation to the Maloney type of cases. One would have thought this is a sensible reform to ensure there is no judicial overreach and no politicising of the judiciary. There simply has been no response from the Government about why it wants to extend access beyond those circumstances. It would appear that it simply wants to get this information just in case it wants to use it.

**The Hon. ADAM SEARLE** (Deputy Leader of the Opposition) [5.04 p.m.]: The Opposition supports The Greens amendment. However, we oppose the bill because we think it is bad in principle, as I outlined during the second reading debate. But if legislation of this type is to exist in any way, shape or form it should be limited in the manner proposed by Mr David Shoebridge only to matters that are current, live and before this House. With that significant limitation on the scope of the operation of this legislation it might just be bearable.

**The Hon. DAVID CLARKE** (Parliamentary Secretary) [5.05 p.m.]: The Government opposes the amendment moved by The Greens. The Judicial Officers Act 1986 prohibits a member or officer of the Judicial Commission from disclosing any information in relation to a complaint before the commission except in some limited circumstances that are set out in the Act. The Attorney General is generally unable to obtain information about the existence, progress or resolution of a complaint before the commission. The Judicial Officers Amendment Bill 2012 will enable the commission to disclose to the Attorney General whether a complaint has been received about a judicial officer, the stage that consideration of the complaint has reached, the subject matter of the complaint, whether it has been summarily dismissed, and whether it is still under investigation or has been resolved. The bill aims to ensure that basic information can be provided to the Attorney General. It will also ensure that the Attorney is aware of any complaints that are serious enough to be referred to the Conduct Division of the commission.

The amendment moved by The Greens would limit the application of this section to complaints made against a judicial officer who has been the subject of a Conduct Division report under section 29 and only to complaints made after that report was presented to the Governor. Under section 29, if the Conduct Division decides that a complaint is wholly or partly substantiated and forms an opinion that the matter could justify

parliamentary consideration of the removal from office of the judicial officer, it must present a report to the Governor setting out the division's findings of fact and that opinion. A copy of the report is then laid before both Houses of Parliament. Last year the removal of Magistrate Brian Maloney was considered by Parliament after a report by the Conduct Division was presented to the Governor. To ensure that Parliament might be fully informed when considering whether Magistrate Maloney should be removed from office on the ground of proved incapacity, the Attorney General wrote to the Judicial Commission asking whether the magistrate had been the subject of any further complaints after completion of the investigation.

Due to the prohibition on disclosure in section 37 of the Act the commission was unable to provide any information until the consent of the complainant was provided. The bill aims to address that issue and other situations in which Parliament or the public may require information about a complaint. The proposed amendments to the bill would unnecessarily restrict the circumstances in which the Attorney General could be provided with information from the Judicial Commission. The Greens amendment would enable information about further complaints made against a judicial officer to be provided only after a Conduct Division report had been presented to the Governor. The inability of the Attorney General to obtain information about complaints made prior to this legislation could hinder the ability of Parliament to consider matters involving judicial officers.

A judicial officer who is the subject of a Conduct Division report, upon being invited to address Parliament about why he or she should not be removed from office, could state that he or she had never been the subject of a complaint. Under the proposed amendments Parliament may be unable to confirm the truth of that. Any complaints made prior to the presentation of the report to the Governor would be subject to the same prohibitions against disclosure of information that currently are in force. The Judicial Commission may be unable to verify the statement of the judicial officer and Parliament would then be in a position of having to consider the possible removal of a judicial officer without being fully informed of all the facts.

The bill as it stands provides the Judicial Commission with discretion in relation to complaints that have not been referred to the Conduct Division. If the Judicial Commission does not consider that release of information about these complaints is in the public interest, it cannot be compelled to release the information. The Judicial Commission is comprised of the Chief Justice of the Supreme Court, the presidents of the Court of Appeal and the Industrial Relations Commission, the chief judges of the Land and Environment Court and the District Court, the Chief Magistrate and four other members who are appointed following consultation with the presidents of the New South Wales Bar Association and the Law Society and the Chief Justice.

The proposed Greens amendment would remove the discretion from the Judicial Commission. By restricting the application of the section only to judicial officers who have been the subject of a Conduct Division report, this amendment removes the ability of the Judicial Commission to provide information to the Attorney General in cases of other complaints where the Judicial Commission considers that it is in the public interest to do so. The Judicial Commission may, for example, consider it in the public interest to provide information to the Attorney General when misrepresentations have been made in the media or elsewhere about complaints against judicial officers. The proposed amendment is far too narrow and does not achieve the purpose of the bill: to enable the Attorney General to be provided with basic information about complaints against judicial officers and to enable the Attorney General to advise Parliament, or in appropriate cases the public, about the status of complaints before the Judicial Commission.

**Dr JOHN KAYE** [5.11 p.m.]: I thank the Parliamentary Secretary for his elucidation of the issue. As I understand it, his key concern about the legislation relates to complaints that were made before the report was presented to the Governor—the inability of the Attorney General to be provided with information in relation to a Conduct Division report about a judicial officer in respect of whom the Conduct Division has presented a report to the Governor under section 29. His concern is that the Greens amendment as it stands would therefore limit the reporting to only matters that have occurred after the report was presented to the Governor. Therefore, I move:

That The Greens amendment No. 1 on sheet C2012-080 be amended by omitting all words after "judicial officer" in 1 (b).

Paragraph 1 (b) now reads, "complaints made against that judicial officer." This allows all complaints to be reported to the Attorney General in relation to a judicial officer in respect of whom the Conduct Division has presented a report to the Governor under section 29. I believe the amendment I have moved to Mr David Shoebridge's amendment will address the concerns of the Parliamentary Secretary.

**The Hon. ADAM SEARLE** (Deputy Leader of the Opposition) [5.13 p.m.]: Despite the amendment, the Opposition still supports The Greens amendment No. 1.

**Reverend the Hon. FRED NILE** [5.13 p.m.]: We share some of The Greens' concerns. We were not sure what the Attorney General would do with the information he gets about complaints. I remember the case of Magistrate Maloney. There was a great deal of tension in the House when dealing with that matter. If the Attorney General had the information, would he present it to the House? Would he envisage getting involved in the debate in some way by saying that he had additional information? The Attorney General is in the other place. Would he present the information in some written document that may influence the outcome of the motion regarding whether the magistrate should be removed from his or her position? That is my only concern. The information should be for the benefit of the Attorney General; the Attorney General should not become directly involved in the debate, guide it in a certain direction and influence the outcome. We will not support the amendment. I am concerned about how the Attorney General would apply the information he receives.

**Mr DAVID SHOEBRIDGE** [5.15 p.m.]: For perfect clarity, the amendment is designed to corral the circumstances in which the Attorney General can access all the information that Reverend the Hon. Fred Nile is concerned about. The Greens and the Opposition share the concerns of the Christian Democrats that the Attorney General can access complaints about any judicial officer regardless of whether they come before Parliament, as in the circumstance of Maloney. An Attorney General may not like a particular judicial officer. As the member knows, Attorneys General come from the legal profession, which is not without certain intense internal rivalries, personality disputes and the like. Judicial appointments are often full of personality concerns, political concerns, and judicial theory concerns. So there can often be intense personal rivalries between an Attorney General and members of the judiciary.

Why would we pass a bill that allows the Attorney General far broader access to any complaints about judicial officers, knowing full well that the Attorney General not only is part of a partisan political debate in Parliament but also comes from the legal profession, where we know full well there are rivalries and personality clashes? I urge Reverend the Hon. Fred Nile to consider seriously supporting the amendment. It is designed not to remove the positive elements of the bill, which allows the flow of information that the member indicated is required, but to limit the bill so that the House can deal with the matters and the very concerns that the member raised.

**Question—That the amendment of Dr John Kaye to The Greens amendment No. 1 [C2012-080] be agreed to—put and resolved in the negative.**

**Amendment of Dr John Kaye to The Greens amendment No. 1 [C2012-080] negatived.**

**Question—That The Greens amendment No. 1 [C2012-080] be agreed to—put and resolved in the negative.**

**The Greens amendment No. 1 [C2012-080] negatived.**

**The Hon. ADAM SEARLE** (Deputy Leader of the Opposition) [5.18 p.m.], by leave: I move Opposition amendments Nos 1 to 3 on sheet 2012-097 in globo:

No. 1 Page 3, schedule 1 [1]. Lines 5–7, 22, 25 and 27. Omit "Minister" wherever occurring. Insert instead "Attorney General".

No. 2 Page 4, schedule 1 [3]. Line 5. Omit "Minister". Insert instead "Attorney General".

No. 3 Page 5, schedule 2. Lines 9 and 10. Omit "Minister administering the Judicial Officers Act 1986 under section 37A of that Act". Insert instead "Attorney General under section 37A of the Judicial Officers Act 1986".

In short, amendments Nos 1 and 2 remove the word "Minister" wherever it occurs in the bill and replace it with "Attorney General". Amendment No. 3 omits "Minister administering the Judicial Officers Act" and inserts instead "Attorney General". The reason for this is that we oppose the bill. We think it is bad in principle. But a further compounding difficulty is that the bill permits not just the Attorney General to receive this very sensitive information but any Minister who is given the administration of the Act.

It is probably unlikely that the Act would be allocated to any other Minister, but another circumstance needs to be addressed. The Constitution Act 1902 provides in section 36 that any Minister of the Crown may act for any other Minister. Section 37 provides that any Minister may perform or exercise the role or any power of any other Minister of the Crown if satisfied that that other Minister is unavailable. Section 37A extends that to some ancillary functions. Section 38 provides that nothing in any of those other provisions authorises a Minister of the Crown to exercise any function that is by an Act or any other law annexed or incident to the office of Attorney General.

So wherever legislation reposes a power, authority or role in the Attorney General, it can be exercised only by the Attorney General and not by any other Minister in any other circumstance. If the Attorney General is unavailable or out of the jurisdiction, those legal powers devolve, as I understand, to the Solicitor General, who is, of course, an independent statutory office holder. If the Attorney General were unavailable or out of the jurisdiction, this bill would permit any of the other Ministers of the Crown in some circumstance to access and receive this information and make use of it. We believe that is extremely dangerous. We think the bill is dangerous anyway and do not accept the need for it. But if such legislation is to exist, the capacities and powers that it provides must be limited to the person who from time to time holds the office of Attorney General, the first law officer of this State.

I note the contribution of Mr David Shoebridge, who pointed out that of course the Attorney General is a politician and part of the adversarial political system. Nevertheless, a number of particular legal powers repose in the holder of that office and, to the degree possible permitted by legislation of this kind, there should be the additional safeguard that not just any Minister of the Crown is able to access this information. Only the Attorney General should access the information. The Parliamentary Secretary in his second reading speech and in his speech in reply made a number of references to the Attorney General and to what that person can do under this bill. It seems to me quite likely that the word "Minister" has perhaps been used erroneously instead of "Attorney General". Hopefully, this oversight can now be remedied by agreement. I urge all members to support Opposition amendments Nos 1, 2 and 3.

**The Hon. DAVID CLARKE** (Parliamentary Secretary) [5.22 p.m.]: The Government opposes the Opposition's amendments as they would be inconsistent with terminology in the rest of the Judicial Officers Act 1986, which uses the term "Minister". The term "Attorney General" is used only in the context of very specific functions of the Attorney General as the first law officer of the State. The Attorney General is always referred to as the "Minister" when he is not performing one of those functions. The ability to request information from the Judicial Commissioner as provided for in this bill is not one of those functions.

**Dr JOHN KAYE** [5.23 p.m.]: The inconsistency pointed out by the Parliamentary Secretary is one reason The Greens support the Opposition's amendments. As I understand it, the specific concern the Labor Party raises is that the functions of the Attorney General can be exercised by any other Minister. The purpose of the amendments is to stop that happening in this particular case—specifically because of the extremely sensitive nature of the information being supplied about a judicial officer. These amendments limit the harm done by the bill and ensure that when information about a complaint against a judicial officer is passed on it goes only to the person who holds the rights and title of the Attorney General, not to another Minister. The amendments attempt to corral the spread of the information as much as possible and have it sit only with the person specifically designated as the Attorney General. To that extent, these are extremely sensible amendments and The Greens support them.

**Question—That Opposition amendments Nos 1 to 3 [C2012-097] be agreed to—put.**

**The Committee divided.**

**Ayes, 15**

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| Mr Buckingham | Mr Primrose | Mr Whan |
| Ms Cotsis | Mr Searle | |
| Mr Donnelly | Mr Secord | |
| Ms Faehrmann | Ms Sharpe | *Tellers,* |
| Dr Kaye | Mr Shoebridge | Ms Fazio |
| Mr Moselmane | Ms Westwood | Ms Voltz |

**Noes, 19**

| | | |
|---|---|---|
| Mr Blair | Mr Harwin | Reverend Nile |
| Mr Borsak | Mr Khan | Mrs Pavey |
| Mr Brown | Mr Lynn | Mr Pearce |
| Mr Clarke | Mr MacDonald | |
| Ms Cusack | Mrs Maclaren-Jones | *Tellers,* |
| Mr Gay | Mr Mason-Cox | Mr Colless |
| Mr Green | Mrs Mitchell | Dr Phelps |

**Pairs**

| | |
|---|---|
| Mr Foley | Mr Ajaka |
| Mr Roozendaal | Ms Ficarra |
| Mr Veitch | Mr Gallacher |

**Question resolved in the negative.**

**Opposition amendments Nos 1 to 3 [C2012-097] negatived.**

**Schedule 1 agreed to.**

**Schedule 2 agreed to.**

**Title agreed to.**

**Bill reported from Committee without amendment.**

**Adoption of Report**

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

That the report be adopted.

**Report adopted.**

**Third Reading**

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

That this bill be now read a third time.

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

## BUSINESS OF THE HOUSE

**Postponement of Business**

**Government Business Orders of the Day Nos 4 to 7 postponed on motion by the Hon. David Clarke.**

## STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2012

**Second Reading**

**The Hon. DAVID CLARKE** (Parliamentary Secretary) [5.35 p.m.], on behalf of the Hon. Michael Gallacher: I move:

That this bill be now read a second time.

The Statute Law (Miscellaneous Provisions) Bill 2012 continues the statute law revision program that is recognised as an effective method of dealing with amendments of the kind included in the bill. The form of the bill is similar to that of previous bills in the statute law revision program. Schedule 1 contains policy changes of a minor and non-controversial nature that the Minister responsible for the amendment to the legislation considers to be too inconsequential to warrant the introduction of a separate amending bill. That schedule contains amendments to 28 Acts. I will mention some of them to give members an indication of the kinds of amendments that are included in the schedule. Schedule 1 amends the Barangaroo Delivery Authority Act 2009 to remove the requirement for the Secretary to the Treasury to be a member of the board of the authority and to increase the number of persons that the Premier may appoint to the board from four to five persons.

The schedule makes a number of amendments to the Environmental Planning and Assessment Act 1979 including amendments to extend a right of appeal to persons who have deposited security with a council in accordance with a complying development certificate and are dissatisfied with the council's failure to release the security. Other amendments to that Act will enable joint regional planning panels to advise the Director General of the Department of Planning and Infrastructure, and not just the Minister, as is currently the case. The Firearms Act 1996 is amended to authorise police officers to seize licences and permits that are not in force, consistent with the existing obligation to immediately surrender licences and permits when they cease to be in force. Another amendment to that Act will reduce red tape by enabling licensed dealers to sell or otherwise deal with imitation firearms under the authority of their licence rather than having also to obtain a permit.

Schedule 1 contains miscellaneous amendments to the Fisheries Management Act 1994. These include an amendment to make it clear that the Minister may cancel an aquaculture lease if the leased area is not used for aquaculture. Schedule 1 amends the Health Care Complaints Act 1993 and the Health Records and Information Privacy Act 2002 to update terminology so that it is consistent with the national scheme for the regulation of health practitioners. For example, the term "nursing services" is replaced with the term "nursing and midwifery services" in recognition of the fact that nursing services are distinct from midwifery services under the national scheme.

The Interpretation Act 1987 is amended to confirm existing law to the effect that a delegation by an office holder generally continues to have effect even though the person who made the delegation has ceased to hold the relevant office. The new office holder may vary or revoke the existing delegation. Schedule 1 also amends the Liquor Act 2007 in relation to the operation of the three-strikes disciplinary scheme that currently applies in respect of convictions for certain offences, or the payment of penalty notices for alleged offences, at licensed premises. The amendments will ensure that a strike is also incurred if a penalty notice enforcement order is made because a licensee or manager fails to pay under a penalty notice and does not elect to have the penalty notice offence dealt with by a court. The amendments also enable a strike to be revoked if a court election is made after payment under a penalty notice or if a penalty notice or enforcement order is withdrawn or annulled.

Finally, in relation to schedule 1, I mention the miscellaneous amendments to the Residential Tenancies Act 2010. One of these amendments will ensure that it is not an offence for a landlord or agent to receive a rental bond from a tenant before the tenant signs a residential tenancy agreement. However, it will remain an offence for the landlord or agent to require the bond to be paid before the agreement is signed.

Schedule 2 deals with matters of pure statute law revision consisting of minor technical changes to legislation that Parliamentary Counsel considers are appropriate for inclusion in the bill. Examples of amendments in schedule 2 are those arising out of the enactment of other legislation, those correcting numbering and typographical errors, and those updating terminology. Schedule 3 makes amendments, by way of pure statute law revision, to forms of statutory declarations and affidavits. These amendments are consequent upon recent changes to the Oaths Act 1900 under which witnesses of statutory declarations or affidavits must certify that they have complied with requirements concerning the identification of the persons making the declarations or affidavits.

