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# LEGISLATIVE COUNCIL

Thursday 21 February 2013

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**The President (The Hon. Donald Thomas Harwin)** took the chair at 9.30 a.m.

**The President** read the Prayers.

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

## BUSINESS OF THE HOUSE

### Formal Business Notices of Motions

**Private Members' Business items Nos 903 and 1072 outside the Order of Precedence objected to as being taken as formal business.**

### PROFESSOR SANDY MIDDLETON AWARD RECIPIENT

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

1. That this House notes that Australian Professor Sandy Middleton has been awarded the 2012 American Heart Association CVN Stroke Article of the Year Award for her research into the current protocols and treatment for acute stroke patients.
2. That this House notes that:
  - (a) Professor Middleton is the Director of Nursing Research Institute at the Australian Catholic University, and St Vincent's Mater Health,
  - (b) Professor Middleton's trial was the first nurse-led trial to be carried out in Australia,
  - (c) that the trial involved 19 acute stroke units across Australia and treated over 1,600 patients as part of the study,
  - (d) Professor Middleton's study found that participants of the trial of three new protocols to manage fever, sugar and swallowing were 16 per cent more likely to be alive and independent in 90 days, compared to those who were not treated as part of the trial,
  - (e) the award was presented to Professor Middleton at the American Heart Association's Scientific Sessions in Los Angeles, and
  - (f) Professor Middleton is the first non-United States recipient of the award.
3. That this House congratulates and commends the outstanding efforts and contributions Professor Middleton has made to the field of medical research, specifically into the study of treatment for stroke patients.

### INNER-CITY SCHOOLS

**Dr JOHN KAYE** [9.33 a.m.]: I seek leave to amend Private Members' Business item No. 1077 outside the Order of Precedence by omitting in clause 1 (e) the words "looming crisis" and inserting instead "future constraints" and by omitting in clause 2 (a) the words "urgently secure new sites and increase the number of positions available in" and inserting instead "investigate options for".

**Leave granted.**

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

1. That this House notes that:
  - (a) population growth in the inner urban areas of Sydney has increased the number of families seeking comprehensive secondary public education for their children,

- (b) comprehensive public high schools which serve the inner city population, including Rose Bay Secondary College, Blackwattle and Balmain, and Newtown Performing Arts High Schools are at or approaching full capacity,
  - (c) while Alexandria Park Community School provides exceptionally high quality secondary education, it is difficult to access by public transport for students who live in the central business district of Sydney who may face bus journeys of an hour each way,
  - (d) students living in and around inner Sydney are in some cases being forced to cross the central business district to attend a public comprehensive high school, and
  - (e) a working party including the Department of Education, the Parents and Citizens Associations and the City of Sydney has been convened to seek solutions to the future constraints in the ability of public education to meet the demand in inner city Sydney
2. That this House:
- (a) supports the mission of the Working Party to investigate options for public comprehensive high schools in inner city Sydney, and
  - (b) calls for future urban planning and residential development assessment to recognise that increasing population densities must be accompanied by the provision of adequate sites for public school development to cater for future population increases.

## **BUSINESS OF THE HOUSE**

### **Formal Business Notices of Motions**

**Private Members' Business items Nos 1078 and 1079 outside the Order of Precedence objected to as being taken as formal business.**

## **GENERAL PURPOSE STANDING COMMITTEE NO. 1**

### **Report: Budget Estimates 2012-2013**

**Reverend the Hon. Fred Nile**, as Chair, tabled a report entitled "Budget Estimates 2012-2013", dated February 2013, together with transcripts of evidence, tabled documents, correspondence and answers to questions taken on notice.

**Report ordered to be printed on motion by Reverend the Hon. Fred Nile.**

**Reverend the Hon. FRED NILE** [9.36 a.m.]: I move:

That the House take note of the report.

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

## **SPECIAL ADJOURNMENT**

**Motion by the Hon. Duncan Gay agreed to:**

That this House at its rising today do adjourn until Tuesday 26 February 2013 at 2.30 p.m.

## **BUSINESS OF THE HOUSE**

### **Suspension of Standing and Sessional Orders: Order of Business**

**The Hon. CATE FAEHRMANN** [9.37 a.m.]: I move:

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 626 outside the Order of Precedence, relating to the Road Transport (Safety and Traffic Management) Amendment (Child Safety on Schools Buses) Bill 2012, be called on forthwith.

**Question put.**

**The House divided.****Ayes, 5**

Ms Faehrmann  
Dr Kaye  
Mr Shoebridge

*Tellers,*  
Ms Barham  
Mr Buckingham

**Noes, 32**

Mr Ajaka  
Mr Blair  
Mr Brown  
Ms Cotsis  
Ms Cusack  
Mr Donnelly  
Ms Fazio  
Ms Ficarra  
Mr Gallacher  
Miss Gardiner  
Mr Gay

Mr Green  
Mr Khan  
Mr Lynn  
Mr MacDonald  
Mrs Maclaren-Jones  
Mr Mason-Cox  
Mrs Mitchell  
Mr Moselmane  
Reverend Nile  
Mrs Pavey  
Mr Pearce

Dr Phelps  
Mr Primrose  
Mr Searle  
Mr Secord  
Ms Sharpe  
Mr Veitch  
Ms Westwood  
Mr Whan  
*Tellers,*  
Mr Colless  
Ms Voltz

**Question resolved in the negative.****Motion negatived.****BUSINESS OF THE HOUSE****Suspension of Standing and Sessional Orders: Order of Business**

**Dr JOHN KAYE** [9.46 a.m.]: I move:

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 1078 outside the Order of Precedence, relating to an order for papers relating to Barangaroo, be called on forthwith.

This matter is urgent because, as we speak, the unsolicited proposals process for the assessment of a supposedly billion-dollar casino and hotel at Barangaroo are proceeding and they are proceeding behind closed doors. Presumably they will come to a landing some time—

**The Hon. Walt Secord:** It's a cover-up.

**Dr JOHN KAYE:** Indeed, a cover-up. It is a cover-up which is disguising for the people of New South Wales the true costs and benefits.

**Mr David Shoebridge:** If there is nothing to hide!

**Dr JOHN KAYE:** Indeed, as Mr David Shoebridge says, if there is nothing to hide this motion should go through unopposed. The Allen Consulting Group report that was submitted by Crown Limited to the process was challenged by Deloitte's report. This motion calls for that Deloitte's report to be put in the public domain. That is urgent because this is a major assessment of a project that can have substantial impacts on the people of New South Wales, on the city of Sydney, on gambling in the city and on the finances of the State, and it is going through behind closed doors.

This is an urgent matter because it is very clear that the licence associated with this new casino will be issued without a public auction for it, without any attempt to discover its real value and, indeed, possibly for

free. The people of New South Wales will not know what economics are behind this proposal. The people of New South Wales will never know what Deloitte says. The Premier says Deloitte's report will be released a year after the whole process is over. That is far too late.

Saying that the report will be released a year after the proposals process is over shows that it is not commercial in-confidence; it is simply being kept back because the O'Farrell Government is embarrassed by this process. The Government is so embarrassed by it that it is keeping all the documents under wraps. A freedom of information request to receive the report was denied. Other matters were released and the freedom of information search revealed Deloitte's terms of reference. Subsequently the matter becomes more urgent because Deloitte International has a commercial relationship with Crown.

**Mr David Shoebridge:** No!

**Dr JOHN KAYE:** Indeed, yes.

**Mr David Shoebridge:** Unbelievable. Mr Hoe and Co.

**Dr JOHN KAYE:** Indeed, Mr Hoe and Co.

**Mr David Shoebridge:** Charming people to do business with.

**Dr JOHN KAYE:** Indeed. Crown's commercial undertakings in South-east Asia include Deloitte auditors, which have a multimillion-dollar contract to Crown. It is urgent the people of New South Wales see this report to assess whether the assessment process information is biased or not. This report could be adopted as part of the assessment process without the ability to be challenged by international experts or the people of New South Wales. The unassisted proposals process will be complete in the next six months, so it is urgent that this document is in the public domain so the people of New South Wales know what is happening with the casino licence and the approval process.

This Government accused the former Government of the same procedures. Behind closed doors decision-making is bad decision-making, not only because it lacks credibility but also because there are too many opportunities for adverse decisions to be made. We do not want this proposal to go to the Independent Commission Against Corruption. To avoid that happening, it is important that the key documents are in the public domain. The suspension of standing orders must go ahead so the people of New South Wales have the opportunity to see this crucial document. I commend the motion to the House.