Schedules 4 and 5 continue the program of repealing Acts and instruments that are redundant or of no practical utility and consolidating Acts that have ongoing operation. Schedule 5 repeals 28 Acts and one instrument in their entirety and various provisions of Acts and instruments. Schedule 4 contains amendments that include the transfer into various Acts of the provisions of Acts repealed by schedule 5. For abundant caution the bill, in conjunction with section 29A of the Interpretation Act 1987, continues to provide a power for the Governor, by proclamation, to revoke the repeal by the bill of any Act or instrument and to restore its operation.

Schedule 6 contains general savings, transitional and other provisions. These include provisions dealing with the effect of amendments on amending provisions and savings clauses for the repealed Acts. The various amendments made by the bill are explained in detail in explanatory notes set out beneath the amendments to each of the Acts and statutory instruments concerned or at the beginning of the schedule concerned. If any amendment causes concern or requires clarification it should be brought to my attention. If necessary I will arrange for government officers to provide additional information on the matters raised. If any particular matter of concern cannot be resolved and is likely to delay the passage of the bill the Government is prepared to consider withdrawing the matter from the bill. I commend the bill to the House.

**The Hon. ADAM SEARLE** (Deputy Leader of the Opposition) [5.41 p.m.]: I lead for the Opposition on the Statute Law (Miscellaneous Provisions) Bill 2012. The Opposition does not oppose the bill, which of course is part of a statute law revision program pursued by all governments in this State. It is an efficient and effective way to achieve what are regarded as minor changes to laws and other statutory instruments. There are different categories of these minor changes: there are minor amendments to legislation in schedule 1; there are amendments to Acts and instruments for statute law revision; there are amendments to enable the repeal of certain Acts and instruments or parts thereof; and there are consequential and ancillary changes. For example, the Aboriginal Land Rights Act is to be amended to extend to 30 June 2014 the period during which a local Aboriginal land council can operate a social housing scheme. Given the great significance of the underlying issue, we will of course not oppose this amendment. It is a repeated amendment, but we think that is a reflection of the difficulty of the policy and practicalities in this particular area.

We note some extensions to the Industrial Relations (General) Regulation 2001, which will allow it to remain in force and effect. That is welcomed. I note also amendments to the Home Building Act 1989 and the Motor Vehicle Repairs Act 1980, and changes to a whole variety of enactments and other statutory instruments. The only item that causes me any potential concern is at page 20 of the bill. It appears that item [6] of schedule 1.25, as I understand it, will require all social housing tenants to pay charges for water. At present, I think some tenants are exempt from the charges if that is specified in their tenancy agreements. If that is the case, this may not be an appropriate vehicle for that change.

I may be misunderstanding the effect of that. Perhaps that could be checked. If my understanding is correct, although I would not want to hold up passage of the bill, all tenants would need to be well notified before such a provision comes into force and effect, particularly if it would constitute a material change to their existing tenancy rights. I am sure it would be no-one's intention to unilaterally change those tenancy rights by legislative fiat, but that may well be the effect of this provision. So it may be wiser to remove it. Those are the only observations I have on the bill. With that comment, I wait to hear from the Parliamentary Secretary in reply.

**Dr JOHN KAYE** [5.44 p.m.]: The Greens concur with what was said by the Deputy Leader of the Opposition. This is a sensible mechanism for minor changes to laws and other instruments. The Greens and other members of Parliament have had the opportunity to go through the Statute Law (Miscellaneous Provisions) Bill 2012 and examine each of the relevant sections to ascertain whether anything is controversial or requires more detailed analysis. Indeed, we found no such sections in this legislation. We thank the Government for extending the usual courtesy of giving us time to go through the legislation and to get back to it. As a result, we did not identify any issues that cause us concern. We presume the same is true of other members of Parliament. Therefore, The Greens support the bill.

**The Hon. Dr PETER PHELPS** [5.45 p.m.]: It fills me with an almost knee-trembling joy that, by this bill, 28 entire Acts of Parliament will be disposed of, consigned to the dust bin of history. Let it be said that no government has ever legislated its way towards freedom. No, every legislative intervention which we make is in some way a diminution of human freedom. But bills such as these are the bliss that drives my life. This is the Promised Land which I see across the River Jordan: today, we dispose of 28 Acts. This continues a long tradition—well, a tradition that has commenced with this Government at least—of getting rid of Acts that we do not need. The Statute Law (Miscellaneous Provisions) Bill 2012 will eliminate another 28 Acts of Parliament, taking the total, I believe, for the O'Farrell Government to more than 120 Acts dispatched, removed from the legislative books of the State of New South Wales. That fills me with a great deal of joy—and I can tell it fills you, Mr Assistant-President, with a great deal of joy also.

It is a truth, universally acknowledged, that governments that seek to legislate inevitably introduce legislation that has unintended consequences. Every bill that comes before us will have had consequences that were not foreseen. Today, we rid the State of 28 Acts that have had, somewhere along the line, unintended consequences. But there is a whole lot more that we can do. As I said in my inaugural speech, when I came into

this Parliament there were 1,089 separate Acts of Parliament in New South Wales. How is an individual man or woman in New South Wales supposed to live in a society governed by more than a thousand separate Acts of Parliament? There is no way individuals could possibly know them. Even the learned Deputy Leader of the Opposition, the Hon. Adam Searle, would have to admit that he could not name the more than one thousand Acts of Parliament in this State, much less know the detail inscribed in each of them.

This Parliament should be about making life easier for its citizens, not tougher for them—not forcing them to devote large amounts of their time to understand the legislative regime in this State, not having to hire the professional help of a whole range of barristers and solicitors to find out what they can and cannot do in their lives. No, Australians and the men and women of New South Wales should be able to go about their lives with minimal legislative interference, guaranteeing their freedom and the freedom of others. That is what this State should be about. That is what this Parliament should be about. It should be about de-legislating. Everyone says, "Well, what do you want to do?" I want to do less. Governments should do less—not more. There should be less interference, less regulation, less legislation, less taxation and fewer diminutions of freedom of Australian citizens—a recognition of our natural rights, not a diminution of our natural rights.

That is the proper and appropriate role for any legislature. Hopefully, in this Parliament we will see bills such as this come before us on an even more regular basis than every six months, because there are many, many extant but useless and unnecessary private bills which still sit on the legislative books of the State of New South Wales. I urge the Attorney General to look deeply into this, to go through these bills with a fine-tooth comb, to apply Occam's razor and to say, "Do we really need this bill? Does this bill increase the total quantum of freedom for the men and women of New South Wales or does it decrease the total quantum of freedom for the men and women of New South Wales?" That is the touchstone by which all legislative programs should be set: Does it increase or decrease freedom?

The Attorney General is doing an excellent job so far in so many different ways but especially in relation to the repeal of redundant and unnecessary Acts of Parliament already on the books. Today we see another 28 redundant Acts go. I am sure people listening to this debate will be surprised to know that there is a Balmain-Rozelle Anzac Memorial Hall Act; that there is a Broken Hill Abattoirs, Markets, and Cattle Sale-yards Act; that there is a Christ Church Cathedral, Newcastle, Cemetery Act; and that there is a General Post Office (Approaches Improvement) Act. Who would think that we would need an Act of Parliament to improve approaches to the General Post Office? But, strangely enough, in this State apparently we do—or at least we did in 1889.

We have a Leeton War Memorial Act and a Lord Howe Island Aerodrome Act. These are not remarkable examples; these are standard examples of private bills that have come in over 150 or 160 years of self-government in New South Wales, which are unnecessary and should not be on the statute books. We have the Parramatta Friendly Societies' Hall Site Vesting Act 1904. Why has that not been removed at some time in the previous 100 years? It is one of these redundant private bills that came before Parliament at a time when people believed that because something was relatively important government should have some say in it. One of the great tragedies is that there are still people in Australia—and they tend to be on the other side of the Chamber—who believe that just because something is important government should have a say in it, government should have a hand in it, government should legislate for it and government should regulate for it. The old saying is, "If it moves, tax it; if it does not move, subsidise it." That is the way the left of the Chamber sees the world. They believe that everything needs an Act. But not everything needs an Act.

We do not need the Sydney Mechanics School of Arts (Enabling) Act 1929. I am not sure why we have ever needed a Standard Insurance Company Limited and Certain Other Insurance Companies Act 1963. I am not sure why we need an Australian Mutual Provident Society Amendment Act 1941. These are the sorts of things we do not need. I note in passing, however, that the Camperdown Cemetery Act 1948 is being repealed. Camperdown Cemetery has deep connotations for me because having grown up in Camperdown I played many times in Camperdown Memorial Park only to realise some years later that there are many extant graves beneath the surface of the park. As it turns out, I could well have been playing football over the body of my great-grandfather, which is a nice symbiosis.

**Dr John Kaye:** Do you know what the Act did?

**The Hon. Dr PETER PHELPS:** I do know what the Act did. The Act transferred the St Stephen's Cemetery to Marrickville Council. Those people who were wealthy enough could remove bodies and have them transferred to Rookwood, but the rest of the cemetery—including bodies from families not wealthy enough—was transformed into the memorial park.

**Dr John Kaye:** They also moved the bodies to Sydney Cemetery.

**The Hon. Dr PETER PHELPS:** Your interjection is incorrect. I know this quite well. It is wonderful to see so many of these Acts going and I look forward to many, many other Acts currently on the books in this State being eliminated or being proposed for elimination by the Attorney General—an excellent Attorney General—in the near future.

**The Hon. PAUL GREEN** [5.55 p.m.]: On behalf of the Christian Democratic Party I speak on the Statute Law (Miscellaneous Provisions) Bill 2012. I note that the Hon. Dr Peter Phelps stole a lot of my information, but he did well with it. It is a good day when we can get rid of red tape, green tape or bill tape by removing 28 Acts that are no longer needed. I think the people of New South Wales will be better off for it. The Christian Democratic Party commends the bill to the House.

**The Hon. DAVID CLARKE** (Parliamentary Secretary) [5.56 p.m.], in reply: I thank members for their contributions to debate on the Statute Law (Miscellaneous Provisions) Bill 2011. In regard to the issue raised by the Hon. Adam Searle about the proposal to omit section 139 (7) of the Residential Tenancies Act, section 39 of that Act sets out the provisions by which a landlord can pass on water usage charges to a tenant. By virtue of section 39 (7), the provisions are a term of every residential tenancy agreement, including those in the social housing sector, whether the agreement was entered into before or after commencement of the Act.

Section 139 is designed to complement section 39. The section enables social housing providers to use approved ministerial guidelines in relation to requesting tenants to pay for water usage. For example, the guidelines provide for a reduction in the amount payable by tenants with health issues or large households. However, section 139 (7) provides that the section does not apply to a social housing tenancy agreement if the agreement specifies that section 39 is to apply to the payment of water usage charges. The purpose and meaning of this provision has been questioned by the Federation of Housing Associations and other stakeholders. Section 39 already applies to every agreement and there is no need for an additional term to be added to an agreement to this effect. The elements of section 39 are reflected in clauses 10.5 and 11 of the standard prescribed agreement. The wording of section 139 (7) raises doubt about the ability of social housing providers to rely upon the ministerial guidelines. The removal of this provision will remove that doubt.

The amendments in the Statue Law (Miscellaneous Provisions) Bill 2012 will enable the Government to get on with the job for which it was elected, and I am pleased to see the Government repealing redundant legislation, easing the regulatory burden, reducing red tape and increasing certainty in the law. The Hon. Dr Peter Phelps is quite right and I am at one with him on this—as I usually am on most matters—that this is another fine bill from an outstanding Attorney General, the Hon. Greg Smith, who is one of the most outstanding Attorneys General New South Wales has ever seen. I am proud to introduce this bill on behalf of the O'Farrell Government.

With regard to some of the other minor amendments, I specifically mention the Environmental Planning and Assessment Act. Amendments to that Act will facilitate the smooth functioning of the property development process. Amendments to the Health Care Complaints Act will enable consistency with national health practitioners' laws. Amendments to the Residential Tenancies Act simplify and improve leasing arrangements for the benefit of tenants and landlords. Amendments to the Petroleum (Onshore) Act 1991 bring the title application process into the twenty-first century by permitting applications to be made electronically. These amendments will also provide for the smoother operation of our legislative arrangements, which is good for business, the community and the people of New South Wales. I have great pleasure in commending the bill to the House.

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

**Motion agreed to.**

**Bill read a second time.**

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

## Third Reading

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

That this bill be now read a third time.

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

## HEALTH LEGISLATION AMENDMENT BILL 2012

### Second Reading

**The Hon. MELINDA PAVEY** (Parliamentary Secretary) [6.01 p.m.], on behalf of the Hon. Michael Gallacher: I move:

That this bill be now read a second time.

The Health Legislation Amendment Bill 2012 makes a number of minor amendments to the Health Practitioner Regulation (Adoption of National Law) Act 2009, the Health Records and Information Privacy Act 2002 and the Poisons and Therapeutic Goods Act 1966. The amendments will help ensure the continued smooth operation of these Acts. I will turn first to the amendments to the Health Records and Information Privacy Act set out in schedule 1.2 to the bill. The Health Records and Information Privacy Act regulates the collection, use and disclosure of health information and applies to both the public and private sector. The private sector in New South Wales is also bound by the Commonwealth Privacy Act 1988.

Genetic information is considered health information and is regulated by the general principles in the Act. However, genetic information poses some specific issues of concern in today's world. A patient's genetic information, including whether the patient has a genetic disease or has a genetic predisposition to a disease, will often be of significance to the patient's genetic relatives. This is because the patient's genetic relatives often carry the same genes and therefore face the same genetic risks as the patient. Because of the relevance genetic information may have on a patient's relatives, genetic services in New South Wales advise individuals during pre-test counselling that there may be a need for them to inform other at-risk family members of genetic test results. While most patients agree, a small number of patients fail or refuse to disclose their genetic information.

These types of cases cause complex ethical issues. When a patient's genetic information indicates the patient either has a genetic disease, or has a strong genetic predisposition to developing a serious disease, there are ethical arguments that clinicians should be able to disclose health information to a genetic relative even without the patient's consent. These arguments are particularly strong when providing the information would allow a genetic relative to take steps to identify his or her own level of risk and take any appropriate preventative action, such as regular screening for the particular disease in order to allow for early diagnosis and treatment. In some cases, such early treatment can be lifesaving.

However, while there are possible benefits to disclosing such information without consent, there are other interests to take into consideration. These include the need to protect the patient's privacy and confidentiality and the need to recognise that negative impacts may flow from such a disclosure. This may include adversely impacting on family dynamics or causing distress to relatives if they have knowledge of a genetic risk that they would prefer not to be made aware of, particularly if there is no current treatment or preventative options available.

While the disclosure of genetic information to a genetic relative without consent is a serious and contentious ethical question, the form of privacy law in New South Wales as currently drafted does not enable the complexities of the question to be addressed. Rather, genetic information is treated in the same way as any other health information. This effectively means that such disclosure without consent can occur only when there is a serious and imminent threat to life, health or safety. However, the serious and imminent test will rarely, if ever, allow disclosure of genetic information to a genetic relative without consent. While many treatable and serious genetic disorders may pose a serious, and potentially fatal, risk or threat of harm, they are likely also to have a slow onset of many years and so are unlikely to meet the requirement that the threat be imminent.

This contrasts with the position at the Commonwealth level under the Commonwealth Privacy Act. The Commonwealth Act allows, but does not mandate, an organisation to use and/or disclose genetic information without the patient's consent if and only if the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety—whether or not the threat is imminent—of a genetic relative of the patient; the use or disclosure is conducted in accordance with guidelines approved by the Commonwealth Privacy Commissioner; and in the case of disclosure the information is disclosed to a genetic relative of the patient.

The Commonwealth Privacy Commissioner has approved guidelines which were developed by the National Health and Medical Research Council [NHMRC]. The guidelines impose a number of conditions on clinicians when they are deciding whether or not to disclosure the information. Thus, the authorising clinician is to first take all reasonable steps to obtain consent from the patient. The clinician is required also to consider all the ethical issues and to consult with other experienced clinicians. Further, the National Health and Medical Research Council guidelines make clear that if a disclosure occurs, only information that is necessary to communicate the risk of harm should be disclosed and, where possible, the patient should not be identified.

By recognising the ethical issues associated with genetic information and by establishing a limited but appropriate framework in which genetic information can be disclosed without consent, the Commonwealth Act is considered the better model to deal with the contentious ethical issues associated with genetic information. The bill therefore seeks to amend the Health Records and Information Privacy Act to establish a similar framework in New South Wales in respect of genetic information. The amendment to the Act will allow, but not require, an organisation to use and disclose a patient's genetic information without consent only if the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety—whether or not the threat is imminent—of a genetic relative of the person to whom the information relates; the use or disclosure is conducted in accordance with guidelines approved by the New South Wales Privacy Commissioner; and in the case of disclosure the information is disclosed to a genetic relative of the individual.

This amendment will bring New South Wales into line with the Commonwealth Privacy Act. The Office of the New South Wales Privacy Commissioner has been consulted and supports the proposed amendment. The decision to use or disclose a patient's genetic information to a genetic relative without consent will always be a difficult one for clinicians as they try to juggle the competing interests of a patient's desire for privacy and confidentiality and a relative's possible need to be provided with important and possibly lifesaving genetic information. The amendment to the Health Records and Information Privacy Act recognises these sometimes competing interests and establishes an appropriate framework in respect of the use and disclosure of genetic information without consent.

I turn to the amendments to the Health Practitioner Regulation (Adoption of National Law) Act, which are set out in schedule 1.1 to the bill. The Health Practitioner Regulation National Law (New South Wales) is set out in the schedule to the Adoption Act and provides for the implementation in New South Wales of the National Accreditation and Registration Scheme for health professionals. In implementing the National Registration and Accreditation Scheme, New South Wales agreed to adopt national registration for health practitioners, but elected to retain its own State-based complaints scheme involving health professional councils and tribunals and the independent Health Care Complaints Commission. It is to the New South Wales specific provisions relating to the complaints management scheme in the Adoption Act and the national law that the bill makes a number of minor amendments.

The first amendment is to section 6A of the Adoption Act, which is amended to remove an "Impaired Registrants Panel" from the definition of an "adjudication body". An adjudication body is a body that can impose conditions on the registration of a health professional or cancel or suspend a health practitioner's registration. However, an impaired registrants panel is not a body that can impose conditions on the registration of a health professional or cancel or suspend a health practitioner's registration; rather, the panel recommends the imposition of conditions. As such, it is not appropriate for the panel to be included in the definition of "adjudication body". The remainder of the amendments relate to New South Wales specific provisions of the national law and are designed to ensure that the complaints management scheme continues to operate smoothly and effectively in New South Wales.

The amendments include inserting in proposed section 3A a new objectives and guiding principles provision. New section 3A will ensure that protection of the public is the paramount consideration when complaints management functions are exercised in New South Wales. The bill amends sections 150 (7), 169B (1) (c), 172B (1) (b) and 174A (2) (b) of the national law to provide a consistent criteria of the qualifications of a lay or community member of a New South Wales specific body under the national law. The bill will amend these sections to provide that to be eligible as a community or lay member for New South Wales bodies a person must be a person who is not, and has never been, registered as a practitioner or student in the relevant profession but may be a person who is, or was, registered in another health profession. The amendment will bring the eligibility criteria for community members for New South Wales bodies into line with the eligibility criteria for community members of the national boards.

The bill will insert a new section 143A into the national law to clarify that a mandatory notification under the national law is taken to be a complaint for the purposes of the Health Care Complaints Act 1993. Amendments also are made in the bill to division 8 of part 8 of the national law to strengthen and streamline a number of the review processes under the New South Wales specific provisions of the national law. The bill amends sections 146B, 148E, 149A and 152I of the national law to clarify that the Professional Standards Committee, a health profession council, a health profession tribunal or an impaired registrants panel can direct a health practitioner or student to undergo psychological counselling, and amends clause 2 of schedule 5 to clarify that a notice of intention to enter premises of a registered health practitioner can be given either by the assessor or by a person on behalf of the assessor. Section 244A is also amended to allow a health professional council to issue an evidentiary certificate relating to a person's historical registration status.

Finally, I turn to the amendments to the Poisons and Therapeutic Goods Act, which are set out in schedule 1.3 to the bill. Following the commencement of the National Registration and Accreditation Scheme consequential amendments were made to the Poisons and Therapeutic Goods Act to ensure that nurse practitioners, optometrists and midwives who were appropriately endorsed under the national law were able lawfully to possess, use, supply or prescribe appropriate scheduled medicines under the Poisons and Therapeutic Goods Act. Podiatrists should have been included in the consequential amendments but were inadvertently omitted. To rectify that oversight the bill amends a number of sections of the Poisons and Therapeutic Goods Act to ensure that podiatrists who are endorsed under the national law are able to possess, use, supply or prescribe appropriate scheduled medicines under the Poisons and Therapeutic Goods Act. I commend the bill to the House.

**The Hon. PENNY SHARPE** [6.13 p.m.]: I lead for the Opposition in debate on the Health Legislation Amendment Bill 2012 and indicate at the outset that the Opposition will support the bill. The Opposition notes that the Government has introduced this bill in a manner that enabled the Opposition to undertake stakeholder consultation and receive briefings. I state for the record that the Opposition appreciates adoption of that approach and wishes it would happen more often. It allowed the Opposition to consult stakeholders in relation to the bill. We have consulted the Australian Medical Association, some practising geneticists and the Optometrists Association, and they have all indicated their support for the bill. The bill states:

> The objects of this Bill are:
>
> (a) to amend the *Health Practitioner Regulation (Adoption of National Law) Act 2009* for the purpose of improving the administration of the Health Practitioner Regulation National Law as it applies in New South Wales and by way of statute law revision,
>
> (b) to amend the *Health Records and Information Privacy Act 2002* to provide for the disclosure and use of genetic information subject to certain conditions,
>
> (c) to amend the *Poisons and Therapeutic Goods Act 1966* to ensure that the same regulatory controls relating to certain restricted substances apply to registered podiatrists as those that apply to other registered health practitioners.

As I indicated earlier, the Opposition has no problem with the adoption of the national law for health practitioner regulation. We note that schedule 1.1 to the bill allows for the New South Wales specific provisions of the health practitioner regulation system to be maintained. The history of this New South Wales specific provision comes from the inquiry into Campbelltown and Camden that found that responsibility for both the investigations of the quality of care by an organisation as distinct from that provided by individual practitioners was sometimes contradictory if carried out by the same team.

When the registration of health practitioners became a national responsibility the Labor Government maintained the previous New South Wales system of regulation. That system was responsible for both the review of the entire systems of care through the Clinical Excellence Commission and individual practitioner investigation through the Health Care Complaints Commission. The Opposition supports continuation of that arrangement. The second part of the bill amends the Health Record and Information Privacy Act 2002. It is an attempt to deal with some of the complex issues of consent and disclosure in relation to genetic testing. Indeed, the Minister touched on that during her second reading speech. She stated:

> When a patient's genetic information indicates the patient either has a genetic disease, or has a strong genetic predisposition to developing a serious disease, there are ethical arguments that clinicians should be able to disclose health information to a genetic relative even without the patient's consent. These arguments are particularly strong when providing the information would allow a genetic relative to take steps to identify his or her own level of risk and take any appropriate preventative action, such as regular screening for the particular disease in order to allow for early diagnosis and treatment. In some cases, such early treatment can be lifesaving. However, while there are possible benefits to disclosing such information without consent, there are other interests to take into consideration. These include the need to protect the patient's privacy and confidentiality and the need to recognise that negative impacts may flow from such a disclosure. This may include adversely impacting on family dynamics or causing distress to relatives if they have knowledge of a genetic risk that they would prefer not to be made aware of, particularly if there is no current treatment or preventative options available.

The Opposition shares those concerns, but is comforted by the work of the Commonwealth Privacy Commissioner, who has approved guidelines that were developed by the National Health and Medical Research Council [NHMRC]. The council's paper on medical genetic testing states:

> The sequencing of the human genome was completed in 2003 and identified approximately 20,000 different genes. Of these, only a proportion have been associated with disease and a small proportion of those are currently tested in clinical practice. However, with rapidly evolving knowledge and technologies, testing volume is increasing, results are available more quickly, and costs of DNA sequencing are falling. The regulatory framework within which medical genetic testing is provided in Australia is also changing.

The council's paper goes on to state:

> For example, it may be appropriate for a health professional to provide information about a genetic test being requested to identify the underlying cause of an affected patient's condition ... Use of the same genetic test to determine the genetic status of an unaffected genetic relative, and thereby determine the risk of that genetic relative becoming affected in the future ... carries very different implications and professional genetic counselling may be required before the test is performed.

The changes will protect patients when consent is not given. As the Minister stated:

> The bill therefore seeks to amend the Health Records and Information Privacy Act to establish a similar framework in New South Wales in respect of genetic information. The amendment to the Act will allow, but not require, an organisation to use and disclose a patient's genetic information without consent only if the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety—whether or not the threat is imminent—of a genetic relative of the person to whom the information relates; the use or disclosure is conducted in accordance with guidelines approved by the New South Wales Privacy Commissioner; and in the case of disclosure the information is disclosed to a genetic relative of the individual.

The support of the New South Wales Privacy Commissioner for this bill is a significant contributor to the Opposition's support. We also note that the National Health and Medical Research Council guidelines state that if a disclosure occurs only information that is necessary to communicate the risk of harm should be disclosed and, where possible, the patient should not be identified. However, we must recognise and take responsibility for the reality that it is likely that in many cases this disclosure will mean that the patient is identified. This is a very difficult situation. However, this legislation will ensure that lifesaving information is given to those who need to know. The Opposition believes that the protectors in the bill are adequate and that the appropriate balance has been struck.

The final part of the bill amends the Poisons and Therapeutic Goods Act to ensure that podiatrists are able to provide certain necessary restricted substances to their patients in the same way that other registered health practitioners such as midwives, nurse practitioners and optometrists are able to. They had inadvertently been left out of previous legislation and this amendment rectifies this oversight. The Opposition supports the bill.

**The Hon. SARAH MITCHELL** [6.20 p.m.]: I speak in support of the Heath Legislation Amendment Bill 2012. In doing so I congratulate the Minister for Health, the Hon. Jillian Skinner, on her commitment and determination to see that the best health services are delivered to New South Wales. She is ably assisted by my colleague the Hon. Melinda Pavey in her capacity as Parliamentary Secretary for Regional Health. Regional health has received a good deal of support from the Government. I know that my colleagues the members for Dubbo and Tamworth are very happy with the hospitals in their regions.

I now turn to the detail of the Heath Legislation Amendment Bill 2012. It makes a number of minor amendments to the Health Practitioner Regulation (Adoption of National Law) Act 2009, the Health Records and Information Privacy Act 2002 and the Poisons and Therapeutic Goods Act 1966. It is important to note that each of these amendments has been proposed by the Health Professions Council Authority. In 2010 New South Wales, along with the other States and Territories, adopted the National Registration and Accreditation Scheme for Health Professionals. The national law streamlines the application process for registered practitioners. However, while New South Wales adopted the scheme, it modified the national law in order to retain its own specific provisions relating to complaints, discipline and health management of health professionals. With the benefit of hindsight, after almost two years, a number of minor inconsistencies and technical issues have arisen that must be addressed.

The scheme is expanding from 1 July this year to include four new areas: Aboriginal and Torres Strait Islander health practice, Chinese medicine practice, medical radiation practice and occupational therapy. It is important that the Government revises the legislation to ensure that the provisions are up to date and are constant across the spectrum. The bill proposes a number of administrative changes. New section 3A will ensure

that the protection of the public is the paramount consideration when complaints management functions are exercised in New South Wales. Section 244A will be amended to allow a health professional council to issue an evidentiary certificate relating to a person's historical registration status. The bill also amends the Poisons and Therapeutic Goods Act to ensure that podiatrists who are endorsed under the national law are able to possess, use, supply or prescribe appropriate scheduled medicines under the Poisons and Therapeutic Goods Act. This will put registered podiatrists on an equal footing—if you will pardon the pun—with other registered health professionals such as nurses, midwives and optometrists in assessing scheduled medications in their professional practices.

The Health and Information Privacy Act 2002 will also be amended to allow for the release of a person's genetic information without their consent to genetic relatives. This amendment is in line with recommendations of the National Health and Medical Research Council. It is important to note that the New South Wales Privacy Commissioner has been consulted and supports the proposed amendments. I acknowledge that the release of genetic information without consent presents a difficult situation for clinics but that is why a workable framework is required. Once again I congratulate the Minister on her fantastic work. This is sensible legislation and I am pleased to commend the bill to the House.

**The Hon. CHARLIE LYNN** (Parliamentary Secretary) [6.23 p.m.]: I support the Health Legislation Amendment Bill 2012 and congratulate the Minister for Health on demonstrating again her commitment to ensuring that the Government is able to deliver the best health services possible for the people of New South Wales. The purpose of the bill is to amend, through some minor changes, three Acts. This need has arisen as a result of the introduction of the national law. The three Acts to be amended are the Health Practitioner Regulation (Adoption of National Law) Act 2009, the Health Records and Information Privacy Act 2002 and the Poisons and Therapeutic Goods Act 1966.

In 2010 New South Wales, along with the other States and Territories, adopted the National Registration and Accreditation Scheme for Health Professionals. The Health Practitioner Regulation National Law (NSW) establishes this national scheme in this State. The national law now allows registered practitioners to practise in all jurisdictions of Australia without having to apply for separate registration in each area of practice. However, while New South Wales adopted the National Scheme for Accreditation and Registration of Health Professionals, New South Wales modified the national law in order to retain its own specific provisions relating to complaints, discipline and health management of health professionals. In this way the important work of the Health Care Complaints Commission continues in this State. New South Wales considered it prudent to retain its own complaint and discipline system due to the higher levels of litigation compared to other jurisdictions in Australia.

All the amendments proposed to the Health Practitioner Regulation (Adoption of National Law) Act have an administrative tidying up effect. As with any complex legislative and administrative scheme, a number of these complexities and their impacts were not evident when the legislation was passed by Parliament. With the benefit of almost two years experience we now see that a number of minor inconsistencies and drafting oversights have come to light. These matters are now being addressed in this bill. The national registration and accreditation scheme is expanding from 1 July this year to include four new areas: Aboriginal and Torres Strait Islander health practice, Chinese medicine practice, medical radiation practice and occupational therapy. These professions have never been registered in New South Wales and it is vital to ensure that the statutory provisions are up to date and applied in a consistent fashion across all professions.

It is also critical that the statutory provisions expressly establish that the overall objective of the regulatory scheme is the protection of the public. Proposed section 3A clarifies that protection of the public is the key for all action taken by New South Wales authorities under the legislation. The amendments will ensure that the New South Wales approach to dealing with complaints about the conduct, health and performance of registered health practitioners remains the gold standard against which the rest of the country is judged. I commend the bill to the House.

**The Hon. PAUL GREEN** [6.26 p.m.]: I speak on behalf of the Christian Democratic Party to the Health Legislation Amendment Bill 2012. The object of this bill is to amend the Health Records and Information Privacy Act 2002 to provide full disclosure and use of genetic information subject to certain conditions and to make other miscellaneous amendments. The Christian Democratic Party notes the ethical complexities with the disclosure of genetic information already mentioned by different members. The age-old saying in health is that prevention is better than cure. We appreciate that sometimes genetic information can provide an opportunity to cure a condition; on the other hand, the information should be private.

The potential breach of privacy and confidentiality by the disclosure of sensitive medical information could impact on an individual's future insurance premiums, and those of family members. Premiums could be affected by the inclusion in declarations for insurance. This could also have ripple effects on other members of the family of a person who has a genetic condition. Of course, some genetic conditions can be triggered by biological or physiological factors. The interplay between factors can mean that the condition may not show up for a year, 10 years or 100 years. We know that some illnesses can be triggered by specific factors in an individual. I do not know whether I would want to know I have a terminal illness; I would feel uncomfortable having that information. However, that is a subjective view and, of course, the disclosure of genetic information by organisations, physicians or whomever is a complex issue. The argument could go either way.

We question also the definition of what constitutes a serious life-threatening genetic condition. What exactly is that? One may have a cancer gene, for instance, but unless that cancer gene is triggered by different factors it may not become active and a person with that gene may never succumb to cancer if the gene is not triggered. Information about a person's genetic makeup being passed to other people could result in complications following the passage of this bill. We question why the Government needs to disclose such sensitive and personal information when not all genetic conditions result in disease in those predisposed to them, and not all are life-threatening. We would welcome a far more in-depth debate on genetic information. The bill harmonises New South Wales law with Commonwealth legislation so we support it.

[*The Assistant-President (Reverend the Hon. Fred Nile) left the chair at 6.31 p.m. The House resumed at 8.00 p.m.*]

**The Hon. GREG DONNELLY** [8.00 p.m.]: The Health Legislation Amendment Bill 2012 has been presented as making minor amendments—as a tidying-up exercise. While I understand that proposition, I believe it is doing more than that in respect of the aspects of the bill to which I will refer. The Opposition has declared its position, which of course I support—but with a degree of caution. All members should be aware of some of the issues covered by this bill. What surprised me about the debate in the other place, to which many members contributed, was the rather perfunctory way in which most of them dealt with section 1.2, which refers to the Health Records and Information Privacy Act 2002. One of the objects of this bill is to "amend the Health Records and Information Privacy Act 2002 to provide for disclosure and use of genetic information subject to certain conditions."

In dealing with the explanation of the impact of the proposed amendments, I draw members' attention to paragraphs 1 to 8 of the second reading speech of the Minister for Health, in which she deals with the issue in some detail. In terms of the issue of disclosure and use of genetic information I think we must look to the future with our eyes wide open and anticipate where the bill may lead if was to be expanded beyond the present legislation. I refer to the comments of Australian bioethicist Anthony Fisher. He recently published a book on genetics and bioethics. I will quote from chapter six, which states:

> We naturally rejoice in the extraordinary achievement of the human genome project and other research, which has contributed so much to our understanding of the genetics of the human condition.

It further states:

> Prudent therapeutic interventions aimed at correcting genetic diseases and preventing their occurrence or onset are in principle good uses of genetic science and healthcare.