**The Hon. DUNCAN GAY** (Minister for Roads and Ports) [9.51 a.m.]: The Government opposes urgency. This motion is not urgent because it relates to the Government's ongoing assessment of an unsolicited proposal for a second casino and resort at Barangaroo. The assessment is ongoing under stage 2 of the Government's unsolicited proposals process. This motion is not urgent because the matter would be better dealt with at the conclusion of stage 2 once the Government has considered whether the proposal meets the benefits of the State and whether it should proceed to stage 3. The appropriate time for this motion is between stage 2 and stage 3. This motion is not urgent because the only material that was presented by The Greens was the usual fibs and distortions and character assassination under parliamentary privilege.

It is anticipated that the Government will release documentation on the stage 2 assessment of the Crown proposal at the conclusion of stage 2. The relevant documentation is released in any event. If concerns still remained at that point that not enough documentation had been provided, then that would be the time to consider this motion. The document that is the subject of this motion has already been the subject of a Government Information (Public Access) Act application. Numerous documents were released under that application and have been widely reported in The Greens favourite source, the *Sydney Morning Herald*.

The document referred to in this motion was assessed to be Cabinet-in-confidence, therefore, access was refused under the Government Information (Public Access) Act. This matter is not urgent because it was commissioned as part of the initial assessment of Crown's proposal and informed Cabinet's decision to proceed to stage 2 of the unsolicited proposal process. The unsolicited proposal is still under assessment. The New South Wales Government is determined to act in the best interests of its taxpayers and for that reason it has appointed a steering committee, chaired by David Murray, AO, to assess the proposal. Mr Murray is leading a detailed, independent and rigorous assessment, as outlined in the unsolicited proposals policy guidelines. Stage 2 does not guarantee final approval; it means that the proposal will be further assessed at stage 3. At stage 2, the net benefit of granting a gaming licence at Barangaroo and the conditions that should apply to ensure maximum benefit to

New South Wales will be comprehensively assessed. The Government will approve the proposal only if the review finds it will deliver positive net benefits and a fair return for the taxpayers of New South Wales. We oppose urgency.

**The Hon. LYNDIA VOLTZ** [9.55 a.m.]: The Opposition supports the motion. The Minister's argument that it should be released at stage 2 and not stage 1 were unconvincing.

**The Hon. Duncan Gay**: That is not what I said. It was stage 3, not stage 2.

**The PRESIDENT**: Order! We were in error in allowing the Hon. Linda Voltz to be called. Only two members may speak at this stage of the debate.

**Question—That the motion be agreed to—put.**

**The House divided.**

**Ayes, 18**

Ms Barham	Mr Moselmann	Ms Westwood
Mr Buckingham	Mr Primrose	Mr Whan
Ms Cotsis	Mr Searle	
Mr Donnelly	Mr Secord	
Ms Faehrmann	Ms Sharpe	<i>Tellers,</i>
Mr Foley	Mr Shoebridge	Ms Fazio
Dr Kaye	Mr Veitch	Ms Voltz

**Noes, 21**

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

**Pair**

Mr Roozendaal                      Mr Clarke

**Question resolved in the negative.**

**Motion negatived.**

**BUSINESS OF THE HOUSE**

**Suspension of Standing and Sessional Orders: Order of Business**

**Reverend the Hon. FRED NILE** [10.05 a.m.]: I move:

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 755 outside the Order of Precedence, relating to the Crimes Amendment (Zoe's Law) Bill 2013, be called on forthwith.

**Question put.**

**The House divided.**

**Ayes, 21**

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

**Noes, 18**

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

Mr Moselmane  
Mr Primrose  
Mr Searle  
Mr Secord  
Ms Sharpe  
Mr Shoebridge  
Mr Veitch

Ms Westwood  
Mr Whan

*Tellers,*  
Ms Fazio  
Ms Voltz

**Pair**

Mr Clarke

Mr Roozendaal

**Question resolved in the affirmative.**

**Motion agreed to.**

**Order of Business**

**Motion by Reverend the Hon. Fred Nile agreed to:**

That Private Members' Business item No. 755 outside the Order of Precedence be called on forthwith.

**CRIMES AMENDMENT (ZOE'S LAW) BILL 2013**

**Bill introduced, and read a first time and ordered to be printed on motion by Reverend the Hon. Fred Nile.**

**Second Reading**

**Reverend the Hon. FRED NILE** [10.12 a.m.]: I move:

That this bill be now read a second time.

I thank members for their co-operation to allow me to give my second reading speech to the Crimes Amendment (Zoe's Law) Bill 2013. The House has developed the policy of enabling members to give a second reading speech on a bill which may be opposed by other members of the House. Although members have allowed the bill to be introduced and read a second time, I accept that it does not mean the bill has the automatic support of all members. I believe that members should have the right to deliver a second reading speech on a bill. The objects of the Crimes Amendment (Zoe's Law) Bill 2013 are to amend the Crimes Act 1900 to:

- (a) establish a separate offence for conduct causing serious harm to, or destruction of a child in utero and,
- (b) to extend the offence of dangerous driving causing death or grievous bodily harm to dangerous driving causing the destruction of, or serious harm to a child in utero.

The Opposition spokesperson has been reported in the media as saying that the Opposition does not understand the necessity for this bill. I hope my second reading speech will show the absolute necessity for this bill. That is the reason the name "Zoe" is in the title of this bill: an incident involving the baby Zoe shows why this bill is absolutely necessary. In 2011 and 2002 two public incidents drew attention to the deficiency of the law with regard to protections extended towards women during pregnancy. I emphasise that this bill provides an exemption for "medical procedures", which is the terminology used for a termination of a pregnancy or for an abortion. This bill specifically states that it has nothing to do with an abortion or a termination of a pregnancy.

**The Hon. Helen Westwood:** Give women a go.

**Reverend the Hon. FRED NILE:** The bill states that: it is the fact.

**The Hon. Cate Faehrmann:** And it does that in the United States as well.

**Reverend the Hon. FRED NILE:** That is the point I am making.

**The Hon. Matthew Mason-Cox:** Point of order: I ask that members of the Opposition be asked to cease interjecting so that we can hear Reverend the Hon. Fred Nile in silence.

**DEPUTY-PRESIDENT (The Hon. Paul Green):** Order! Members will give respect to Reverend the Hon. Fred Nile. I appreciate that it is a sensitive topic but the member will be heard in silence.

**Reverend the Hon. FRED NILE:** In 2001-02 two public incidents drew attention to the deficiency of law with regard to the protections extended toward women during pregnancy. In November 2001 Ms Renee Shields suffered a road rage incident that led to the death of her unborn child, Byron. In August 2002 Ms Kylie Flick suffered a miscarriage after she was beaten and stood on by her 112 kilogram boyfriend, Mr Phillip Nathan King. In both cases the law failed to directly address the injustice and grief suffered by these women as there was no existing offence for the destruction of a child in utero. In response to community pressure the then New South Wales Attorney General John Hatzistergos commissioned the Hon. Mervyn Finlay, QC to conduct an inquiry into the matter.

In April 2003 the Finlay report recommended "that New South Wales legislate to introduce the offence of killing an unborn child relating to a criminal act causing a child, capable of being born alive, to die before it has an existence independent of the mother". The report mirrored the request of the woman concerned. However, in December 2003 the Court of Criminal Appeal ruled that:

The close physical connection between a pregnant woman and her unborn child means that the loss of that child can constitute grievous bodily harm to the pregnant woman, even in the absence of other injury to her.

The former New South Wales Government then decided against the adoption of Finlay's recommendation, that is, to introduce a new offence, preferring instead to codify the court's ruling and provide for the remedial restitution of justice through the existing provisions of "grievous bodily harm" found within the Crimes Act 1900. The Crimes Amendment (Grievous Bodily Harm) Bill 2008, otherwise known as Byron's law, merely added the following clause to the existing definition of "grievous bodily harm":

4. (1 a) the destruction (other than in the course of a medical procedure) of the foetus of a pregnant woman, whether or not the woman suffers any other harm,

The bill was passed in the Legislative Assembly on 22 March 2005 and in the Legislative Council on 4 May 2005 but not without incident. Significant concerns were raised in the Legislative Council with regard to the scope and eventual implementation of the legislation. Amendments were moved by the Christian Democratic Party and strongly supported by the Coalition, but these were ultimately defeated 17 to 22 after the Government—a Labor Government—refused to allow its members a conscience vote. Subsequent events were to highlight the acute failure of Byron's Law.