Anthony Fisher then asks the rhetorical question:

> Where is the new genetics leading us? Is this the re-emergence of eugenics—that discredited nineteenth and twentieth century project to improve the race, or at least particular families, by getting rid of those with unwanted genes?

Some might consider that statement inflammatory. Anthony Fisher talks about the completion of the mapping of the human genome in 2003 and reflects on occurrences in the second decade of this century. He states:

> Now hardly a week passes without a report of another genetic attribute or predisposition being identified. In the last few years genes have been identified that are thought to cause or confer predispositions to syndromes such as Down's, Patau's, Edward's, Turner's and fragile X; to cystic fibrosis, dwarfism, haemochromatosis, haemophilia, Huntington's chorea and muscular dystrophy, phenylketonuria, sickle-cell anaemia, spina bifida and thalassaemia, as well as much more common conditions such as cardiovascular disease, Alzheimer's, many cancers, osteoporosis, epilepsy, asthma, diabetes, deafness and hypertension. Genes are being identified that are associated not only with physical diseases, but with various physical features such as height, body shape, the colouring of skin, hair and eyes, sex, various immunities, longevity and athletic and other physical potential. Of course no test is 100 per cent accurate: there will be false negatives and false positives; people will have the genes but never present with the condition or exhibit the characteristic; there may be a broad range of impairments from trivial to severe, often without any means of accurate prediction. The diagnostic tests tell us, at best, what very well might be on a somatic or bodily level.

Anthony Fisher refers to the genetic testing associated with psychological qualities. He states:

> There are also psychological qualities to consider. In recent years scientists have confidently declared the following qualities among those entirely or largely genetically determined or at least predisposed to: intelligence of various kinds, insomnia, migraines, depression, substance dependency, schizophrenia and psychosis; shyness and aggressiveness, risk aversion and thrill seeking, optimism, extroversion, alienation, leadership and career choice; aesthetic sensibility, sexuality, tastes, memory, creativity and docility; and even political and religious ideals.

The point is that a range of possibilities are evolving with genetic testing, and nobody in this House can possibly foresee where it will lead. In reflecting upon the bill it is important to consider what use the disclosure of a person's genetic information will be put to. Members must be sure that there are satisfactory boundaries, procedures and guidelines with the bill to ensure protection for those affected. I note the Minister and the Parliamentary Secretary stated earlier this afternoon that this bill ensures comity with Commonwealth legislation and guidelines. I note that the Privacy Commissioner in New South Wales is being consulted and guidelines are being developed that I understand are consistent with the National Health and Medical Research Council guidelines.

I have not seen the guidelines produced by the Office of the Privacy Commissioner. I have looked carefully at the National Health and Medical Research Council guidelines, which are thorough and detailed. It is interesting to examine those guidelines because they contain a range of difficult case studies and hypothetical examples. It requires careful and prudent judgement to decide whether it is appropriate in the circumstances for the genetic information of a person to be communicated to another individual, albeit a family member.

I note that the amendment proposed by the bill regarding transfer of genetic information where it is "reasonably believed by the organisation to be necessary to lessen or prevent a serious threat to life, health or safety (whether or not the threat is imminent) of a genetic relative of the individual to whom the genetic information relates". On face value, that provision appears to be clear. But one does not need much imagination to see how down the track such a provision could be amended in ways that could broaden its application. I wish to place my concern about that on record. Though members would feel relatively comfortable with the construction of the language in the amendment, we would not want the provision broadened in future. The term "serious threat to life, health or safety" obviously is open to interpretation.

I conclude by saying that, while cautiously supporting this legislation, I will be watching to see how it operates in practice. I will be particularly concerned about any future attempts to broaden the language used in this amending bill to provide for the transferring of genetic information from one person to another person or to an organisation in circumstances perhaps not envisaged by this bill. Our personal genetic information is innately and intrinsically us, with all our strengths and weaknesses, and we need to ensure that our laws have adequate measures to protect our genetic information with the highest level of integrity.

**Dr JOHN KAYE** [8.11 p.m.]: On behalf of The Greens I address the Health Legislation Amendment Bill 2012. I say from the outset that The Greens do not oppose the bill. We recognise that a number of public health goods are to be achieved through this legislation. However, I will be raising some concerns about the provisions relating to the transfer of genetic information—concerns that are not congruent with those raised by the Hon. Greg Donnelly but come from a different perspective. There are three major provisions in the bill. The first two are not controversial: one involves a minor administrative change to the Health Practitioners Regulation (Adoption of National Law) Act 2009 to facilitate the application of National Law in New South Wales; the other extends regulations on the use of restricted substances by registered health practitioners to include podiatrists. I do not think anybody would have a major issue with that.

The key concern with this legislation revolves around the transfer of genetic information about one individual to another individual where that information is transferred without necessarily the permission of the individual whose genetic information was obtained in the first place. As previous speakers have pointed out, under current legislation the disclosure of genetic information is treated in the same way as we treat the disclosure of other health information; that is to say, disclosure without consent can occur only in circumstances where there is a "serious and imminent threat to life, health or safety". The word "serious" is not in dispute; the problem arises with the use of the word "imminent". The issue with many genetic disorders is not that they pose an imminent threat, because many have a delayed or slow onset; most genetic disorders would fail this test and therefore not be communicated.

In effect, schedule 1.2, item [3], new clause 10 (1) (c1), will amend the Health Records and Information Privacy Act to allow genetic information to be disclosed for a "secondary purpose if it is believed by the organisation to be necessary to lessen or prevent a serious threat to the life, health or safety (whether or not the threat is imminent) of a genetic relative". That becomes a real test, because many individuals carry a genetic code that creates a predisposition to a particular disease, and that disease may take many years to manifest. The fact that one carries that genetic code may well mean that a close relative carries that genetic code, and the issue at stake here is: Should that close relative be notified in order to take precautions—precautions such as regular testing, or lifestyle changes, or recognising that they may have a shorter life?

There are personal and public health benefits in the communication of such information. The public health benefits transcend just the individual. Certainly, there are individual benefits in knowing that one may carry a disease and therefore can take preventative actions that will either prolong life or improve the quality of life. But there are public health benefits in that communication of such information can reduce overall healthcare costs. I do not wish to stand in the way of those public health benefits; I think they are manifest, I think they are proven, and I think they will be greater with increasing sophistication of genetic testing over the next few decades. There will be massive individual benefits—people living longer and living better lives. These are things that we should not stand in the way of.

However, there are two key issues that I raise concerns about. The first is the issue of privacy. The Hon. Greg Donnelly touched on this from a philosophical perspective, which, though not my philosophical perspective, reaches a similar position. Genetic information is a personal possession; it is something about yourself that you should have the right to control. The release of that genetic information to another person, identifying your genetic characteristics, violates some fairly fundamental principles of privacy if you are identified as the source of that information. It is easy to conceive of a situation where an individual carries, for example, BRCA3, a genetic code that suggests the carrier has a higher rate of predisposition to testicular cancer, ovarian cancer or prostate cancer.

The person carrying that gene may not wish to have their brother or sister know they carry the gene; it is a personal health issue, and we respect that. On the other hand, the fact that one carries the gene increases the probability that one's genetic relatives carry the gene, and there is a huge benefit if those relatives know that they too should be tested. If you are a male and carry BRCA3 you should increase the frequency of having your prostate checked for cancerous growths; and if you are a female and carry BRCA3 it increases the risk of breast cancer, and you should certainly at least increase the frequency of mammograms. People can act on the information if they know about it.

It is, of course, a moral quandary. On the one hand is the right to privacy; on the other hand are the public benefit and the health benefits for one's family members. We are concerned that this legislation achieves an appropriate balance between those two outcomes. Professor Ron Trent, a genetics expert from the University of Sydney, was quoted in the *Sydney Morning Herald* of 30 May this year. He said that in most cases people were willing to share information with relatives, but some refused to disclose private information. He is quoted as saying:

> That puts a doctor in an incredible dilemma of not being able to give a family member potentially life-saving information.

The article reported:

> Professor Trent said some cancers of the colon or the breast could be prevented with the benefit of genetic testing. He said doctors would only inform relatives in serious cases.

So we have this tension between the individual right to maintain privacy about one's genetic code—and I agree with the Hon. Greg Donnelly that this is something about yourself that is intensely you, and you have some rights over it. On the other hand, you share that code with your genetic relatives—that is the nature of DNA and the nature of organic life—and they have some stake in your genetic code and in knowing what is happening with your genetic code. So we are concerned with the need to get that balance right. The Greens have some amendments that do not diminish the capacity to share information, but try to protect the identity of the individual who is being tested.

In some cases, that will be absolutely impossible. Where you have one genetic relative and someone comes to you and says, "A genetic relative of yours is carrying a gene for colon cancer," you will know who it is because there is only one person who fits that description. If you come from a large family a greater opportunity exists to protect privacy. The Greens view—the view we debated for a long time and in detail—is that, where possible, all steps should be taken to protect the privacy, the anonymity, of the individual who is being tested. Where it is not possible, it should not be thus.

The second privacy issue concerns being given information you might not necessarily want to have. For example, a sibling is carrying a gene that will increase the chance of some particular cancer and regardless of whether you want to know you are told that you have an increased a priori probability that you also carry the gene. You did not set out to have that test; it was not your choice to find out whether you carried that gene but you are given that information about yourself. In some ways that is a violation of privacy. Maximum steps must be taken to ensure that the individual being given the information has the opportunity to reject it. Of course, that poses its own particular problems.

For example, a person receives a telephone call from a doctor saying that a close genetic relative has just been tested. He says the test shows something the person should be aware of and asks them whether they want to know. Human nature is such that it would be almost impossible to decline—I certainly would not be able to say no in that situation. Communication formats and pro forma documents must be developed that give people the opportunity to reject information without being alerted to its existence in the first place. There are ways of doing that. For example, it is possible for a doctor to contact a person and say, "A relative of yours is having a test. We do not know the results of that test but they may be relevant to you. If they are, do you want to know?" That puts the individual in an information-neutral situation and they are able to reject receiving the information.

The Greens third concern—it is probably our greatest concern—is insurance. The Commonwealth Insurance Contracts Act 1984 provides that a person purchasing or holding an insurance policy is required to disclose every matter known to them that they know to be relevant to the insurer's decision to accept the risk, or that a reasonable person in the circumstances could be expected to know is relevant to the insurer. If you hold a life assurance policy or have medical insurance and you are told that a close genetic relative carries a gene that increases your risk of developing a potentially fatal cancer, the Centre for Genetic Education advises—it is also referenced on the New South Wales Department of Health website—as follows:

> Where a relative has had a predictive genetic test and the test result is known by the insurance applicant:
>
> When applying for insurance, it is required to disclose any health information that is known, about oneself, their parents, brothers and sisters. This is relevant to an assessment of their risk.

That means an individual who possesses information that a close genetic relative—a sibling or a first- or second-degree relative—has tested positive for a predictive test that might be relevant has an obligation to disclose that to the health insurer. That may result in increased premiums or in a refusal of insurance coverage. When an individual seeks a genetic test and comes by this information, surely it should be treated like all other health information. For example, if a test shows that you have tuberculosis or a degenerative disease of the bones, under the Act it is reasonable to tell the insurer. However, when the individual did not seek that information—it was, in some ways, foisted upon them by a test undertaken by a genetic relative—it seems to us unreasonable that as a result of what their brother or sister did they are then forced to disclose information to the insurer that might increase their premium or even cause their policy to be cancelled or their application for a policy rejected. The Greens believe that is unfair and interferes unnecessarily with the rights of an individual to access insurance when they have not gone out of their way to find out whether they carry a disease.

For that reason I foreshadow that The Greens will move amendments in Committee to try to protect individuals who come by genetic information as a result of being told, under the provisions of this legislation, that a relative has a genetic disease. Of course, if you come by that information and you then choose to have a test and find out that your genome carries the disease then, as with every other predictor, you will need to disclose that information to your insurer under the Commonwealth insurance contracts legislation. That is a matter for the Commonwealth; it is beyond the grasp of this bill. But it is different when we allow the transmission of information about one individual to another individual that could have a bearing on their insurability. We are allowing a situation in which individuals, through no actions of their own, could be given information they have not sought that may have a material bearing on their capacity to get an insurance policy. The Greens believe that situation should be addressed and we should take serious action to protect such individuals.

Having made those comments, I return to what I said at the beginning of my contribution: There are huge public and individual health benefits in transmitting genetic information. Allowing the test results of one's sibling or one's genetic relative to be passed to another can produce positive outcomes—life-saving outcomes, life-prolonging outcomes, outcomes that enable people to enjoy a higher quality of life, and outcomes that enable individuals to avoid disease by being tested regularly for the disease and taking preventative measures

involving exercise, lifestyle changes or even medication in some cases. There is no question that the sharing of genetic test results is a powerful public health tool that can help individuals take preventative action to avoid life-threatening and debilitating diseases. However, I argue that it must be accompanied by gold standard privacy protections. People seeking insurance should not be disadvantaged because their relative carries a genetic disorder and they were told about it without necessarily having sought out that information themselves.

The Insurance Contracts Act should be updated; it was written in 1984, and in 1984 genetic testing was certainly talked about but it was not at all well understood. Genetic testing is now common practice and the Commonwealth should take a good, solid look at the insurance Act to see how it deals with genetic tests. Without our foreshadowed amendments and without action by the Commonwealth there is a real risk that the benefits of genetic testing will be, at least to some extent, compromised by the impacts on privacy and access to insurance. There is a real risk that individuals who did not seek information about their own genetic identity and genetic predisposition will be forced to disclose their relative's condition to an insurer. In reality, the Federal Parliament has a responsibility to change the laws to protect against those individuals having to pay higher premiums or being denied insurance. I will propose in Committee some steps that we can take, but we should think this legislation through. We should think through the privacy implications and the insurance implications to make absolutely and abundantly sure that we are doing unalloyed good here tonight.

In conclusion, I have a huge sense of optimism about health care. I think we are on the cusp of some really wonderful changes—changes that will enhance lives and enable people to overcome debilitating, life-shortening diseases that in the past they would have had to live with. We should not stand in the way of that. It is an honour to live in a generation in which we can do things to improve people's quality of life. However, we should always be mindful of the implications of every technology we introduce. We should not be afraid of technology and we should not reject it, but we should be mindful of it. Where we can we should make sure that we protect basic human rights such as privacy and access to insurance. The Greens will not oppose the legislation; however, we will move amendments in the Committee stage.

**Reverend the Hon. FRED NILE** [8.31 p.m.]: I will outline some of the concerns of the Christian Democratic Party with the Health Legislation Amendment Bill 2012. The overview of the bill states that the objects of the bill as follows:

> (a) to amend the *Health Practitioner Regulation (Adoption of National Law) Act 2009* for the purpose of improving the administration of the Health Practitioner Regulation National Law as it applies in New South Wales and by way of statute law revision,
>
> (b) to amend the *Health Records and Information Privacy Act 2002* to provide for the disclosure and use of genetic information subject to certain conditions ...

It puzzles me that whoever wrote that left out key words concerning the impact of (b), which should state "disclosure and use of genetic information subject to certain conditions without the consent of the patient". That is the issue at stake in this legislation. In her second reading speech the Minister for Health, Jillian Skinner, said, "These include the need to protect the patient's privacy and confidentiality and the need to recognise that negative impacts may flow from such a disclosure." She was speaking about supplying genetic information against the will of the patient and without his or her consent. She went on to say:

> This may include adversely impacting on family dynamics or causing distress to relatives if they have knowledge of a genetic risk that they would prefer not to be made aware of, particularly if there is no current treatment or preventative options available.
>
> While the disclosure of genetic information to a genetic relative without consent is a serious and contentious ethical question ...

I emphasise the Minister's words "without consent is a serious and contentious ethical question". That raises the question of whether members fully understand the impact of the legislation because of the subtle change in regard to consent. The Minister also said in her speech that such disclosure without consent can occur only when there is a serious and imminent threat to life, health or safety. To me that seems to be a stronger test. That is replaced in this legislation, which states that the disclosure is necessary to lessen or prevent a serious threat to life, health or safety. That significantly waters down the original protection and it is probably why there has been little controversy about it. People have been reluctant to give consent and it cannot be proved that there is an imminent threat to life, health or safety.

I was considering the legislation and the taking away of the rights of a patient who does not want to give consent who is told, "It doesn't matter; we are going to supply the information." It made me think of the passionate plea about freedom that the Hon. Dr Peter Phelps gave during debate on another bill. It seems to clash with the concept of freedom when the freedom of a patient is taken away by the State. The Hon. Greg Donnelly raised some concerns about how this legislation may operate in the future. I also had some thoughts as to whether, for example, a pregnant woman who is given information about a genetic issue would feel she has no option but to abort her child. I have questions about how the information could be used.

It may also be that once the effect of this legislation becomes more widely known in the public domain people may be reluctant to undergo genetic testing. People may not go through genetic testing when they know they have no control over where the information goes. The easiest way to avoid that uncertainty is to not undergo genetic testing. This legislation may lead to a lack of interest in or support for genetic testing that would otherwise be of some value to a patient. Those are the concerns that I have. The Christian Democratic Party will support the legislation, but its operation must be monitored carefully in New South Wales.

**The Hon. MELINDA PAVEY** (Parliamentary Secretary) [8.36 p.m.], in reply: I thank all honourable members for their support of the Health Legislation Amendment Bill 2012 and note their genuine concerns. It is important to highlight, especially after the contribution of Reverend the Hon. Fred Nile, that the clinician must take steps to ensure that any information provided to the relative does not directly identify the patient. Therefore the identity of the person who has presented with some genetic disposition will remain in confidence. That is an important process in this bill because, as the Hon. Greg Donnelly highlighted—

**Reverend the Hon. Fred Nile:** Can they ask the question, "Where did this information come from?"

**The Hon. MELINDA PAVEY:** They will not be able to identify where the information has come from, and that is the important part. Dr John Kaye has quite ironically pointed out that sometimes left and right do come together in a complete circle. As he said, with the technology that is available to us today it is important to ensure that the information is passed on. Clinicians have driven this legislation because in their surgeries they are the ones who are faced with this very difficult proposition. As I said to the Hon. Greg Donnelly across the Chamber, if he had a bowel cancer marker or some genetic disposition he would want his children to know; he would tell his children and they would then have regular testing. That is where we are in terms of modern medicine and technology. I acknowledge that a breakdown in communication in a family situation can be difficult, but that person's privacy is maintained and contained so that other people can follow up on relevant information to ensure their own safety if they so wish.

As noted, the bill proposes a number of minor but important amendments to the Health Practitioner Regulation (Adoption of National Law) Act, the Poisons and Therapeutic Goods Act and the Health Records and Information Privacy Act. I will go into more detail about the genetics issues that have concerned many members in the House. The bill amends the Health Records and Information Privacy Act to allow a healthcare organisation to be able to use and disclose genetic information in certain circumstances, being where the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent a serious but not necessarily imminent threat to the life, health or safety of a genetic relative of the patient, the use or disclosure is conducted in accordance with the guidelines approved by the New South Wales Privacy Commissioner, and in the case of disclosure the recipient of the genetic information is a genetic relative of the patient.

Some concerns have been expressed about how a genetic disclosure to a blood relative without the patient's consent would occur in practice under the bill. Before any disclosure to a genetic relative occurred, first, the disclosure would be necessary to lessen or prevent a serious threat to life, health or safety of the genetic relative. Secondly, and importantly, the disclosure would have to comply with the guidelines issued by the New South Wales Privacy Commissioner. We should not pre-empt what will be contained in the New South Wales Privacy Commissioner's guidelines, but it is important to note what happens at a Commonwealth level. The Commonwealth Privacy Act already contains a similar provision allowing genetic information to be disclosed without consent to a genetic relative if guidelines approved by the Commonwealth Privacy Commissioner are complied with.

The Commonwealth Privacy Commissioner has approved guidelines that were developed with the National Health and Medical Research Council [NHMRC] guidelines. The National Health and Medical Research Council guidelines provide a comprehensive and ethically sound set of principles that should be followed before any disclosure without consent takes place. Importantly, the National Health and Medical

Research Council guidelines provide that if a disclosure without consent is to take place the clinician must take steps to ensure that any information provided to the relative does not directly identify the patient or the genetic condition, or that consent was not given for disclosure. Form letters attached to the National Health and Medical Research Council guidelines provide that if a disclosure without consent is to occur, the genetic relatives should be informed that a genetic relative of theirs has been diagnosed with an inheritable condition and also provide contact details, including genetic counselling services, should the genetic relative decide to obtain further information.

The point was made by Dr John Kaye that the relative may not necessarily want to know. The National Health and Medical Research Council guidelines are clear that the patient's identity should not be disclosed, nor his or her genetic condition. That is to preserve, as far as possible, the patient's privacy and to ensure that relatives can decide for themselves whether to obtain further information and testing to determine the level of their own risk. The Government recognises the importance of having appropriate guidelines in place before commencement of this amending legislation to ensure that any disclosure without consent occurs only within an ethical framework. For this reason, unlike other provisions of the bill, the amendment to the Health Records and Information Privacy Act will not commence until proclamation. That will ensure that the New South Wales Privacy Commissioner has time to develop guidelines that will provide the ethical framework for genetic disclosures without consent.

The Government accepts that this is not an easy matter; rather, the disclosure of genetic information without consent is an ethically complicated and potentially messy issue facing clinicians and patients today. The current law in New South Wales does not grapple with this issue at all; rather, there is currently simply an effective blanket ban on disclosing genetic information to a patient's genetic relatives without consent. A blanket ban is not the appropriate way to respond to this issue; rather, we need to accept that in some situations—not all, but some—in which a clinician is faced with a patient who refuses to consent to the disclosure of genetic information to a relative, and it is information that might allow the relative to access early life-saving treatment, the most ethnically appropriate thing to do might be to notify the relative of the potential risk.

That is not to suggest that the privacy of the patient is unimportant or that relatives should be routinely provided with genetic information that they do not wish to know. However, we need to provide clinicians with an appropriate framework to support in rare cases the disclosure of genetic information without consent. The bill provides such an appropriate framework. It allows, but does not require, genetic information to be disclosed to a patient's genetic relative without consent if the disclosure is necessary to lessen or prevent a serious risk to life, health or safety of the relative, and the disclosure is done in accordance with guidelines approved by the New South Wales Privacy Commissioner. The guidelines to be approved by the New South Wales Privacy Commissioner will provide the ethical framework to guide any such disclosure. I look forward to the development of those guidelines by the Privacy Commissioner.

Amendments to the Health Records and Information Privacy Act relate to the ethically complex issues we have discussed. The issues associated with the use of disclosure of genetic information without consent have become increasingly common in recent years due to the changes in medical technology and treatment. However, the law has not adapted to meet the needs of this area. The Government recognises this as a fraught issue in which the interests of a patient's right to confidentiality has to be balanced against a relative's interest in being provided with potentially life-saving information. However, it is an issue that needs to be resolved. The bill attempts to balance those competing interests by providing an ethically appropriate framework to allow clinicians in the rare case to use or disclose genetic information without consent when it is necessary to lessen or prevent a serious risk to life, health or safety. The amendments to the Health Records and Information Privacy Act are a necessary and important amendment to address the complex issue relating to the use and disclosure of genetic information. I commend the bill to the House.

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

**Motion agreed to.**

**Bill read a second time.**

## In Committee

**Clauses 1 and 2 agreed to.**

**Dr JOHN KAYE** [8.45 p.m.]: I move The Greens amendment No. 1 on sheet C2012-081D:

No. 1 Page 9, schedule 1.2. Insert after line 14:

**[3] Section 70A**

Insert after section 70:

**70A Disclosure of genetic information**

(1) An insurer must not require a person to disclose genetic information in connection with, or as a condition of, the provision of insurance to the person if that genetic information relates to another person and was obtained wholly or partly under this Act.

Maximum penalty: 100 penalty units.

(2) In this section, ***insurer*** means a person who provides insurance.

The amendment addresses the issue I raised during the second reading stage with respect to the risks for an individual who has received genetic information that has been passed to them without the consent of his or her relative and the risk that exists for that individual once he or she passes on the information to the insurer. As I pointed out during the second reading stage, the interpretation of the Commonwealth Insurance Contracts Act is that an individual who is in possession of second degree genetic information, which is genetic information about a relative who has a predisposition, has an obligation to pass that on to the insurer. If the individual passes on that information to the insurer, that person runs the risk of losing his or her contract or having the premiums increase. If the person does not pass on the information and it is discovered later that the person possessed such information at the time a claim was made, that person runs the risk of that claim being voided. That person is in a difficult situation.

The difference between this and obtaining one's own genetic test is that people obtain their own genetic test and seek information about themselves. In the instance addressed by the amendment, the insured does not seek information about himself or herself. I again make it clear that The Greens are not seeking to stand in the way of the passage of this legislation—we think this legislation will do some good—nor is it the desire of The Greens to make it impossible to pass on information. It is our desire to protect individuals who have been given information from losing their insurance contract or from being forced to pass on information. The Greens new section 70A states:

> An insurer must not require a person to disclose genetic information in connection with, or as a condition of, the provision of insurance to the person if that genetic information relates to another person and was obtained wholly or partly under this Act.

The effect of the amendment is that if information is passed to the insured, who did not obtain their own test, the insured does not have to declare that to an insurer. If the amendment is accepted it would be illegal for the insurer to seek to force the insured to disclose that information. The Greens think this amendment offers reasonable protection to individuals with a relative who has been genetically tested in circumstances in which a test reveals a predisposition or marker of a disease. In those circumstances, The Greens think that the insured should not lose their insurance because of that test. I commend the amendment to the Committee.

**The Hon. MELINDA PAVEY** (Parliamentary Secretary) [8.48 p.m.]: For a number of reasons, the Government does not support The Greens amendment No. 1. First, the amendment on its face is very poorly drafted and it is unclear what its precise application would be. The Government understands that the intent of the provision is to ensure that when a healthcare provider discloses genetic information to a genetic relative of an individual in the circumstances contemplated by the bill, that relative is not required to disclose that information to an insurer as part of an application for insurance. That would appear to be the intent of the provision.

However, there is considerable ambiguity in relation to the requirement that the genetic information must have been obtained wholly or partly under the Act. Arguably that would also cover the situation in which a healthcare provider discloses information to a genetic relative of a patient of the healthcare provider with the consent of the patient. The effect of the amendment may therefore be to create a category of information of "genetic information", disclosure of which cannot be required by insurers as part of their ordinary full disclosure obligations required of a person seeking to take out insurance.

This brings me to the Government's second objection to the proposed amendment. To the extent it seeks to depart from the usual requirements relating to full disclosure of information by applicants for insurance to insurers, it raises complex questions of policy and insurance practice that extend well beyond the subject matter of this bill, and in respect of which far more detailed consideration and consultation with affected parties would be required. I refer members to the detailed consideration of these and related matters by the Australian Law Reform Commission in its 2003 report entitled "Essentially Yours: The Protection of Human Genetic Information in Australia". I am sure members are well aware of that paper.

The Government does not consider that it is appropriate to further delay the important amendments contained in this bill, allowing disclosure of genetic information to relatives, by opening up the broader and more complex issues around genetics and insurance. The amendments proposed by the bill will provide health care providers with an appropriate framework to support, in rare cases—and I highlight the words "in rare cases"—the disclosure of genetic information without consent. In doing so, it will provide genetic relatives with information that might allow the relative to access early treatment or testing.

**The Hon. PENNY SHARPE** [8.52 p.m.]: The Opposition understands where The Greens are going with this amendment; however, we do not support the amendment at this time. We believe that the way the Government has structured this bill is adequate. The bill will not be proclaimed until the guidelines have been developed, in consultation with the New South Wales Privacy Commissioner under the framework that is set out in the legislation. We also have some concerns that what is being proposed could have unintended consequences. We are concerned that the amendment extends the reach of the bill into areas that the bill is not seeking to go at this time. The Opposition does not support the amendment.

**Mr DAVID SHOEBRIDGE** [8.53 p.m.]: The contributions from the Government and the Opposition acknowledge, in part, the fact that this bill will be going into new territory. Without requesting it, people will be receiving information about issues that may affect their health by reason of their genetic connection with someone who has sought treatment. The bill is going into relatively unchartered waters. People will be provided with genetic information about themselves that they have not requested. Many people would rather not know about ticking genetic time bombs that they may have—a perfectly valid approach to take. Other people would like to know of any potential genetic difficulties so that they can take whatever remedial action may be available to them.

As a result of this amendment a person who has genetic information—not through their own searches or their own approaches to medical professionals, but through being provided with the information as a result of the mechanisms put in place under this bill—is not required to provide that information to an insurer. I may have misstated what the amendment does. The amendment says that the insurer cannot require people to provide that material. So, unlike the way in which the Parliamentary Secretary defined the amendment, the amendment says that a person cannot be compelled by the insurer to provide that material to it. From the Parliamentary Secretary's contribution on this matter, it would seem that the Government is more interested in protecting the rights of insurance companies to acquire genetic information so that they can fully price the product that they will be selling. That right would be placed over and above the right of an individual not to disclose genetic information that they did not request in the first place.

There are unintended consequences of going into this relatively unchartered territory of providing people with genetic information that they have not requested. Is it reasonable to say that insurance companies can compel people to produce that information when it may have a substantial cost impact for them when they try to get life insurance or medical insurance? Under the usual good faith provisions in insurance contracts people are required to provide all relevant information for the purchase of a life insurance product. In the course of getting that information the insurance company may discover that the person has had provided to them information that they may have a high predisposition for, for example, breast cancer or prostate cancer. Because of the genetic information that has been provided to them under this bill, that person would almost certainly face the difficulty of either not getting life insurance or being offered a premium that may be prohibitive. That would happen in circumstances where people did not ask for the genetic information to be provided to them but they were given it because of the provisions being put in place in this bill. That is the evil that the amendment seeks to remedy.

**Dr JOHN KAYE** [8.55 p.m.]: The Opposition objects to this amendment as being premature because the guidelines are yet to be seen. I will address that issue when we come to the next amendment. No matter what the guidelines say, they will not be capable of overriding the obligation on somebody who is in possession of genetic information to provide that to his or her insurer. Only an amendment to this legislation—or, better still,

an amendment to the Federal legislation—would achieve that outcome. Without the protection this amendment affords, harm will be done to people who did not seek genetic tests. People who are told of a result for their brother, sister or another genetic relative will be forced to disclose that to their insurer and will either have to pay more or be denied access to insurance. That is the way this law works. The guidelines are privacy guidelines and cannot override that obligation. Only this amendment can go towards overriding that legislation.

It was also said that this amendment would delay the passage of legislation. I have said repeatedly that I have no interest in doing that. The Greens want this legislation to pass. This amendment would not delay the implementation of this legislation. The only delay on the implementation of this legislation is the absence of guidelines. The Government has said it will not implement this legislation until those guidelines occur. Those guidelines relate to the privacy issues and the protection of the privacy of the individual who has had the test, which we recognise as a negotiable issue because we are talking about individual health and public health. Nonetheless, this amendment will not be addressed by the guidelines and will not delay the outcome. I do not accept the argument that it is poorly drafted. It clearly says that:

> An insurer cannot require a person to disclose genetic information that is obtained under this Act wholly or partly.

It is clearly saying that we cannot require somebody to pass on genetic information that relates to another person and was obtained under this Act, such as information about a genetic sibling. The insurer cannot demand or require that people tell them about a test result of a genetic relative. It does not stop them, because it says, "relates to another person". That does not stop the insurer requiring people to pass on genetic information about themselves when they approach an insurer. That is another argument we could have—that is, balancing the profitability of insurance versus the rights of individuals. That is a separate argument; it is not the argument we are seeking to have here. This is about genetic information that relates to another person. It is genetic information that has been passed to you. The only such genetic information that an insurer would require you to pass on would be that which relates to a genetic relative, hence it is directly relevant to the bill before this Committee. It sits at the heart of the bill before this Committee.

I urge both the Government and the Opposition to have another look at this amendment and to fully understand what it is about. The amendment is designed to protect individuals who did not seek a genetic test but who had the results of a test on their relative given to them and who are then forced to hand that information over to the insurer and possibly suffer an adverse consequence for doing so.

**Question—That The Greens amendment No. 1 [C2012-081D] be agreed to—put.**

**The Committee divided.**

**Ayes, 4**

Dr Kaye
Mr Shoebridge

*Tellers,*
Mr Buckingham
Ms Faehrmann

**Noes, 30**

| | | |
|---|---|---|
| Mr Blair | Mr Khan | Mr Searle |
| Mr Borsak | Mr Lynn | Mr Secord |
| Mr Brown | Mr MacDonald | Ms Sharpe |
| Mr Clarke | Mrs Maclaren-Jones | Mr Veitch |
| Ms Cotsis | Mr Mason-Cox | Ms Westwood |
| Ms Cusack | Mrs Mitchell | Mr Whan |
| Mr Donnelly | Reverend Nile | |
| Ms Fazio | Mrs Pavey | |
| Mr Gay | Mr Pearce | *Tellers,* |
| Mr Green | Dr Phelps | Mr Colless |
| Mr Harwin | Mr Primrose | Ms Voltz |

**Question resolved in the negative.**

**The Greens amendment No. 1 [C2012-081D] negatived.**

**Dr JOHN KAYE** [9.08 p.m.]: I move The Greens amendment No. 2 on sheet C2012-081D:

No. 2 Pages 9 and 10, schedule 1.2 [4], proposed clause 11 (1) (c1), line 30 on page 9 to line 8 on page 10. Omit all words on those lines. Insert instead:

(c1) **Genetic information**

the information is genetic information and the following requirements are complied with in relation to the disclosure of the information for the secondary purpose:

(i) the disclosure is to a genetic relative of the individual to whom the genetic information relates,

(ii) the disclosure is reasonably believed by the organisation to be necessary to lessen or prevent a serious threat to the life, health or safety (whether or not the threat is imminent) of a genetic relative of the individual to whom the genetic information relates,

(iii) the organisation has taken all reasonable steps to ensure that the genetic relative to whom the genetic information would be disclosed would wish to know if he or she has an increased risk of developing a condition which the genetic information would indicate,

(iv) the identity of the individual to whom the genetic information relates is protected as much as practicable,

(v) the disclosure of the information for the secondary purpose is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or

This amendment seeks to protect the identity of the individual to whom the genetic information relates. It also requires the organisation—that is, either the medical practitioner or the health provider who holds the genetic information—to take all reasonable steps to ensure that the genetic relative to whom the genetic information would be disclosed would wish to know if he or she has an increased risk of developing a condition which the genetic information would indicate. This is to protect both the individual who is being tested and the individual to whom the information is being passed. The Government will no doubt argue that we are developing guidelines.