On Christmas Day 2009 Ms Brodie Donegan, who was eight months pregnant at the time, decided to go for a short walk to stretch her legs. She had only managed to walk several metres when she was run down by a drug-affected driver. The impact killed Ms Donegan's unborn daughter, Zoe, and inflicted significant injuries to Ms Donegan herself, including a shattered pelvis and injuries to her lower spine, hip and right foot. Pursuant to the Crimes Act 1900, the driver was charged with inflicting grievous bodily harm but as Ms Donegan had sustained injury herself the death of her child in utero was rendered legally irrelevant. The failure of the law to specifically acknowledge Ms Donegan's loss demonstrated that the concerns of eight years prior had not been adequately addressed. That is why I am introducing this bill.

Several women were to suffer in like circumstances. Mrs Susan Harris had persevered with in vitro fertilisation for three years before finally falling pregnant with her son Lars. On 20 January 2010 a reckless driver crossed the road and hit the vehicle in which she was travelling. The impact caused the death of her child in utero but the driver only received a suspended sentence and loss of licence for six months. This raises the question: What is the value of a human life? When I first became concerned about this issue one of my supporters, who was very close to giving birth to her child, was driving her car when it was hit from the rear by a bus. She was thrown forward onto the steering wheel. She did not sustain any substantive injury—no broken bones and so on—but the impact with the steering wheel caused the death of her unborn child. In my innocence I asked, "What happened about the death of your child?" She replied, "Nothing happened." I could not believe that a baby almost ready to be born had died yet nothing happened, and that has been on my conscience since I entered this Parliament.

The Crimes Amendment (Zoe's Law) Bill 2013 seeks to provide an appropriate response. The bill is geared to meet the anguish of women who are concerned and want something done; it is not being driven by men. The constant complaint made by those who suffer the loss, the death, of a child in utero as a result of a malicious or otherwise reckless act of another is that the law fails to provide for the remedial restitution of

justice due to a failure to adequately acknowledge the loss directly. After nine years, two inquiries and an amendment to the Crimes Act this situation remains unchanged. We now have the opportunity to rectify what amounts to a serious gap in our legislation and an injustice.

Often when I endeavour to do something some in the media try to turn it into an abortion debate. This bill specifically excludes terminations of pregnancies, abortions. The bill seeks to provide an appropriate and just legal response to the destruction of a child in utero other than in the course of a medical procedure or with the consent of the mother. It achieves this by adopting a recommendation of the Finlay report and introduces a new stand-alone offence within the Crimes Act 1900. For more than two years I have been corresponding with the current Attorney General, and Minister for Justice, and prior to that with Attorneys General in the Labor Government. Mr Smith has made various suggestions over the years as to the wording of the bill and I have sought to meet every suggestion or request he has made. The bill is now in a form capable of support by the Government and, I hope, the Opposition.

The bill also seeks to provide equal protection for all pregnant women. With the passage of the Crimes Amendment (Grievous Bodily Harm) Bill in 2005 the current Crimes Act only covers cases involving a foetus, thereby ignoring the plight of any woman who happens to be less than 63 days into her pregnancy. This precludes expectant mothers who may have only recently heard the heartbeat of their child—usually around 35 days; or viewed them on an ultrasound—usually around 42 to 56 days—at the first medical check-up. Further, as demonstrated by the case of *R v King*, there is a strong correlation between pregnancy and domestic violence. This is particularly acute in the first 100 days of pregnancy. Many members of this House, particularly female members, have spoken frequently about the issue of domestic violence and their concerns. The bill is related to that issue.

In 1994 the *Medical Journal of Australia* published a paper stating that one in 10 Australian women had experienced domestic violence during pregnancy. This should be of great concern to all members of this House. In 2008 the *Australian Journal of Primary Health* reported that domestic violence during pregnancy occurred with one in every five women and that 40 per cent of those women were more likely to suffer a miscarriage as a result. The bill seeks to provide equal protections for all pregnant women by removing discrimination against women who do not fulfil the selective criteria currently defined within the Crimes Act 1900—the current law.

The bill seeks to provide clarity in the application of law. With the current protections to pregnant women being limited to a specific day, there is a great deal of needless ambiguity and uncertainty with regard to the application of the law as exact times of conception are impossible to prove. The bill seeks to add clarity and certainty by removing the arbitrary limitations currently in force and broadening the scope of protection to include all stages of pregnancy. This allows medical experts and the judiciary better flexibility to make determinations based on their specific expertise and any future advance in science and technology. The bill does not tie a judge's hands—a judge will make his or her judgement having heard the evidence—but it gives a judge the flexibility of considering the life of the baby in the womb during the period of pregnancy.

The bill also seeks to ensure that any act committed against a pregnant woman other than in the course of a medical procedure or with the consent of the mother that results in the death or disability of a child after birth will likewise constitute an offence. Schedule 1, item [2], proposed section 41AA (4) makes use of the term "child in utero" as a naming convention to cover all stages of pregnancy:

**41AA (4)** In this section:

**child in utero** means the prenatal offspring of a woman.

This term was found to be the most appropriate in relation to this legislation. The term "child" in a pre-birth context is nothing new; it is currently used within the Crimes Act 1900 and the criminal codes of all Australian States and Territories, with the exception of South Australia and Victoria. Further, both the Hon. Mervyn Finlay, QC, and the Hon. Michael Campbell, QC, acknowledged the term's utility and regularly made use of it within their reports. The term "child in utero" is also found in several foreign jurisdictions. Members are aware that there have been media reports about this bill, including one in the *Sydney Morning Herald* and one in the *Sun-Herald*. Unfortunately, the *Sun-Herald*, for its own purposes, tried to make the bill about abortion—that was a red herring—and took it in another direction. As I said, that was not the intention, and it is clearly not the legal intention as stated in the bill.

I have named the proposed legislation "Zoe's Law" in honour of the unborn child of Brodie Donegan, a Central Coast woman who was eight months pregnant on Christmas Day in 2009 when a driver on drugs ran

over her. A media article reported Ms Donegan as saying that I had not discussed the bill with her. After the tragedy that she experienced I felt that I had no right to interfere in her privacy. I am very happy to talk to her and discuss the bill at length with her. However, I thought it was improper, as a member of Parliament, to impose myself on her, which is why I did not do so. As I said, Zoe was stillborn as a result of injuries suffered by her mother but the driver was not charged with Zoe's death because the law did not recognise her as a person. The article in the *Sun-Herald* stated:

"I think it's about the victims feeling that someone has taken responsibility for the baby losing its life," Ms Donegan said ... "It's important for the victims to feel like their baby mattered and counted."

I say amen to that. The article further stated:

The existing law defines harm against a foetus as an aggravated assault against the mother. But the new law would create a distinct criminal offence over harm to an unborn child other than in medical procedures, such as abortion.

The article further stated:

"I find it hard to reconcile that if a baby has not yet taken a breath, then a situation like mine is considered grievous bodily harm to the mother, but if one breath is taken then it is manslaughter of a child," Ms Donegan said.

The *Sydney Morning Herald* had a follow-up article about the bill which was more accurate. It repeated the information that the bill:

... has been named in honour of the unborn child of Brodie Donegan, a central coast woman who was eight months pregnant on Christmas Day in 2009 when a driver on drugs ran over her.

While the existing law defines harm against a foetus as an aggravated assault against the mother, Zoe's Law would create a separate offence.

Mr Nile said it would give the unborn child legal protection but would not affect existing abortion laws.

I am pleased—this may not be a surprise to members of the House—finally to have received an excellent supporting statement on the bill from the Archdiocese of Sydney; it has only just been forwarded to me. The statement was issued through the Archdiocese of Sydney Catholic Communications Department and is headed "Call for Zoe's Law Welcomed". It states:

The Archdiocese of Sydney's Life Marriage and Family Centre has welcomed calls for Zoe's Law to be passed by NSW Parliament which would enable manslaughter charges to be brought against a driver involved in a motor accident who causes the death of an unborn child.

The legislation proposed in a private members bill brought by Christian Democratic MLC Fred Nile has been named Zoe's Law in honour of the unborn child who was killed when a female driver high on drugs ran into a 32-weeks pregnant Central Coast mother, Brodie Donegan, on Christmas Day, 2009.

The 31 year old mother of toddler Ashlee from Ourimbah, NSW suffered fractures to her pelvis, spine, leg and foot. But for her and her partner, Nick, far worse than her injuries was the loss of her unborn baby.

The little girl Brodie and Nick named Zoe was stillborn. Delivered by caesarean she had died as a result of the injuries her mother suffered in the accident. Grief stricken, the young parents held their baby Zoe in their arms unable to believe she would have no future and that their much-loved, much-wanted child had not survived the crash.

For Brodie and Nick though there was even worse to come when they learned not only that the driver had been on drugs at the time of the accident but that because their unborn child never took a breath she was not regarded legally as a person. Instead under existing law her death could only be counted as yet another of her mother's multiple injuries.

Under today's laws, the driver whose recklessness had taken baby Zoe's life could not be charged with her death. Instead the only charges that could be brought were aggravated assault or grievous bodily harm to Zoe's mother. But Zoe as an individual and a person in her own right with a life and a future that had been cut short had no legal recognition.

From December 2009 when they lost Zoe, mother Brodie and father Nick have fought to change the law.

Unbeknown to them, Fred Nile picked up the case and in this particular bill wants to try to ensure that in future when an unborn baby is killed as the result of a car accident or domestic violence or similar cause, but not as a result of a legally approved medical procedure such as a termination, the person or people responsible can be charged with causing the death and be brought to justice.

"It's about the victim feeling someone has taken responsibility for the baby losing its life. It's important for victims to feel their baby mattered and counted," Brodie said at the weekend on hearing about the private member's bill that if passed will become known as Zoe's Law.

I have indicated to Ms Donegan that I am happy to talk to her at any time. The statement continued:

"It is heartbreaking and deeply unjust our laws still do not properly recognise the life and value of the unborn child," says Mary Joseph, Project Office with the Life Marriage and Family Centre, and hopes the bill will be passed into law.

"The Convention on the Rights of the Child to which Australia is a signatory says the state must provide children with 'appropriate legal protection before as well as after birth'," Mary says. "But Baby Zoe was not recognised as a victim of manslaughter in this case because she was still inside her mother's womb and had not taken a breath. Zoe was a living person, a unique and irreplaceable baby girl with a wonderful future ahead of her, to love and be loved."

As I said, the parents nursed baby Zoe after she was delivered by caesarean. The statement continued:

[Mary Joseph] points out how much and how deeply Zoe had been loved by her parents and how her loss continues to be mourned by the entire family including her elder sister, Ashlee who was a toddler when Zoe lost her life and by brother Lachlan, who was born two years later.

"Zoe's family deserves justice. Zoe's life was precious, as the life of every child is precious. And whether a child is loved or wanted by his or her family or not, our laws should protect all unborn children equally," Mary Joseph says and hopes that Zoe's Law will become NSW Law and that the legislation will not only secure justice for Zoe but for all other unborn children.

"We also hope the debate about Zoe's Law in Parliament will mark a turning point in our attitude to unborn children so we can more deeply recognise and respect the beautiful and unique expression of humanity represented in each of these children and the life they have to share," Mary says.

A spokeswoman for NSW Attorney General, Greg Smith, says once the private bill brought by Mr Nile comes before Cabinet, the government will determine its position.

I have not been given a guarantee that the Government will vote for the bill but I hope that, after two years of negotiations, the legislation has the goodwill of the Attorney General and the Coalition Government. Although Labor Opposition members have been negative about this bill, even in relation to a second reading debate, I trust that they will seriously consider this bill without any emotional response and deal factually with it. It is my hope that they will come to see that they can support it as an Opposition in this House and that it is not in any way against Labor Party policy; I would say that it upholds Labor Party policy.

I hope that, in due course, all members will give this bill their serious consideration when the time comes—and it will not be dealt with urgently; it will not be dealt with next week. I hope and pray that the Cabinet will support the bill. I will wait for the Attorney General to advise me after it has gone through Cabinet. When I am advised, then I will inform the House that I am ready to bring on the bill for debate. There will be no ambush and suddenly the bill is being debated. All members will be fully informed when that will happen. I will let members know as soon as I know. I commend the bill to all members of the House.

**The Hon. Dr PETER PHELPS** [10.40 a.m.]: I move:

That the debate be adjourned for five calendar days.

**The Hon. LYNDIA VOLTZ** [10.40 a.m.]: According to Standing Order 101 (2) a motion to adjourn may be debated. I would like to speak on the adjournment motion that has been moved by the Hon. Dr Peter Phelps. Many of the women in this Chamber are concerned that of the 20 bills outside the order of precedence 16 are in the name of Reverend the Hon. Fred Nile. While I appreciate his views in relation to this bill, I have a great concern that in relation to those 16 bills that have sat on the table for a long time only Reverend the Hon. Fred Nile's voice has been heard. No women's voices have been heard in those debates. When an adjournment is moved in the House, as the Hon. Dr Peter Phelps has just done, we find that these bills sit on the table for a long time and no voice other than that of the Reverend the Hon. Fred Nile is heard. I am concerned that when debate on a bill of this nature is adjourned that women members do not have a chance to put their views before the House.

**The Hon. Greg Donnelly**: Point of order: I have been a member of this House for a relatively short time, since 2005, but the common practice for private members' bills—and I cannot think of any exception; I stand to be corrected—is that a member can bring a bill before the House and second read it.

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

**DEPUTY-PRESIDENT (The Hon. Paul Green)**: Order! The Hon. Lynda Voltz cannot take a point of order when the Hon. Greg Donnelly is taking his point of order. I am listening carefully.

**The Hon. Lynda Voltz**: I am wondering which point of order we are addressing.

**The Hon. Greg Donnelly:** As to the second reading of bills, as I have always appreciated it, the Government Whip or Opposition Whip, immediately after the second reading speech by the member introducing the private members' bill seeks to adjourn debate for five calendar days. That is standard procedure. I cannot think of any exception and I do not understand this attempt to disrupt a standard procedure.

**The Hon. Lynda Voltz:** To the point of order: I refer again to Standing Order 101 (2), which states that a motion to adjourn a debate may be debated or amended. I am simply debating the motion to adjourn and will move, as the Government Whip did, an amendment to the motion.

**DEPUTY-PRESIDENT (The Hon. Paul Green):** Order! I note that on 21 October 2009 then President Primrose ruled that debate on a motion to adjourn debate must be confined to comments as to whether the debate should or should not be adjourned; however, the substantive motion cannot be referred to. Under the spirit of that ruling, the adjournment motion can be debated but not the substantive motion.

**The Hon. DUNCAN GAY** (Minister for Roads and Ports) [10.45 a.m.]: I am confused as to what the Hon. Lynda Voltz is seeking. She delivered some personal views but did not comment on whether the debate should be adjourned. As I understand it, the usual procedure in this House is that, whether we like a member's bill or not, the member has the right to be heard. Firstly, I was disappointed to see a vote against a second reading by The Greens and the Opposition. However, it is the usual procedure to adjourn debate for five calendar days. We have been given an assurance by Reverend the Hon. Fred Nile that he is not planning to ambush us by bringing it on quickly. I am not sure what the Hon. Lynda Voltz is doing, and I wonder if she knows what she is doing. I support the motion to adjourn the matter for five calendar days.

**The Hon. Lynda Voltz:** To the point of order—

**The Hon. Duncan Gay:** I was not speaking to the point of order. I was speaking to the motion.

**DEPUTY-PRESIDENT (The Hon. Paul Green):** Order! My understanding is that the Hon. Lynda Voltz was speaking to the motion that the debate be adjourned. Then a point of order was taken by the Hon. Greg Donnelly, and he was followed by the Hon. Duncan Gay. Now the Hon. Lynda Voltz is speaking to the motion moved by the Hon. Dr Peter Phelps to adjourn the debate.

**The Hon. Lynda Voltz:** I have concluded my comments on the motion of the Hon. Dr Peter Phelps to adjourn the debate.

**Reverend the Hon. Fred Nile:** May I speak to the point of order?

**DEPUTY-PRESIDENT (The Hon. Paul Green):** Order! There is no point of order at this time. The motion to adjourn is being debated. I make it clear that we are debating the motion by the Hon. Dr Peter Phelps to adjourn the debate.