**The Hon. Dr Peter Phelps:** Ah, we'll be developing guidelines.

**Dr JOHN KAYE:** No doubt it is developing guidelines—at this time of night even the Government Whip seems to be funny—funny in the humorous sense, not in the normal sense in which he appears to be funny. No doubt the Government will argue that it is producing guidelines and that the provisions of this legislation will not come into play until those guidelines have been appropriately developed. Whilst that is appropriate, there still needs to be some legislative protection beyond those guidelines. It ought to be the will of this Parliament to protect the identity of individuals, wherever practical.

The Greens have outlined situations where it might not be practical—for example, when there is only one genetic relative; it does not take a lot to work out to whom that information is related. However, when there are a number of genetic relatives it is only reasonable to protect that privacy. It may well be that individuals may not wish their brothers or sisters to know that they are the carriers of a particular gene and that that gene may cause them to develop an illness, or personal or financial matters may even be involved. But is it not the right of individuals to protect their identity if they wish to do so?

The Greens amendment No. 2 is one of all reasonable steps. It does not stop the passage of information from one person to another where it would not be practical to protect privacy issues. The Greens do not wish to stand in the way of the public health benefits that genetic testing and the passage of genetic information from one genetic relative to another would bring. We do not believe that this amendment will do that. The guts of this amendment is to be found subparagraphs (iii) and (iv) of new clause 11 (1) (c1). Subparagraph (iii) states:

> the organisation has taken all reasonable steps to ensure that the genetic relative to whom the genetic information would be disclosed would wish to know …

The tense is subjunctive. It says that the requirement on the organisation is not to disclose the information but if one was to take such a test would one not want to know the results? It would not work to say, "Look, we know something really juicy that you ought to know; do you want to know it?" Indeed, that would be an unfair thing to do.

**The Hon. Melinda Pavey:** In your opinion.

**Dr JOHN KAYE:** I think in anyone's reasonable opinion, basically that would give it away and at that point one may just as well disclose. Subparagraph (iii) states that reasonable steps should be taken to ensure that a person would want to know if such information exists and subparagraph (iv) states:

> the identity of the individual to whom the genetic information relates is protected as much as practicable.

Of course, there will be situations where it is not. If subparagraphs (iii) and (iv) were to become part of the legislation they would give guidance to the Privacy Commissioner as to the direction and intent of the Parliament and they would set a bottom line for protection of privacy of this information. The Greens amendment No. 2 is about minimising the harm that can be done and recognising that it can do great good. I commend the amendment to the House.

**The Hon. MELINDA PAVEY** (Parliamentary Secretary) [9.12 p.m.]: The Greens amendment No. 2 proposes to add a number of additional requirements for the disclosure of genetic information to a genetic relative in the proposed amendments to the Health Privacy Principles. In addition to the requirements proposed in the bill, the proposed amendment adds two additional requirements. The Government's first concern with the proposed amendment is that it would mean that a different test applies under the New South Wales Health Records and Information Privacy Act in relation to disclosure of genetic information to a genetic relative from the test that applies under the Commonwealth Privacy Act.

The Government does not consider that it is in the best interests of patients and their families for clinicians to be required to have regard to two different sets of statutory provisions, both of which will apply to private healthcare providers such as general practitioners in New South Wales. This is likely to result in confusion and unnecessarily complicated regulation of an area that is already fraught with ethical and legal complexity. Further, the existing disclosure requirements appear to have been working well for a number of years under Federal law.

It is unclear why a different test should apply in New South Wales, particularly when the drafting contains some uncertainty—an issue to which I will turn shortly. It is also important to note that the Government has consulted extensively in relation to proposed requirements contained in the bill. In 2010 the Ministry of Health consulted with the NSW Genetics Service Advisory Committee—an advisory committee to NSW Health on genetics—and the experience and expertise of that committee is well respected and regarded. In late 2010 this potential change in practice was referred to the NSW Health Clinical Ethics Advisory Panel for consideration of relevant ethical concerns. The New South Wales Privacy Commissioner and the Medical Service Committee have also been consulted on the bill and both support the proposed amendments—that consultation contains a wealth of knowledge. The first additional requirement proposed by the amendment is that:

> (iii) the organisation has taken all reasonable steps to ensure that the genetic relative to whom the genetic information would be disclosed would wish to know if he or she has an increased risk of developing a condition which the genetic information would indicate.

Whilst the intent of the provision would appear to be reasonable, in practice its drafting is likely to cause problems. For example, it is unclear how a healthcare provider would ensure the existence of what is effectively a state of mind of a genetic relative—that is, that the relative would wish to know if he or she has an increased risk of developing a particular condition. How this could be objectively ascertained by a healthcare provider is difficult to understand. Further, the inclusion of such a requirement may cause healthcare providers to be excessively cautious in disclosing information to a genetic relative in circumstances where failure to disclose may result in long-lasting effects to the genetic relative's health, as a lack of information may prevent early detection and therefore potentially early lifesaving treatment. The second additional requirement proposed by the amendment is as follows:

> (iv) the identity of the individual to whom the genetic information relates is protected as much as practicable.

Again, the Government does not disagree with the intent behind this provision. However, it is unclear precisely what are the practical steps required to be undertaken by healthcare providers in protecting the identity of the patient to whom the genetic information relates. The Government considers that both these requirements would be more appropriately addressed in guidelines for clinicians to be developed—as Dr John Kaye expected—by the New South Wales Privacy Commissioner rather than as prescriptions contained in the legislation.

I note that the guidelines entitled "Use and disclosure of genetic information to a patient's genetic relative under section 95AA of the Commonwealth Privacy Act 1988", issued by the National Health and Medical Research Council and the Commonwealth Privacy Commissioner, contain a number of relevant guidelines, including that prior to any decision concerning use or disclosure, the authorising medical practitioner must discuss the case with other health practitioners with appropriate expertise to assess fully the specific situation; where practicable, the identity of the patient should not be apparent or readily ascertainable in the course of inter-professional communication; disclosure to genetic relatives should be limited to genetic information that is necessary for communicating the increased risk and should avoid identifying the patient or conveying that there was no consent for the disclosure; and disclosure of genetic information without consent should generally be limited to relatives no further removed than third degree relatives.

The guidelines are backed up by detailed explanations and case studies. As I said earlier, it is proposed that similar guidelines will be developed by the New South Wales Privacy Commissioner in consultation with all relevant stakeholders, including consumers, patients and healthcare providers. The Government also anticipates that the proposed guidelines would, in the usual course, be disseminated for public comment by the Privacy Commissioner as they are developed and that an independent body is best placed to look at these issues. The Government recognises the importance of having appropriate guidelines in place before the amendment in respect of genetic disclosure commences. This will ensure that any disclosure without consent occurs only within an ethical framework.

For this reason, unlike the other provisions in the bill, the amendment to the Health Records and Information Privacy Act will not commence until proclamation. This will ensure that the New South Wales Privacy Commissioner has time to develop the guidelines to provide the ethical framework for genetic disclosures without consent. In conclusion, the Government considers a consistent approach with the existing Commonwealth legislation on this subject, combined with the development of further detailed guidelines by the Privacy Commission in consultation with relevant parties, to be in the best interests of patients and their families. For that reason the Government does not support The Greens amendment No. 2.

**The Hon. PENNY SHARPE** [9.18 p.m.]: Again Opposition members have some sympathy for the intent of The Greens amendment but we are persuaded by the case put forward by the Government that it is not appropriate to set up a system within this legislation. The aim of the legislation is to bring everyone into line with the Commonwealth and a process is included within it for the New South Wales Privacy Commission to set up guidelines in consultation with the relevant groups. Opposition members believe that to be sufficient and, consequently, will not be supporting The Greens amendment No. 2. An interesting argument could be made about establishing whether a genetic relative may or may not want to know this information and setting up a test in which someone could be asked that question without him or her saying, "Why are you asking me that question in the first place?" Again, I have some sympathy for the intent of The Greens amendment, but I am not convinced that it is able to be achieved easily. We will not support the amendment.

**Dr JOHN KAYE** [9.19 p.m.]: I thank the Government and the Opposition for taking the time to respond to the amendment. I understand their arguments but simply do not accept them. The first issue raised by the Government was the possibility of different tests between the Commonwealth and the State. If it is true that the Commonwealth would allow this kind of information to be passed on without taking steps to protect the privacy of the individual on whom the test had been performed or ascertaining to the greatest practical ability whether the other individual wished to receive the information, then there is something badly wrong with the Commonwealth guidelines because both scenarios seem to be an eminently reasonable thing to do. Firstly, it is important to ascertain that the person actually wants to know the information and, secondly, to work as hard as we can to protect the privacy of the individual who, we must bear in mind, did not want the information passed on in the first place.

**The Hon. Melinda Pavey:** How do you know? You don't know that.

**Dr JOHN KAYE:** We know they do not because if they did this would not be relevant. The Parliamentary Secretary said that those individuals who do not want information passed on—

**The Hon. Penny Sharpe:** They're genetic relatives. That's part of it.

**Dr JOHN KAYE:** Sorry?

**The Hon. Adam Searle:** Some people don't know who their genetic relatives are, John. That's the point.

**Dr JOHN KAYE:** No. I am not sure I follow that. The situation with which we are dealing is where individuals underwent a genetic test and then did not give consent for the passage of their information. They have expressed a desire for other people not to know about their genetic information. If they provided consent, these clauses would not be relevant. So we only talk about people who have said, "I don't want my information passed on." Surely we have an obligation to protect their privacy.

**The Hon. Melinda Pavey:** Their privacy is contained.

**Dr JOHN KAYE:** Sorry?

**The Hon. Melinda Pavey:** Yes, their privacy is contained.

**Dr JOHN KAYE:** All our amendment says is that we ought to contain that privacy. If the Commonwealth guidelines do not contain that privacy—

**The Hon. Melinda Pavey:** They do.

**Dr JOHN KAYE:** If they do then there is no inconsistency. We cannot have it both ways. We cannot have a situation where we say, "We cannot do this because it is inconsistent with the Commonwealth guidelines" when what we are saying is that privacy must be protected, and then we say that the Commonwealth guidelines protect the privacy therefore our guidelines could be consistent with this legislation. It is not possible to have it both ways. The second issue raised by the Government was that the amendment would make organisations excessively cautious about passing on information. There should be caution about passing on information when somebody has not provided consent and said, "I do not want this information passed on." That caution should go towards checking that we are doing everything we possibly can. We acknowledge that situations exist where that ought to be done. I repeat for about the ninth time that we support the passage of this legislation. Passing on information is a good idea when it benefits public health or, indeed, an individual's health.

However, surely at that point any clinician would take every reasonable step to protect the individual's privacy and also make sure that the person receiving this information actually wanted to know the existence of such information. Another issue raised was that an independent body is developing the guidelines. That is a good thing, but it is appropriate for this Parliament to make clear the two key features of those guidelines. We are not trying to write the guidelines into the legislation as that would be inappropriate. The amendment attempts to draw a bottom line on two key privacy protection issues: the protection of the privacy of the individual who had the test and the protection of the right not to know of the individual who is receiving the information. It was suggested that it would be difficult to conduct such a test. I do not believe that is the case. It is easy to say, "A genetic relative of yours is having a test. Do you want to know the results? They could have some relevance to you?" That is a neutral statement and it is very different to saying, "A relative has had tests. We think that is relevant to you. We want you to know." All subclause (iv) of the amendment does is define a set of guides to clinicians to make sure they ask the question wherever possible in a value-neutral fashion.

The Parliamentary Secretary said that it would be difficult to get objective tests and that it would be unclear how to ensure the state of mind of either the person receiving the information or the person to whom the information belonged. I do not believe that. I presume that the guidelines will create tests for that purpose. It is entirely possible to do so; we do these things throughout all kinds of legislation and it is up to the guidelines to implement them, and they are entirely implementable. The Opposition said that legislation is not the place to set up a system. We are not attempting to set up a system with these amendments.

**The Hon. Melinda Pavey:** I think you are.

**Dr JOHN KAYE:** We are not setting up a system. All we are doing is laying out two criteria that should be followed within the guidelines. The amendments are simply criteria, not setting up a system. I hope they are not the system. The Commonwealth guidelines I have seen are far more complex than just two clauses. The amendment is not unreasonable but takes a small step towards securing the privacy and rights not to know of individuals. I commend the amendment to the Committee.

**Question—That The Greens amendment No. 2 [C2012-081D] be agreed to—put and resolved in the negative.**

**The Greens amendment No. 2 [C2012-081D] negatived.**

**Schedule 1 agreed to.**

**Title agreed to.**

**Bill reported from Committee without amendment.**

### Adoption of Report

**Motion by the Hon. Melinda Pavey, on behalf of the Hon. Michael Gallacher, agreed to:**

That the report be adopted.

**Report adopted.**

### Third Reading

**Motion by the Hon. Melinda Pavey, on behalf of the Hon. Michael Gallacher, agreed to:**

That this bill be now read a third time.

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

## CRIMES AMENDMENT (RECKLESS INFLICTION OF HARM) BILL 2012

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

**Motion by the Hon. David Clarke 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

**The Hon. DAVID CLARKE** (Parliamentary Secretary) [9.30 p.m.], on behalf of the Hon. Michael Gallacher: I move:

That this bill be now read a second time.

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

**Leave granted.**

The Government is pleased to introduce the Crimes Amendment (Reckless Infliction of Harm) Bill 2012.

In 2007 the former Government made a number of amendments to the Crimes Act to remove the antiquated term "maliciously" from the Act. The term had a tortuous definition, and the opportunity was taken to replace the term with appropriate, modern fault elements for a number of offences. At the time, it was not intended that the operation of the offences themselves would change.

In 2011, one of the offences which had been amended, that of recklessly inflicting grievous bodily harm, was considered by the Court of Criminal Appeal in the case of R v Blackwell.

Prior to amendment, that offence criminalised the malicious infliction of grievous bodily harm. The definition of "maliciously" in the Act did not require an intention by the offender to cause any particular injury, merely an "intent to injure".

The Court of Criminal Appeal considered the question of whether the offence as amended now required foresight of grievous bodily harm to establish recklessness, or whether foresight of mere injury remained sufficient. Beazley JA, with whom both James and Hall JJ agreed on this point, found that under the Crimes Act as amended, grievous bodily harm was the relevant consequence with respect to recklessness. The Court found no basis upon which that term could be read down to mean "some physical injury", since the word "maliciously" and its attendant concepts had disappeared from the statute.

Although this was not the apparent intent of the amendments, the Court's interpretation of the offence as it currently stands is correct. This interpretation, however, creates a significant gap in the prosecution of offences involving physical harm.

The offence of recklessly inflicting grievous bodily harm was regularly used to prosecute cases that are more serious than assault occasioning actual bodily harm, which carries a maximum penalty of five years imprisonment, but which would be difficult to prove as the intentional infliction of grievous bodily harm, which has a maximum of 25 years. A common example of cases formerly prosecuted as the reckless infliction of grievous bodily harm is that of a single punch causing a victim to fall and strike their head on the footpath, resulting in serious brain injury.

However, the offence's utility as such an intermediate offence has been greatly eroded by the decision in Blackwell. This is because proving that a person foresaw the possibility of grievous bodily harm is significantly more difficult than proving that they foresaw some injury.

The amendments restructure relevant personal injury offences affected by the 2007 amendments, so that the appropriate fault element applying prior to 2007 is reinstated.

Turning to the substantive provisions of the bill, Item 1 of Schedule 1 omits section 35 of the Crimes Act and inserts instead restructured offences of recklessly wounding and inflicting grievous bodily harm. The structure of each offence makes it clear that to be guilty of the offence, a person must have caused grievous bodily harm, and been reckless as to causing actual bodily harm when they did so.

The words "actual bodily harm" have been chosen so as to use consistent terminology with other provisions in the Act. The provisions apply to someone who is reckless as to causing the harm to the victim or any other person as this ensures that no-one

escapes liability merely because the ultimate victim was not the primary target of the accused's behaviour. This wording is also consistent with the relevant provisions of the Model Criminal Code.

Items 2, 3 and 4 of Schedule 1 insert the same structure for the offences of recklessly wounding or inflicting grievous bodily harm on a police officer, other law enforcement officer, school student or member of school staff.

Item 5 adjusts the definition of circumstances of special aggravation in the context of breaking and entering offences.

As is generally the case with amended offences, the transitional provisions provide that the amended offences will only apply to offences committed on or after the commencement of the amendments.

The amendments in the bill restore the intended operation of these offences and I commend the bill to the House.

**The Hon. ADAM SEARLE** (Deputy Leader of the Opposition) [9.31 p.m.]: I lead for the Opposition on the Crimes Amendment (Reckless Infliction of Harm) Bill 2012. The Opposition supports this bill, the object of which is to amend the Crimes Act 1900 in relation to offences involving the reckless infliction of grievous bodily harm and reckless wounding. This has become necessary because of the decision of the Court of Criminal Appeal in *Blackwell v Regina* last year. That decision followed on from the Crimes Amendment Act 2007, which replaced "malice" with "recklessness" as the fault element in various offences in the Crimes Act 1900. In 2007 that legislation passed this Parliament with support from both sides of the House.

The 2007 bill did a number of things. The most relevant for present purposes was to remove what was then described as the "archaic fault element of 'maliciously'" from the Crimes Act and replace it with the more modern fault elements of "recklessly" and "intentionally". In 2007 the then Government pointed to the difficulty of explaining the archaic formulation of "maliciously" to juries and touched on the significant judicial criticism of the term, as long ago as 1955, by the High Court. The criminal law review division of the Attorney General's Department issued a discussion paper on this topic in 2005. The consultation process revealed general support for deleting "maliciously" and replacing it with more modern terms such as "recklessly". These concerns were echoed by the Court of Criminal Appeal in Blackwell.

At paragraph 67 of her judgement Justice Beazley referred to the definition of "maliciously" as "cumbersome, if not unmanageable, for trial judges in giving directions to juries". She noted that it had been the subject of adverse judicial comment by judges for a considerable period. There was thus broad agreement to the change at the time. As I understand the second reading speech, which has just been incorporated, the current Attorney General still adheres to that view. When introducing the 2007 legislation it was made clear that this was a clarification of the law; it was not intended to be a substantive change. To quote the second reading speech, "It is not intended that the elements of any offence, or the facts that the prosecution needs to establish to prove the office, will change substantially."

However, the consequence of the Court of Criminal Appeal decision in Blackwell was that the law was changed significantly. The case of Blackwell involved an instance of an off-duty police officer being attacked in Scruffy Murphy's in the early hours of 13 October 2007. He was struck in the face by a glass, resulting in the loss of sight in one of his eyes. The accused was found guilty of maliciously inflict grievous bodily harm with

intent under section 33 of the Crimes Act. The Crown also relied upon an alternative count of maliciously inflict grievous bodily harm contrary to section 35 of the Crimes Act. Some of the 2007 amendments, including section 35, came into effect on the date of the assent of the Act, which was 27 September 2007. Others, including section 33, did not come into effect until 15 February 2008. The incident occurred on 13 October 2007, between the two dates, just to add to the confusion.

The pre-2007 position required the Crown to establish under section 35, malicious infliction of grievous bodily harm, that the accused had an intent to injure, not specifically an intent to cause grievous bodily harm or cause any particular injury. The post-amendment position as determined by the Court of Criminal Appeal in Blackwell was that to establish the offence of recklessly inflict grievous bodily harm it had to be established that the accused had foresight of grievous bodily harm, not just foresight of mere injury. This is a significant change from the pre-2007 position and was clearly not intended when the Act was amended in 2007. The court was of the view that where the mental element of an offence is recklessness the court must establish foresight of the possibility of the relevant consequence: that is, the jury, under the section 35 count, had to be satisfied that the accused knew that it was possible that grievous bodily harm—that is, really serious injury—would be inflicted and yet he went ahead and acted anyway. To quote from paragraph 82 of Justice Beazley's judgement:

> There must be a foresight of the possibility of something. The recklessness must cause something. That which it must cause is grievous bodily harm. In my opinion there is no basis upon which that term can be read down to mean "some physical injury".

Justices James and Hall agreed with Her Honour on this point. Broadly speaking, the bill aims to restore the law to the pre-2007 position in relation to section 35 by requiring the foresight to be established as recklessness as to causing actual bodily harm. The same structure is extended to offences under section 60, assault and other actions against police officers, section 60A, assault and other actions against law enforcement officers other than police officers, and section 60E of the Crimes Act, assault at schools. In addition, a consistent amendment is made to the definition of "circumstances of special aggravation" contained in section 105A, which applies to the break and enter offences in sections 109 to 113 inclusive of the Crimes Act. The bill seeks to place the law where the Parliament intended it to be in 2007, not where the Court of Criminal Appeal found that it had gone. So the Opposition supports the measure before the House.

**The Hon. WALT SECORD** [9.37 p.m.]: I will make a brief contribution on the Crimes Amendment (Reckless Infliction of Harm) Bill 2012. The Opposition supports the bill. While I am not a lawyer, admittedly, I do find these areas of public policy and law very interesting. The main purpose of the Crimes Amendment (Reckless Infliction of Harm) Bill 2012 is to amend the Crimes Act 1900 in response to a recent decision of the Court of Criminal Appeal. In 2007, with bipartisan support, amendments were made to the Crimes Act 1900 to replace the term "malice" with the phrase "recklessness". This was in relation to a fault element required in several offences under the Crimes Act 1900. At the time this was generally well received, and it was seen as a matter of simplifying the law. However, in April 2011 the Court of Criminal Appeal held in *Blackwell v Regina* that the amendments had unforeseen consequences.

After the decision the offence of recklessly inflicting grievous bodily harm meant recklessness as to causing grievous bodily harm not just some physical harm, as was the case before the 2007 amendments. In turn, that meant a higher bar for a successful prosecution. By way of background, on 31 May the Attorney General in his second reading speech said that the offence of recklessly inflicting grievous bodily harm was regularly used to prosecute cases that are more serious than assault occasioning bodily harm. In the Legislation Review Committee's report to Parliament tabled yesterday the committee cited the most common example as the case of a single punch causing a victim to fall and strike their head on a footpath, causing serious brain injury.

The offence of recklessly inflicting grievous bodily harm was regularly used to prosecute cases more serious than assault occasioning actual bodily harm. The offence of assault occasioning actual bodily harm carries a maximum penalty of five-years imprisonment. It is difficult to prove the offence of intentional infliction of grievous bodily harm, which carries a maximum penalty of 25 years imprisonment. The Crimes Amendment (Reckless Infliction of Harm) Bill 2012 returns the law to the 2007 position. In practical terms, I understand that the Act commences on the date of assent and the amendments will only apply to offences committed on or after commencement. The Opposition supports the Crimes Amendment (Reckless Infliction of Harm) Bill 2012. I thank the House for its consideration.

**Mr DAVID SHOEBRIDGE** [9.41 p.m.]: The Greens do not oppose the Crimes Amendment (Reckless Infliction of Harm) Bill 2012. I note this bill has been introduced by the Attorney General in the other place. It is appropriate to note the recent passing of Frank Walker, a former Labor Attorney General. He was 34 years of age when he became the Attorney General for New South Wales, making him the youngest Attorney General to

be appointed. On any view he was a reformist Attorney General who made significant changes to the regulation of the Police Force and modernised provisions in the Crimes Act. I note that he paid particular attention to the Crimes Act and its operation in relation to Aboriginal and homeless people in New South Wales. He exhibited great concern about the abuse of police discretions in the 1970s and 1980s and initiated substantial legislative reform. He stood up and made the reforms.

Frank Walker went on to have a career as a judge in both the Workers Compensation Court and the District Court. I appeared before him in the Workers Compensation Court and, speaking as an applicant's advocate, he was always a good draw. While on the bench in the Workers Compensation Court he carefully considered what he could do to provide remedial justice to workers. He did take that role on in the Workers Compensation Court. As the Attorney General in this Parliament he stood up for the rights of injured workers, the homeless and those people who often do not have a voice. It is with sadness I note his passing.

It brings me to the Crimes Amendment (Reckless Infliction of Harm) Bill 2012. It is entirely appropriate there be an offence on the statute book that allows for graduated sentencing between assault occasioning actual bodily harm and the intentional infliction of grievous bodily harm. That is what the offence of reckless infliction of grievous bodily harm does in the statute book of New South Wales. As previous speakers have stated, the Court of Appeal reviewed the current provisions in section 35 of the Crimes Act. The Court of Appeal has, not unreasonably, formed the view that the current graduated penalties of between 7 and 14 years imprisonment for the offence of recklessly cause grievous bodily harm where a person in the company of others or otherwise recklessly causes grievous bodily harm to any person is guilty of an offence. The court of appeal found that a person had to be reckless as to the causing of grievous bodily harm. That is the mental element of the offence. The recklessness had to be in relation to the causing of grievous bodily harm. That is an enormously difficult thing to prove.

If we are going to have a graduated offence that fits within the three categories of assault then it makes sense to have one that does fit in that mid range of the three categories. Having the mental element defined as recklessness as to the inflicting of actual bodily harm does reflect the appropriate mens rea of the offence. The prosecution has to prove the actual infliction of grievous bodily harm. The mental element is recklessness as to the infliction of some bodily harm. The prosecution must prove that, together with the actual infliction of grievous bodily harm, to prove the offence. The offence fits mid-range in the category of offences. The Greens see a role for that offence containing that mental element to be included on the statute book.

The only difficulty with the proposed amendment is the continuation of a pattern in the Crimes Act which provides for a different penalty depending upon the occupation of the victim. There is a scale as to the seriousness of the offence with regard to the victim graduating from a law enforcement officer or police officer, to a schoolteacher, down to a nurse or a worker on a railway station. The Greens find it an offensive approach to the criminal justice system to graduate a penalty based on the nature of the victim. There should be equality between victims. A victim of grievous bodily harm should not receive privileged treatment based on their occupation.

**The Hon. Duncan Gay:** The Greens do not like police.

**Mr DAVID SHOEBRIDGE:** The Parliament should do all it can to protect police, teachers, construction workers, nurses and people such as the Hon. Duncan Gay in an equal manner. All people should be treated equally before the law under the Crimes Act. The Greens do have a concern that this bill maintains graduated penalties depending on the occupation of the victim. I am pleased to note that the Hon. Duncan Gay would fall within the lesser of those categories. The Greens do not oppose the bill. It is important to remember genuine reformists such as Frank Walker and the service he gave to the State in Parliament and as a judicial officer.

**Reverend the Hon. FRED NILE** [9.47 p.m.]: I speak on behalf of the Christian Democratic Party in support of the Crimes Amendment (Reckless Infliction of Harm) Bill 2012. This bill will amend the Crimes Act 1900 in relation to certain offences involving the reckless infliction of harm. As members know, we have had a great increase in violence on our streets, not just in Kings Cross but in many other suburbs. Much of the violence is alcohol related. Anything this Parliament can do to bring that under control through legislation will be supported by the Christian Democratic Party. In 2007 the Crimes Amendment Act removed the archaic element of "maliciously" from the Crimes Act. It was replaced with the modern wording of "recklessly" or "intentionally", as appropriate, in order to clarify the meaning of the elements of the crime.

A 2011 decision by the New South Wales Court of Criminal Appeal highlighted an unintended consequence of the 2007 amendments. Prior to the amendment section 35 of the Crimes Act criminalised malicious wounding or infliction of grievous bodily harm. Under the common law understanding of "maliciously" the offence required foresight of the possibility that some physical harm might result to the victim. The 2007 amendments gave this wording to the offence under section 35 (2) "recklessly causes grievous bodily harm to any person". Subsequently in *Blackwell v Regina* the Court of Criminal Appeal considered the question of whether section 35 (2), as amended, now required foresight of the consequence of grievous bodily harm to establish recklessness, or whether foresight of mere injury remained sufficient.

The court found that under the Crimes Act as amended foresight of grievous bodily harm was required. The court found no basis on which that term could be read to mean some physical injury since the word "maliciously" and its attendant concepts had disappeared from the statute. This made prosecution under section 35 (2) significantly more difficult and created a gap in the hierarchy of personal violence offences. This was not the result intended by the 2007 amendments. The bill will restore section 35 and similar offences in the Act to their operation prior to 2007. This will make it easier for police to carry out their duties in reducing violence in our society. The bill restructures sections 35, 60, 60A, 60E and 105A to make clear that the offences apply where a person inflicts a wound or causes grievous bodily harm and was reckless as to causing actual bodily harm to the victim or any other person. The Christian Democratic Party supports the bill.

**The Hon. DAVID CLARKE** (Parliamentary Secretary) [9.50 p.m.], in reply: I thank honourable members for their contributions to the debate and support for the bill. The bill corrects unintended consequences of amendments made in 2007 and restores relevant offences to their intended operation, closing a gap in the hierarchy of personal violence offences. I commend the bill to the House.

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

**Motion agreed to.**

**Bill read a second time.**

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

## Third Reading

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

That this bill be now read a third time.

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

## ADJOURNMENT

**The Hon. DUNCAN GAY** (Minister for Roads and Ports) [9.52 p.m.]: I move:

That this House do now adjourn.

## YOUNG NATIONALS ANNUAL STATE CONFERENCE

## NSW NATIONALS WOMEN'S COUNCIL

**The Hon. JENNIFER GARDINER** [9.52 p.m.]: Recently I had the pleasure of participating in two important events conducted by the New South Wales Nationals. The first was the Annual State Conference of the Young Nationals, which was held in Wagga Wagga. It was terrific to see the excellent attendance of delegates from around the State. The conduct of the conference was a credit to the State chairman, Jeremy Scott, and his predecessor, the Hon. Sarah Mitchell, who is present in the Chamber. The Young Nationals debated many and varied policy motions over the course of the weekend and at least in one case the wider body of delegates disagreed with the position of the Young Nationals State Executive that had earlier put up the proposals. It was wonderful to see healthy debate on a range of issues.

The Young Nationals Annual State Conference reintroduced to the conference the teams debating event, which has been a feature of the organisation throughout its history. The teams competed for the Miriam Hunt Trophy, named after Miriam Hunt, who suggested to her husband, Ralph Hunt, then State Chairman of the Australian Country Party, that young people in the party should have a more specific role in its organisation. Ralph Hunt agreed with that view and he inveigled a young Richard Bull of Narrandera into being the inaugural State Chairman of the Young Australian Country Party, as it then was, who later became a member of the Legislative Council.

The Young Nationals are an important part of the wider Nationals structure and the standard of debate, camaraderie and sense of fun exhibited at Wagga Wagga was uplifting. I take this opportunity to congratulate the outgoing office-bearers, who have ushered in a new era in the history of the Young Nationals. I congratulate also the incoming State chairman, Felicity Walker, with whom I have had the privilege of working in various capacities over a number of years, and the new State executive, on their election. I wish them well in the year ahead. I look forward to seeing many of the delegates again next week at The Nationals Annual General Conference, where I am sure they will play an important role on the floor of the annual conference and participate in those debates as well.

A couple of weeks later I participated in the inauguration of the NSW Nationals Women's Council, another event in The Nationals calendar that attracted delegates from Tweed to Tilpa, from Byron Bay to Broken Hill, from Albury to Tamworth and many points in between. The diversity of backgrounds and interest represented by the many delegates was very impressive and the sense of keenness to make a contribution to the growth and future of The Nationals and, in particular, to the development of Federal and State policies was palpable.

My women parliamentary colleagues, with the exception of the Hon. Katrina Hodgkinson, who had a ministerial commitment elsewhere, were present, including the Hon. Sarah Mitchell, the Hon. Melinda Pavey, the member for Port Macquarie, Leslie Williams, a former member for Port Macquarie, Wendy Machin, and the former member for Riverina, Kay Hull. We welcome the addition of these women to the ranks of the party. Many of them are new members of the organisation and we look forward to working with them in the future. The election of the inaugural executive of the women's council took up many hours because so many people wanted to be office-bearers in the new organisation. I congratulate Sharon Cadwallader and the inaugural executive of the NSW Nationals Women's Council and wish them well in a very exciting time ahead.

## NATIONAL RECONCILIATION WEEK

**The Hon. PENNY SHARPE** [9.57 p.m.]: Reconciliation Week commemorates the 1967 referendum and the High Court Mabo decision. It ran from 27 May to 3 June 2012. Reconciliation Week grew out of the Week of Prayer for Reconciliation, which began in 1993 and was originally supported by Australia's major religious groups. The day before National Reconciliation Week, 26 May, is National Sorry Day, which was first held in Sydney in 1998 and is now commemorated nationally to remember and honour the Stolen Generations. The theme for 2012 Reconciliation Week was "Let's Talk Recognition" and it focused on exploring how Australians can better recognise the contributions and history of Aboriginal and Torres Strait Islander peoples. The theme was also designed to highlight the importance of constitutional recognition of Aboriginal and Torres Strait Islander peoples as the first inhabitants of Australia.

In 2011 an expert panel appointed by the Government led a national conversation about the constitutional recognition of Aboriginal and Torres Strait Islander peoples. More than 3,400 submissions were received. In January 2012 the expert panel presented the report entitled "Recognising Aboriginal and Torres Strait Islander peoples in the Constitution" to the Prime Minister. This report recommends a number of changes to enhance recognition of Aboriginal and Torres Strait Islander peoples in the Australian Constitution. This is recognition that their time has come and it is pleasing to note that at this stage it has in-principle support from all political parties. As Professor Peter Buckskin, Dean of Indigenous Scholarship, Engagement and Research at the University of South Australia, has said:

> … we need to correct what happened in 1901 where the founding fathers chose to ignore Australia was occupied by Indigenous individuals … what we need now is to ensure there is recognition of Australia's first peoples.
>
> It is in a sense an opportunity for all Australians to acknowledge the oldest living culture in humanity which is the Indigenous peoples of Australia and to appreciate and understand our contribution.

Recognition in our Constitution is also another step forward towards true reconciliation. In New South Wales reconciliation events were organised by the New South Wales Reconciliation Council. The Reconciliation Council promotes reconciliation through the recognition of the social, political and economic rights of Aboriginal and Torres Strait Islander peoples in Australia.

The New South Wales Reconciliation Council encourages public participation during the week to spread knowledge about reconciliation. The council hosted events such as National Sorry Day and the ceremony honouring Aboriginal and Torres Strait Islander servicemen and servicewomen. I was very pleased to attend the opening of the Schools Reconciliation Challenge exhibition currently being hosted at the Australian Museum. The Schools Reconciliation Challenge is a statewide art competition for young people aged 10 to 16 years in New South Wales. From humble roots, and about 50 entries previously, the 2012 Schools Reconciliation Challenge has grown to more than 1,000 entries being received from all over New South Wales.