**Reverend the Hon. Fred Nile:** Point of order: The House needs to be very clear about this. I do not believe Standing Order 101 applies to a motion to adjourn debate on a second reading speech for the usual five days. Members cannot debate the bill, if that is their intention, because nobody has copies of the bill.

**DEPUTY-PRESIDENT (The Hon. Paul Green):** They cannot do that. That is correct.

**Reverend the Hon. Fred Nile:** Our House is very strict on this point. The adjournment must be for five days and then the Hon. Linda Voltz can say all she wants to about the bill. She cannot start a second reading debate now.

**DEPUTY-PRESIDENT (The Hon. Paul Green):** Order! I have made it very clear in my ruling that the motion to adjourn the debate can be debated, as the Hon. Lynda Voltz is doing, but the substantive motion can only be referred to; it cannot be debated. We are not debating the bill; we are debating the adjournment procedure.

**The Hon. Duncan Gay:** Point of clarification: The motion before the House under Standing Order 101 (2) is to adjourn debate on the bill for five days.

**DEPUTY-PRESIDENT (The Hon. Paul Green):** That is correct. That is the motion.

**The Hon. Duncan Gay:** There is opposition to it, but what is the alternative?

**DEPUTY-PRESIDENT (The Hon. Paul Green):** The alternative is to speak to the motion.

**The Hon. Duncan Gay:** We cannot bring on a debate because there is no bill. Have members opposite thought through what they are doing? It is amateur hour.

**DEPUTY-PRESIDENT (The Hon. Paul Green):** Order! I make it very clear that we are setting a dangerous precedent. I ask members to be cautious about what they are doing because it is probably not in the spirit of the standing orders. Everyone is entitled to speak during the second reading debate. The bill will be laid on the table of the House for five days so that members can prepare their speeches. There is provision to do what the Hon. Lynda Voltz is doing, but I strongly recommend that we follow the normal processes and protocols of the House.

**Question—That the debate be adjourned—put and resolved in the affirmative.**

**Motion for adjournment of debate agreed to.**

**Debate adjourned and set down as an order of the day for a future day.**

#### **FIREARMS LEGISLATION AMENDMENT BILL 2011**

##### **Second Reading**

**Debate called on, and adjourned on motion by Reverend the Hon. Fred Nile.**

#### **NATIONAL PARK ESTATE (SOUTH-WESTERN CYPRESS RESERVATIONS) AMENDMENT BILL 2012**

##### **Second Reading**

**Debate called on, and adjourned on motion by the Hon. Dr Peter Phelps.**

#### **NATIONAL PARKS AND WILDLIFE AMENDMENT (ILLEGAL FORESTRY OPERATIONS) BILL 2012**

##### **Second Reading**

**Debate called on, and adjourned on motion by the Hon. Lynda Voltz.**

#### **SMALL BUSINESS COMMISSIONER AND SMALL BUSINESS PROTECTION BILL 2012**

##### **Second Reading**

**Debate resumed from 18 October 2012.**

**The Hon. PAUL GREEN** [10.55 a.m.]: I speak to the Small Business Commissioner and Small Business Protection Bill 2012 on behalf of the Christian Democratic Party. At the outset I congratulate the Hon. Adam Searle for his efforts in bringing forward this bill. I think it has certainly moved the matter along in the Government's agenda and I look forward to the Government's response. I hope the Government's bill will encourage the outcomes sought by the Hon. Adam Searle and the Christian Democratic Party that will enable small business in New South Wales to prosper.

The object of the bill is to create the office of the Small Business Commissioner as an independent statutory office and to confer the functions of the commissioner in relation to small businesses. It aims to ensure that small businesses are treated fairly in their commercial dealings with other businesses and with government agencies through enforceable codes of practice. It will enable small businesses to obtain relief under the Contracts Review Act 1980 in respect of unjust contracts. I note that recently the Federal Leader of the Opposition, Tony Abbott, has reaffirmed the Coalition's commitment to extending the unfair contract protections currently available to consumers to small business. I think the Hon. Adam Searle would join me in applauding the Federal Opposition Leader for taking that stance. It should prove very fruitful for small businesses across Australia and, of course, in New South Wales.

A small business can be defined as one that is independently owned and operated and controlled by owners or managers who contribute most if not all of the operating capital. The owner or manager is the main decision-maker and quite often the risk-taker. Usually such businesses have a small number of employees and a relatively low volume of sales. We acknowledge the amazing work that small businesses do across New South Wales. Many of those hardworking people are trying to live their dream while also having a flexibility of lifestyle and quality of life. Many of them are pursuing a dream they had in childhood. Often those small business owners put their life savings on the line to fund that dream. We acknowledge that they need all the help they can get so that their businesses can be cultivated and nurtured to prosperity. Obviously their prosperity will flow on to the people and the communities of New South Wales.

There is no doubt small businesses face many problems and the Hon. Adam Searle referred to a number of them. There are immense layers of regulation that choke the opportunities for small business prosperity. They are often at the mercy of larger businesses—the David and Goliath situations. In many cases the franchisor challenges the franchisee because it possesses more resources and contractual powers. As a result, small business owners may have to invest their life's savings. On many occasions the relationship between landlords and tenants break downs. This situation is not an example of a template to give an outcome of A plus B equals C. Often there are hurdles to overcome. Landlords have an advantage over their tenants when the tenancy agreement is due for renewal and this advantage can be used in unfavourable ways. Reviews need to take place to ensure that if there are areas of conflict with landlords, they can be managed appropriately and justly by small business owners.

Costly litigation and no terms of contract were also mentioned. Hiring lawyers and contesting differences in court is not cost effective and causes bankruptcy for many small business owners, thus compulsory mediation is important. I am sure mediation will be used more often in the future. Resolving these contentious issues by way of costly litigation not only depletes people's life savings but also owners of small businesses experience difficulty in exercising their legal rights. Landlords and franchisors often have the finances and ability to make it hard for small businesses to contest what they believe to be unfair. Small businesses should ensure the advocacy and mediation that takes place is at low cost and achieves results that are just and fair for both parties.

Codes of practice for businesses and forced payments were mentioned. The appointment of a small business commissioner is the way forward. I have met the Small Business Commissioner, Yasmin King, on a couple of occasions. Yasmin has advised me on how small businesses can be helped in New South Wales. I spoke to her about the milk pricing war and the vulnerability of farmers who are not getting a fair price for their milk. This issue is close to my heart. In my electorate there are farmers and small businesses that rely on the dairy industry. It was refreshing to hear Ms King's view on the way forward to resolve those issues. Small businesses across New South Wales could find a kindred spirit in Yasmin King when seeking justice in respect of the cost of their products. The discussion paper and the feedback that the Government has released were noted. The Small Business Commissioner will mediate and advocate for the small business owners of New South Wales.

Many of the 650,000 small businesses employ mums and dads, sons and daughters, seniors and other people across the community. There is no doubt that if we do not cultivate and nurture small businesses they will not grow. If something does not grow it is depleted and that is not good for our communities. It is said that one dollar goes around seven times. People can imagine that one little shop in a village will make all the difference for the village's opportunities. It is in the State's best interest that small businesses thrive. I commend the Hon. Adam Searle for his contribution in this respect because he has helped me to understand the necessary outcomes from this legislation for the New South Wales small business commissioner. Small businesses need certainty. The establishment of a New South Wales small business commissioner will be helpful. These people are dedicated to fulfilling their life's dream and they are investing their life's savings to achieve a quality of life that all of us deserve.

Members of this House are coming together for the common good of the residents of New South Wales. That is what the Hon. Adam Searle has achieved by introducing this bill. Unfortunately, the Christian Democratic Party will not be supporting the bill, but the Hon. Adam Searle's efforts have gone far beyond this bill than he will ever know.

**The Hon. SOPHIE COTSIS** [11.06 a.m.]: I commend my colleague the Deputy Leader of the Opposition, the Hon. Adam Searle, for introducing the Small Business Commissioner and Small Business Protection Bill 2012. It is important legislation and he has done fantastic work in consulting with the relevant

stakeholders, organising community meetings and speaking with small business owners, which is more than the Government has done. Although it promised to change the world when it came to small business, there has been no legislation to remove the red tape or to improve relationships between small businesses and local councils, or between small businesses and government. I commend the introduction of this bill.

Everyone knows that small businesses are the lifeblood of our economy. In New South Wales more than 650,000 small businesses provide employment for more than half of the work force. Importantly, small businesses employ many women who work part-time or who need flexibility because of childcare commitments or carer responsibilities. The role of small businesses is important in helping these women. Parliamentarians need to understand the work they put into building a successful business. As a painter, my father was a subcontractor/small business owner. I witnessed the highs and lows he experienced being at the beck and call of big contractors and the economy. Small business owners are vulnerable to a number of variables.

Small business operators have ideas and passion and have carved out a place for themselves in our great State. New South Wales is the engine room of the national economy and the financial capital of this country. It also has many small businesses in rural communities through innovation and hard work have been able to export their product to emerging markets; that is, to the 200 million strong middle class of Asia. Our small businesses must be supported by the State Government, local government and politicians. We must support small businesses so that they can export their products and focus on innovation. They should do what they are good at rather than be swamped by red tape. The Government should deal with red tape and there should be minimum government intervention.

**The Hon. Trevor Khan:** We will have to send this speech to Julia.

**The Hon. SOPHIE COTSIS:** I am the daughter of a small business operator, so I get it. Small business operators raise with me their concerns about industrial relations and their relationships with larger businesses and governments. Over the past 18 months, small and medium-sized businesses have folded because of manipulation and abuse of trust by large contractors. Several major construction companies have folded, including St Hilliers Construction and Reed Construction. Each time a big business folds the small businesses that supply it with labour and materials are not paid. As members know, cash flow is a major issue for small businesses. Last year my colleagues and I were in Springwood and met with a number of contractors who have been affected by the collapse of Reed Construction. I also met with building subcontractors in Port Macquarie in July last year who were doing work under the Building the Education Revolution program. They were desperate because they were confronting bankruptcy. They had not been paid for the work they had done and they had had to put off their workers. They were also distressed because they had had to use their house as security. We must address these issues.

The Opposition has been calling on the Government for months to do something, and I acknowledge that an inquiry has been established. I have also spoken to subcontractors in the Blue Mountains doing work on the upgrade of the Great Western Highway. They were in difficulties for a long time because of cash flow issues and they could not start new work because they did not have the funds to do so. They faced the choice of waiting to see whether work would restart or to go home without being paid. Those delays kill off other small businesses in the local area, for example local shops, and we all know how devastating that can be. Those businesses paying high rent must continue to pay it regardless of their cash flow and businesses plan their inventories based on the work being undertaken in the local area. As a result of the construction work their customer base changed and they found new customers in the construction workforce.

As I said, I have met with business owners in Port Macquarie and I attended a meeting with my colleagues the Hon. Lynda Voltz and the Hon. Adam Searle at Lidcombe at which small business owners raised many concerns. Small businesses are not on an equal footing with the big businesses and governments with which they deal. There is unequal bargaining power and often a lack of meaningful discussion or negotiation. This area needs urgent reform. Often the unfair practices experienced by small business are not illegal and there is no legal remedy, but the effect on them can be devastating. They can cause economic hardship and slow economic growth.

This bill seeks to level the playing field and to ensure that small businesses are treated fairly by creating an effective legal foundation for the Small Business Commissioner. If this bill is passed, the commissioner will be able to act independently to ensure that small businesses are granted the rights and protections they deserve. As I said, many small businesses are run by small traders—mum and dad companies and families working together—and thousands of them have been established by women who work part time

including home and online. It is vital that they be protected. They do not have their own legal department, but they should have the same rights enjoyed by the big businesses and governments that do. This bill enshrines those rights and I commend it to the House.

**The Hon. JEREMY BUCKINGHAM** [11.15 a.m.]: The Greens support the Small Business Commissioner and Small Business Protection Bill 2012. I commend the Hon. Adam Searle for introducing this important bill. As someone who has spent his entire working life until being elected to this place in the small business sector as a tradesman, I know that it is vital.

**The Hon. Trevor Khan:** Do you have a second job?

**The Hon. JEREMY BUCKINGHAM:** I was a production manager at a stonemasonry and I experienced firsthand the inequalities involved in dealing with Federal, State and local governments and large businesses when negotiating contracts. As the Hon. Adam Searle stated, we had reduced bargaining power when negotiating terms of contracts, schedules of payments and so on, and we were offered a take-it-or-leave-it choice. This bill seeks to address that situation. I congratulate the Labor Party on introducing this bill. I acknowledge that the Government has indicated that it will not support it, largely because it has its own plans to introduce legislation to establish formally the role and functions of the New South Wales Small Business Commissioner. However, it is clear that the Government has been dragging its feet on the issue of protection for small business, and that is shameful. It has waited many months into this term of government even to issue a discussion paper on this topic.

A number of policy models dealing with this issue are already in operation across Australia, so it should not be that hard to address. It has taken more than 18 months for the Government to introduce legislation. I understand that this bill is modelled on the South Australian legislation, which from my research appears to be operating very effectively to protect small business, to reduce the risks of doing business and in so doing to support the biggest employment sector in the country. Far from being an effort to embarrass the Government, I believe this bill seeks to do as it states; that is, to put in place a legal basis for an independent small business commissioner with real teeth to work with small businesses to address their concerns, particularly in relation to their treatment at the hands of bigger business and government bodies. The Greens support this approach.

The Greens have a strong record of support for small businesses. We know our 650,000-odd small businesses employ about half of the State's workforce. Small businesses are defined in the bill as those businesses having no more than 20 employees and an annual income or expenditure of between \$10,000 and \$5 million. Many of the industries that will play a growing role in our economy into the future, such as the renewable energy sector, comprise largely small businesses. Those involved in home-based electricity generation and energy efficiency will be a driver in manufacturing components, installations and maintenance.

In the past 12 months under this Government small businesses involved in the renewable energy sector have had to manage an unacceptable level of policy change and they continue to carry tremendous risks associated with policy flip-flopping such as that which occurred in respect of the Solar Bonus Scheme. While a small business commissioner with the legislative roles detailed in this bill may not have been able to address the policy failures of this Government, the risks associated with subcontracting or working on projects for certain head contractors or government agencies would have been reduced.

The functions as outlined in the bill are broad, and so they should be. Importantly these functions include: to investigate complaints and facilitate resolution of those complaints, to administer codes of practice, and to monitor, investigate and advise the Minister on non-compliance of those codes. There is also a broad catch-all function to take any other action considered appropriate by the commissioner for the purpose of facilitating and encouraging the fair treatment of small businesses in their commercial dealings with other businesses and their dealings with government agencies, or assisting small businesses in their dealings with other businesses or government agencies.

Importantly the functions under this bill are backed up by legal powers, including the requirement to provide information and to enforce codes of practice. That is in stark contrast with the current situation in New South Wales with a Small Business Commissioner that has no legislative basis. The consultation paper on a legislative framework for the NSW Small Business Commissioner published in June 2012 includes a list of potential functions that a commissioner may have in the future that are significantly weaker than those proposed in this bill.

For example, while the Government's proposed function is to facilitate and encourage the fair treatment of small businesses, this bill empowers the commissioner to take any other actions appropriate to do this where existing functions cannot meet that need. There is also no provision in the Government's draft to administer, monitor, advise and take action in relation to codes of practice and compliance of those codes as there is in this bill. The New South Wales Government is heavily focusing its support and engagement with the big end of town—such as with big miners, coal seam gas businesses and big casino operators—and I think it is fair to suggest that they have dropped the ball when it comes to looking after the interests of small businesses.

**The Hon. Dr Peter Phelps:** Point of order: The Hon. Jeremy Buckingham is misleading the House. The Independent Contractors Association has clearly stated it prefers the Government's bill to the Opposition's bill.

**DEPUTY-PRESIDENT (The Hon. Sarah Mitchell):** Order! There is no point of order.

**The Hon. JEREMY BUCKINGHAM:** Small business is a traditional constituency that is looking for alternatives and turning to The Greens for support. The Greens support encouraging innovative small business to drive a new economy in Australia based on value adding to our natural resources, using technology and entering new spaces and looking for opportunities under programs such as the Carbon Farming Initiative. The leaders in implementing the Carbon Farming Initiative will require new and complex partnerships between small businesses and between small business and big enterprises. Having a small business commissioner with the powers of those set out in this bill will be vitally important to assist a rapid take up of opportunities in this space, to give businesses confidence that they can take risks and while being vulnerable to those risks not to be exposed to unfair practices of others or at least having a recourse available through the Small Business Commissioner.