Artworks this year explored the concept "Our Place" and what it means for reconciliation. There were 12 winners and 24 highly commended works from schools all around New South Wales. Schools from Condobolin, East Maitland, Wallaga Lake, Erina Heights, Cessnock, Merimbula, Kingswood, Gladesville and Balgowlah are all represented. If I can indulge the House this evening, I want to congratulate those students, including five students from the Newtown Performing Arts High School—one of whom is my daughter—who had their works hung as part of the exhibition. I note that my colleague Mick Veitch was very pleased to hear that Young High School had won a prize. The Australian Museum is now exhibiting these inspirational and challenging works until August. I encourage anyone who has a spare 30 minutes and finds themselves in the city to go to the Australian Museum and have a look at the work that young people across New South Wales are doing, exploring themes of reconciliation and what it means to live in the community that is New South Wales.

## TRIBUTE TO MARGARET ELAINE WHITLAM, AO

**The Hon. HELEN WESTWOOD** [10.02 p.m.]: I speak in tribute to a great Australian woman and feminist, Margaret Whitlam, AO, who died on 17 March 2012—although "feminist" is not a term she would have readily used to describe herself; instead, she referred to herself as a "relaxed gradualist". In the 1987 book the *Matriarchs* she is quoted:

> I am a feminist in so far as I don't want to be trodden on and I don't want to be used as some body's handbag. I am not an accessory.

Margaret Whitlam was a woman I greatly admired. She was a firm believer in the women's movement and an advocate for women's rights. She will always be remembered as a strong outspoken woman and champion of social change. As a young woman she was an accomplished athlete who represented Australia swimming breaststroke in the 1938 Empire Games. She played tennis and hockey and, it is said, was a proficient backyard cricketer. Later in life she was also a keen golfer and while at The Lodge declared Tuesday golf day. Margaret Whitlam never lost sight of her strong principles of social justice.

Some of her work and activities included social worker, journalist, television presenter, book reviewer, tour leader, author and Red Cross volunteer, and later in life she also taught English to migrants. We also remember her well for her passion for the arts. She remained at the heart of the community and for the community. She was duly recognised for this work in 1983 when awarded the Order of Australia. She declared she was celebrating the award with Gough over a simple dinner of sausages and mash. That says it all about our Margaret Whitlam: she never believed she was ever due anything. In the early years her intellect, wit and grounding were evident to those around her. As noted in the book *Prime Ministers Wives*, she was quickly identified as an electoral asset:

> Margaret Whitlam—well educated … well travelled and with a mind of her own—fits well with the ALP's election slogan, "It's time" and Margaret Whitlam is Gough's secret weapon … the best public relations agent Gough could have … The lady doesn't need slits.

It was believed that not since Enid Lyons had there been a more controversial woman in The Lodge, largely due to her readiness to speak and write with unrestrained candour on a wide range of topics. Margaret Whitlam was a reflection of a fresh, new, modern Australia. She had her own views and no fear of expressing them—views which 40 years later can still be considered progressive. Speaking to the press soon after the 1972 election she spoke openly in favour of equal pay for women, the need for the decriminalisation of abortion, the legalisation of marijuana and her belief that marriage was not necessary unless the couple involved intended to have

children; and she could see no problem with de facto relationships. She always went to great lengths to point out that her views were her own. In 1973 she opened her first media conference in Britain with the tantalising offer, "Ask me an outrageous question and I'll give you an outrageous answer." She urged women to have faith in themselves and find strength in unity. At a 1975 equality symposium in Adelaide Margaret said of women:

> We do not exist as people in our own right. We are often missing from history. Our language virtually ignores us. Our names are not our own. Our lives are lived through others. We are someone's daughter, someone's wife, someone's mother. Our role in life is largely determined for us. Our God is masculine. Our laws are made by men. We are attacked by men, defended by other men. Even our bodies are not our own.

It is statements such as these that inspired so much respect. She was so well loved throughout her life by those who did know her and then by so many Australians who had never met her but who felt they knew her from her writing. It would be remiss of me in paying tribute to Margaret Whitlam if I did not mention her long and enduring partnership with Gough. In 1939 she met Gough at a Sydney University Dramatic Society Christmas party. He was "just the most divine looking man I'd seen, he had this beautiful dry, dry wit—and he was tall." Two years later, Gough proposed and they were married at St Michael's, Vaucluse, on 22 April 1942. It was a marriage that endured almost 70 years. Margaret attributed the success of her long and sustaining partnership to her husband's "extraordinary sense of humour". He repaid the compliment by dedicating his books to her: "To my best appointment", "To my most constant critic", and in a book about Italy "To my prima donna".

In 1997, after public voting in a National Trust poll, Gough and Margaret were the only couple to be declared National Living Treasures. I wish to express my condolences to Gough as he faces a future without the love of his life, treasured partner and companion. My thoughts are also with Gough and Margaret's children, Antony, Nicholas, Stephen and Catherine, and their partners, their grandchildren and their great-grandchildren. Vale Margaret Whitlam.

## TRIBUTE TO REGIMENTAL SERGEANT MAJOR WALLY THOMPSON, AO

**The Hon. CHARLIE LYNN** (Parliamentary Secretary) [10.06 p.m.]: I wish to pay tribute to the life of the Australian Army's first Regimental Sergeant Major, Warrant Officer Class 1 Wally Thompson. Wally passed away peacefully at Bankstown Hospital on 19 April 2012. Unfortunately I was in Papua New Guinea at the time of his passing and was unable to pay my final respects to him. Wally commenced his Army service with the Citizen Military Forces in 1950 and was later conscripted into National Service. He enlisted in the Australian Regular Army in 1954 and was posted to the 2nd Battalion of the Royal Australian Regiment where he served on operations in the jungles of Malaya.

In 1961 he was posted to the British Army Jungle Warfare Training School as an instructor. On his return to Australia in 1963 he was posted to the 1st Battalion of the Royal Australian Regiment. In 1964 he was amongst our first contingent to be posted to the Australian Army Training Team in Vietnam. During his tour of duty he was awarded the South Vietnamese Cross of Gallantry with Silver Star for action with the 3rd/5th Regiment, 2nd Infantry Division. On his return to Australia in 1965 he was posted to the Sydney University Regiment. In 1967 he served on the Headquarters 10 Task Force as a Company Sergeant Major. The following year he returned to the 1st Battalion.

In 1968 he returned to Vietnam for his second tour of duty. He was badly wounded in the Battle of Coral, causing him to be returned to Australia. After he recovered from his wounds he was posted to the Battle Wing of the Infantry Centre as the Company Sergeant Major. All infantry soldiers who served in Vietnam were trained at the Infantry Centre and they were well prepared for the action under the watchful eye of their sergeant major. In 1970 he was posted to the 4th Battalion as their Regimental Sergeant Major and returned to Vietnam for his third tour. On his return to Australia in 1973 he was posted to the Jungle Training Centre as their Regimental Sergeant Major. I believe the Battle Efficiency Courses conducted under his watchful eye would have had no equal.

He returned to the Infantry Centre in 1975 and was a proud and deserving recipient of the Order of Australia. In 1979 he was posted to the Army Training Command as the Regimental Sergeant Major. He was later posted to the 1st Brigade at Holsworthy as the Brigade Sergeant Major where I had the honour to serve with him under Brigadier John Sheldrick in 1982. The following year the post of Regimental Sergeant Major of the Australian Army was created and Wally Thompson, our most respected and experienced sergeant major, created history by being appointed to the position. He served in this role with distinction until he retired in 1987, after 37 years of loyal service to our nation. Warrant Officer Dave Ashley, the current Regimental Sergeant Major of the Army, knew Wally for over 30 years and said that the passing of Wally marked a sad day for the Australian Army and its soldiers:

> Wally Thompson was the first Regimental Sergeant Major of the Army. For me, personally, he is a role model. A role model for all Australian soldiers and someone that I look up to in the work I do on a daily basis. His legacy is profound. He was truly a soldier's soldier.

There is no great accolade a soldier can receive from his peers. The staff club at Kapooka and the Soldier Promotion Centre at Lavarack Barracks in Townsville have been named in his honour. The Army was family to Wally, as it is for most career soldiers. He retained a strong interest in its welfare and was kept busy with invitations to commemorative services, graduation dinners, unit reunions and other special occasions. After a visit to the Soldiers Promotion Centre at Lavarack Barracks in 2005 he said:

> I spent most of the day going around and talking to the soldiers at Lavarack, and I know I can say one thing, "We're in safe hands." They are very fine young men and women who are a credit to the Army and to Australia.

The success of an army in battle relies upon the quality of its soldiers. Wally Thompson was one of the greatest of them all, and his memory will be proudly carried on by the soldiers of our army. Warrant Officer Ashley described Wally as a great leader who epitomised the regimental sergeant major. "He seldom gave orders or directions," said Warrant Officer Ashley. "He didn't need to. When a soldier was in the wrong, Wally's mere distant presence would snap him into the right." This is a great soldiers' example of the respect Wally was, and is, held in. Wally led by example, which in our egalitarian army is the most effective form of soldier leadership.

Wally is a mentor and will remain so for the army's current crop of regimental sergeant majors, including me. While I met Wally on only a few occasions when we were both in uniform, but more so after Wally retired, Wally's example had a profound effect on me. Wally was not a "Do this" RSM but a "Do as I do and follow me" example. Wally Thompson taught me and thousands of other soldiers the true value of respect. Wally's wife, Judith, passed away just last week and was buried yesterday. They are survived by Brett, Scott, Catherine, Elizabeth, 46,500 soldiers and tens of thousands of former soldiers who had the honour to serve under Warrant Officer Class 1 Wally Thompson. Wally was not just an Australian soldier, he is the Australian soldier and the world is a poorer place for his passing. Rest in peace, Wally. Your duty is done and you did us proud.

## MURRUMBIDGEE REGULATED RIVER WATER SHARING PLAN

**The Hon. JEREMY BUCKINGHAM** [10.11 p.m.]: I rise to speak about the proposed amendments to the Murrumbidgee Regulated River Water Sharing Plan. As members would no doubt be aware, water sharing plans are how we deal with allocations of water to irrigators and to the environment in New South Wales. I will outline some of the issues relating to the proposed amendments to the water sharing plan as they relate to the Nimmie-Caira area. The Murrumbidgee regulated river is located in south-west New South Wales. The river is almost 1,600 kilometres in length from its source in the Snowy Mountains to its junction with the Murray River. About 1,200 kilometres of this is regulated. It drains an area of about 84,000 square kilometres and is a major tributary of the Murray-Darling river system. The major urban centres within the region include Canberra and the largest New South Wales inland city, Wagga Wagga. The catchment also supports numerous regional cities and towns including Cooma, Gundagai, Tumut, Narrandera, Griffith, Leeton, Hay and Balranald.

The volume and pattern of flows in the Murrumbidgee River have been altered significantly by the construction and operation of Burrinjuck Dam on the Murrumbidgee River and Blowering Dam on the Tumut River to supply water to downstream users and the diversion of water from the Snowy River through the Snowy Mountains Scheme into the Murrumbidgee River. Members would no doubt be aware of the significance of the Lowbidgee wetlands, one of the most magnificent wetlands in Australia. They would also be aware that the Office of Water is proposing a massive increase in entitlements in the Nimmie-Caira area and to buy them back.

**The Hon. Dr Peter Phelps:** Hear, hear!

**The Hon. JEREMY BUCKINGHAM:** Government members would be aware that they are proposing to spend in the order of a couple of hundred million dollars of taxpayers' money—

**The Hon. Duncan Gay:** You're anti-farmer, aren't you?

**The Hon. JEREMY BUCKINGHAM:** The farmers are completely opposed to this massive waste of taxpayers' money because these 11 farmers are about to be given 700 gigalitres of water only to have it immediately bought back. It is a massive rort of historic proportions that represents all that is wrong with water management in the Murray-Darling Basin. The supplementary water Lowbidgee access licences, which are

proposed as part of the plan amendments, are based on the maximum observed diversion to each of the three Lowbidgee areas: namely, Nimmie-Caira, 381,000 megalitres a year based on 1992 diversions; Redbank North, 211,000 megalitres a year based on 1986-87 diversions; and Redbank South, 155,000 megalitres a year.

These entitlements are going to 11 farmers—some of whom do not even live on the land—who are set to have a windfall profit in the order of $150 million in taxpayers' money. They have put in thousands of kilometres of irrigation channels and diversion banks, and they are using water in the worst possible way—flood irrigating, drowning weeds. This has now become a State priority project and at least $83 million—$9 million to $10 million each—will be given to these farmers when they should not have been taking the water at all. They have had no entitlement until now. How much have they been paying? They have been paying an absolute pittance for the water for 23 years. Fiona Nash, The Nationals senator, had this to say about the project—

**The Hon. Dr Peter Phelps:** Who is giving them the money?

**The Hon. JEREMY BUCKINGHAM:** The Federal Government out of John Howard's water buyback. Fiona Nash said:

> We certainly haven't had the transparency we need to ensure that the money is being spent appropriately and that the taxpayers are getting value for money.

The Greens completely oppose these entitlements and we completely oppose the waste of money on these irrigators.

## POLITICAL EXTREMISM

**The Hon. SOPHIE COTSIS** [10.15 p.m.]: Last week I participated on a panel that was organised by the University of Sydney called Sydney Ideas. The discussion was about the European financial crisis and the political and economic consequences for Greece. My contribution related mainly to the topic of the rise of extremist minority parties, one of which is Golden Dawn—an extreme right-wing Neo-Nazi fascist party that won 21 seats out of 300 in the Greek elections about a month ago and increased its vote from 3 per cent to 7 per cent. My colleague Walt Secord, deputy chair of the Parliamentary Friends of Israel, and I made a public statement condemning this group and opposing any plans for it to establish branches in Australia.

As members may be aware, the Greeks are going back to the polls on 17 June and as part of the campaign members of Parliament from different parties were on a panel on Greek television a couple of nights ago. During the debate one of the Golden Dawn members of Parliament disagreed with female members of Parliament Liana Kaneli and Rena Dourou. He then committed a most disgraceful act of violence and assaulted the two female politicians on live television. I condemn this violence against women and condemn this attack on democracy. We should not see this type of party rise in Australia, or anywhere else in the world. We should condemn these acts of hatred and attacks on democracy. This extremist party must be stopped.

## FASCISM

**The Hon. Dr PETER PHELPS** [10.17 p.m.]: I rise to correct something that the Hon. Sophie Cotsis said when she referred to "right-wing fascism". Any study of the historical basis of fascism in its true form, through Mussolini, will lead to an understanding that it is in fact an inherently left-wing movement. In fact, Mussolini derived his power from his senior leadership in the Italian Communist Party. Mussolini was in fact a senior Italian communist who, upon falling out through disagreements with the communist leadership over internationalism, decided to get together some of his old World War I buddies and create a crypto-communist party called the Fascist Party. Indeed, the word "fascism" arises from the idea of fascis, a bundle of individual sticks that are bound together. That is the nature of fascism.

If one is talking more broadly about the growth of Nazism—which is a distinct ideology and in some ways quite different from fascism because of its strong anti-Semitic element—one must acknowledge the fact that Nazism derives its name from National Socialism. Hitler and the early theoreticians of the Nazi Party made it quite clear that they were of a socialistic bent but they were not Stalinist or, if you like, doctrinaire Marxist socialists. What we have in both of these early iterations of fascism is essentially a non-Stalinist socialism which sought to appropriate the symbols of socialism—and, indeed, much of the rhetoric of socialism and much of the social policy that guided socialism—and turn them into their own national socialism, which, of course, is where the Nazi party derives its name.

**The Hon. Sophie Cotsis:** Are you giving a history lesson?

**The Hon. Dr PETER PHELPS:** I have to correct members who continue to perpetuate this myth that somehow fascism and Nazism are right-wing ideologies. They are nothing of the sort. They have been demonised by communists as right-wing ideologies because Stalin well understood at the time the perils that lay with fascism—and I am speaking about Italian fascism. Stalin himself made it absolutely clear when he said, "We are fighting for the same people with the same ideas and we must crush Italian fascism". That was Stalin's own view because he knew that these were not two disparate ideologies, they were the same ideologies—certainly in the case of Mussolini—with the same sort of leadership grouping and the same totalitarian streak. Just as Stalin opposed Trotskyism as a splinter group of the main Bolshevik party, Stalin opposed fascism for the same reason: because it was an alternative and competing form of communism. It was as left wing as was Stalinist communism.

## TRIBUTE TO KATERINA BUBNIUK

**The Hon. AMANDA FAZIO** [10.21 p.m.]: Tonight I advise the House that a very important lady has celebrated her ninetieth birthday today. Mrs Katerina Bubniuk was a refugee from the Ukraine who came to Australia to flee communism—something I am sure the Hon. Dr Peter Phelps would support. She has lived her whole life in Cabramatta and raised her family there. She worked hard and was an exemplary citizen. She is currently in the Sacred Heart Hospice in Darlinghurst. She is very excited that today is her ninetieth birthday and I wish to send her the very best returns.

[*Time for debate expired.*]

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

**Motion agreed to.**

**The House adjourned at 10.22 p.m. until Thursday 14 June 2012 at 9.30 a.m.**