Small businesses are very important to regional areas. I note the comments of the Hon. Steve Whan about the closure of regional Trade and Investment Offices in Broken Hill, Tweed Heads, Coffs Harbour and Goulburn. This raises serious questions about the commitment of this Government to small business and supporting the investment needed in regional areas to drive those small businesses. Of course farmers are a very large component of the small business community, with the National Farmers Federation indicating that 90 per cent of the 134,000 farm businesses in Australia are family owned and operated. The Department of Innovation, Industry, Science and Research reports that small businesses are responsible for more than 82 per cent of the value of agriculture, forestry and fishing production in Australia.

A small business commissioner with strong legislative powers would be very useful for those farm businesses already under pressure from a high Australian dollar pushed up by the out-of-control mining boom, from downward pressure on farm gate prices from the big retailers in Australia and increasing costs from farm inputs. One area of particular interest to me in my role as the Primary Industries spokesperson for The Greens is the growing impact of the disproportionate power relationship between the major supermarkets and food growers—farmers—and food processors. A strong advocate for small businesses may be able to assist small farmers in managing their relationship with the big retailers, transport companies, fertiliser and seed suppliers. I imagine some codes of practice in these areas may be long overdue. The Greens support this bill and congratulate the Opposition on the level of consultation it has gone through to introduce it. I commend the bill to the House.

**The Hon. LYNDIA VOLTZ [11.25 a.m.]:** The Small Business Commissioner and Small Business Protection Bill 2012 provides an answer to many difficulties being experienced by subcontractors, particularly in the building and construction industry in this State. In 2010-11, 1,862 firms operating throughout Australia went into insolvency, accounting for 23 per cent of all corporate bankruptcies. Almost half, 48 per cent, occurred in New South Wales, which has had a massive effect throughout the industry. As well as losing their jobs, subcontractors and their workers can lose amounts owing for superannuation, leave entitlements and unpaid wages. Clients experience delays in project completion and the extra costs of having to engage new contractors. They can also be subject to claims for damages.

The reality is that due to the speculative nature of the construction industry, and the current state of the market, contractors are offered rock bottom prices and low profit margins. Some subcontractors have stated that they have taken on work with a negative profit outcome simply to keep their business operational. The contractor with the lowest price often wins the tender, even if they are not best suited for the contract. When these contractors become unviable, hardest hit at the payment end of the queue, of course, are the subcontractors and the suppliers, which are all small businesses. An analysis carried out for the Australian Securities and

Investment Commission by Kingsway Financial Assessments reveals that in 92 per cent of cases unsecured creditors do not recover any of the money owed to them. Replacement head contractors rarely agree to honour claims incurred by previous head contractors and may even choose new subcontractors to complete the works.

In the past year in this House we have heard of many cases of that, not the least of which is Reed Constructions, which fell over doing constructions works on the Pacific Highway. Although the Government did its best to try to keep some of those subcontractors, a lot of them who had completed their work, particularly concreters on the Central Coast part of the highway, were not re-employed and as a result are significantly out of money. The damage to the community when these collapses occur within the building and construction industry is significant. Building suppliers and contractors can lose millions of dollars. They lose their nest egg and their future is put in jeopardy, as is their ability to be re-employed in other contracts.

In March last year the Labor Opposition called for an inquiry into security of payment legislation to ensure that when major construction companies collapse, subcontractors and other workers are not left in the lurch. Six months later the Government set up an inquiry into construction company collapses to look at the legal quality reforms in this area. This bill will provide measures to protect contractors and other small businesses from unfair commercial practices and provide them with extra legal rights to secure them should they be exposed to a major construction company collapse. It is not good enough that, as things stand, subcontractors are often the last to be paid after a company goes into administration or liquidation. In recognition that most small businesses do not have the resources to go to court, the bill also provides for the creation of codes of practice for the fair treatment of small businesses that would be enforced by the Small Business Commissioner.

Under the bill the Small Business Commissioner would administer the codes of practice and ensure compliance with them in the courts if necessary. The bill will also provide measures to address another scourge of the industry by protecting small businesses from the phoenixing of companies—that is, where those responsible for failed enterprises just walk away, owing money to subcontractors, and often set up businesses time and again in other places.

In particular I congratulate the Construction Division of the Construction, Forestry, Mining and Energy Union [CFMEU] on its work with phoenix companies and attempts to recover subcontractors' lost wages. The union pointed out that if the original legislation had been administered correctly—and quite often it is not—many of these subcontractors would have received some money. This bill is much better than the original legislation. The bill seeks to give subcontractors some hope of recovering money through the Small Business Commissioner.

**Dr JOHN KAYE** [11.30 a.m.]: I support the Small Business Commissioner and Small Business Protection Bill 2012 and largely echo the words of my colleague, the Hon. Jeremy Buckingham, who led for The Greens in favour of this legislation. I congratulate the Hon. Adam Searle on introducing this bill. The bill differs from another piece of legislation that is before the lower House in that it gives the Small Business Commissioner real teeth to go out and take action to protect small businesses. This is extremely important in the current economic context given that so many small businesses are unfairly and unconscionably dealt with by large businesses. In fact, one only has to look at the stories that emerge in newspapers almost on a daily basis of large shopping centre operators acting in a predatory fashion towards the small strip shops around them and driving those small strip shops out of action.

The history of that behaviour extends right across Sydney. In almost every area with a large shopping centre, particularly a Westfield shopping centre, the nearby strip shopping centre has either entirely disappeared or is in substantial decline. Larger shopping centres will often do things such as picking off the successful retailers in strip shops and offering them rent-free periods in the larger shopping centres. The surrounding strip shops are consequently killed off and new monopolies are created. This practice does not apply only to shopping centres. For instance, the milk war that erupted with the two large supermarket chains suppressed the price of milk and had devastating consequences for milk suppliers, and long-term consequences for the industry as a whole and consumers. Across the range of suppliers to supermarkets there have been reports of individuals and whole sectors of the agricultural industry being appallingly dealt with. They have been given inappropriate prices because supermarkets have been using their near monopsony powers to suppress prices. That might be great for the profits of supermarkets but lousy for the long-term health of the industry.

As members well know, the issue of free range eggs is an area close to my heart. Increasingly we have seen the four or five industrial egg producers—Sunny Queen, Farm Pride and Pace—effectively destroy public confidence in the term "free range" through their influence over the Egg Corporation. If the Australian

Competition and Consumer Commission [ACCC] does not intervene and if the O'Farrell Government does not pass The Green's Truth in Labelling (Free-range Eggs) Bill through the lower House we will be on a path that will see many genuine small free range farmers being driven out of the industry. It is a true battle of David and Goliath, where Goliath uses market power and influence over supermarkets—

**The Hon. Rick Colless:** That is a Christian analogy.

**Dr JOHN KAYE:** I beg your pardon?

**The Hon. Rick Colless:** You heard me. Go on.

**Dr JOHN KAYE:** I did not hear what you said. Did you say it was a Christian analogy?

**The Hon. Rick Colless:** Yes.

**Dr JOHN KAYE:** That would be a deeply ignorant thing to say, given that it comes out of the Old Testament and it is actually a Jewish analogy. But let us move on and ignore the profound ignorance displayed by that remark. As I have said, the large industrial producers are using their political and economic power to drive the genuine free range farmers out of business. Many small free range farmers who have invested their life savings in developing their farms, and who are innovating to produce an egg that reflects the ethical desires of the growing number of free range consumers, are being competed against in an entirely unfair way by the use of the term "free range".

It applies also in the construction industry. The Hon. Lynda Voltz referred to the unfair and unlevel playing field between the big developers and subcontractors. The situation also occurs in the energy sector. Indeed, the future of the energy sector is being fought out between a number of smaller renewable energy providers and the large fossil fuel industry—a classic case of a large industry using its political and economic might to undermine the capacity of small players to enter the industry. The fundamental problem is the unlevel playing field; it is not about the economies of scale, because they are intrinsic. Large players within industry can exploit economies of scale, but that is counterbalanced by the increased flexibility and manoeuvrability of small players in the industry. In the nature of markets there is natural competition, and that will play out. But there is another form of unlevel playing field and this legislation seeks to address it—that is, the unfair exercise of market power.

I am currently engaged in a debate over the proposal to build a Woolworths supermarket at Bermagui. Leaving aside the planning issues—and they are huge—it is an assault on the community, heritage and ecological values of Bermagui. One of the real concerns emerging from this debate is that once Woolworths is established at Bermagui there will be a massive loss of small business opportunities. One report submitted to council suggested that anywhere between 30 per cent and 50 per cent of the existing retailers at Bermagui would go out of business. Many of those retailers already operate quite close to the edge. Woolworths has the economic might and capacity to cross-subsidise and reduce prices—

**The Hon. Dr Peter Phelps:** Shame! Reducing prices!

**Dr JOHN KAYE:** I acknowledge the interjection of the Hon. Dr Peter Phelps. I also acknowledge the fact that the Hon. Dr Peter Phelps thinks it is all right for a large corporation to come in, cross-subsidise into a market, reduce prices, drive the existing small providers out of business and then sit back and watch, as he would do with his commitment to nineteenth century laissez-faire economics, the supermarket chain then recoup its losses on its cross-subsidising activities and jack up its prices and receive what the member would understand to be the monopoly rent—the massive amount of money that monopolists can make. The Hon. Dr Peter Phelps is happy to accept that kind of behaviour which in the long run will see small businesses struggling to make a dollar lose. In Bermagui many businesses live hand to mouth through the winter waiting for the summer season to arrive. Many have invested their life savings into their small shops. Consumers also will lose because once the small businesses have been driven out the supermarket chain will jack up its prices.

While the Australian Competition and Consumer Commission attempts to intervene, its capacity to intervene is limited by the terms of the Trade Practices Act and what the court will allow. This legislation seeks to give those small businesses the capacity to go to a Small Business Commissioner, point out their problems and get the commissioner to act where those behaviours have contravened the codes of practice established by clauses 11, 12 and 13 in part 3 of the bill. This would give the small business commissioner the capacity not

only to hear complaints but also to act on those complaints. Once the codes of practice are established—the codes of practice will be established by the Minister in consultation with the industry as a regulation—the small business commissioner will have the capacity to do what I think everyone wants the commissioner to do, which is to protect small business.

The examples I outlined at the beginning of my contribution show small business needs protection urgently. It strikes me as a fundamental phenomenon of Australian politics that political parties go to an election and put their hand where their hearts should be and say, "We are for small business." At election time there is a sickening rush to be seen to be the party of small business. However, the minute the writs are returned all those commitments are forgotten and it is big business as usual. It is a return to government for big business, by big business and paid for by big business.

I congratulate the Deputy Leader of the Opposition on putting some teeth into the Government's intentions and on introducing legislation that will provide some relief to small business. This bill translates the commitment of every political party into legislation. It says to businesses suffering from a supermarket chain, a large retail outlet, a large subsidised energy industry, whatever is treading on the toes of a small business or a group of small businesses, "This will give the small business commissioner the capacity to act." The obverse side of that coin is this: What is the point of having a small business commissioner who does not have these powers?

Without the codes of practice, without the ability to intervene and seek injunctions from the Supreme Court, without the capacity to identify and act when the rights of a small business or the capacity of a small business to survive are being trampled on, what is a small business commissioner other than simply a public relations exercise? I have a lot of respect for the person who currently holds the office of small business commissioner. I believe she will do a great job even without this legislation. But with this legislation we may begin to see the tables turn on what has been half a century of aggression against small business by big business. It is time for Parliament to say, "We don't just talk about small business. We don't just wear a 'polities for small business' hat once a year. We will put the rights of small business into law. We will create the rights in codes of practice and the ability of the small business commissioner to throw some weight around and protect small business." Therefore I join with my colleague the Hon. Jeremy Buckingham in supporting this legislation.

**The Hon. HELEN WESTWOOD** [11.43 a.m.]: I support the Small Business Commissioner and Small Business Protection Bill 2012. This bill is important, and I commend the Deputy Leader of the Opposition for bringing it before the House. In this debate many examples have been given of how the bill will positively impact on the New South Wales economy and on many small business owners, who are major employers in our communities. The area I will focus on, and where this bill will have a clear, beneficial effect for small business operators, is in the field of franchising. Page 11 of the Government's discussion paper published in June, nearly three weeks after Labor's draft bill was released for consultation, states:

Whilst some small businesses may consider that the franchising sector could be an appropriate sector for this purpose, it is the NSW Government's clear commitment that there is no such role for the State at this point in time ...

Such an approach flies in the face of overwhelming evidence of the need for laws to protect franchisees from the exploitation by franchisors of their superior bargaining power. Over the past few years, in different States, there have been several inquiries into the issues that surround franchising. The Commonwealth Parliament undertook its own inquiry. The committee received evidence and submissions from across industries, including franchisees detailing systemic abuses by franchisors. Its report, titled "Opportunity not Opportunism: Improving conduct in Australian franchising", was tabled in December 2008 and recommended sweeping changes to the industry, including a statutory obligation for good faith. I am pleased that this bill addresses that issue.

Report after report has found that too many franchisees have suffered for too long at the hands of franchisors because of inadequate legal or regulatory protections. Stories of financial ruin, as well as adverse health and family problems for franchise operators, are too frequent, have occurred over too long a period and relate to too many different franchise systems to be dismissed as a one-off or isolated problem. Clearly there is a systemic problem at the heart of franchising caused by unequal bargaining power. The need for action in this area is illustrated by the following letter sent to the shadow Minister, the Deputy Leader of the Opposition, by a franchise owner. For the sake of privacy I will withhold the author's name. I quote:

I am writing to you in regard to your efforts to enact the Small Business Commissioner and Small Business Protection bill 2012.

This Bill will help individuals, small businesses and franchisees such as myself.

In my particular case the conduct of the Franchisor has meant that I and my family have lost everything that we invested in our franchise business.

We purchased the business 19 years ago for \$1,850,000.00 [\$1.85 mil] as a going concern from the Franchisor and paid over \$5,000,000.00 [\$5.0 mil] before interest in royalties during 19 years.

We developed the business personally with very little support from the Franchisor.

My and my Family's life's savings were invested in this Franchise business.

After 19 years, Franchisor ended our Franchise and Lease and took the business over themselves.

Despite extended negotiations, the Franchisor played games with us and refused to pay a fair value for the business which we had bought from them as a going concern.

During this difficult time we were left to spend many thousands of dollars on lawyers and mediation with no result.

I and my Family are personally devastated by this experience, and we would greatly benefit from the enactment of the Small Business Protection Bill.

We need laws to protect Small Businesses from predatory behaviour from other businesses and this Bill will go some way towards correcting the huge power imbalance between a Franchisor and Franchisee. This Bill will have very positive ramifications in rectifying and improving ethical business behaviour and standards.

This in turn will encourage and act as a vital catalyst in the maintenance and healthy growth of Small Businesses; which generates significant revenues and accounts for a very significant amount of employment.

I thank you on behalf of my family and all those franchisees that do not have a voice and are destroyed by bad Franchisors.

Yours sincerely

The letter highlights a number of problems associated with franchising and demonstrates the manner in which a Small Business Commissioner will be an asset to small business and the franchise industry. The Small Business Commissioner will have a strong role in advocating on behalf of small business. The position will provide enhanced powers for the investigation of complaints about actions by big business or government departments that unfairly affect small business. It will create a more level operating environment for small business and franchisees. I believe that franchisees will benefit greatly from those enhanced powers. A franchisee derives income from selling to the general public; the franchisor makes money by selling the franchise itself and often also by selling branded products to the franchisee and receiving royalties—however described—on the sale of the product to the public. It is often the case that the franchisor will have links to the manufacturer of the product or will receive rebates from the product's suppliers for placing the product on a list for purchase by franchisors. Under the terms of many, if not all, franchises the franchisee is contractually bound to use only products approved by the franchisor or sourced from specified suppliers.

From the experience of my own family I know that limits are often placed on the location in which a business can be conducted and where the business can advertise and market a franchise. Often the effect of these provisions is that, from the outset, the franchise is made financially unviable because of the pricing structures used, causing the franchisee to be contractually obliged to spend uneconomic amounts of money. How can this be in the interests of the franchise brand? Many franchises appear to have their economic model based not on the growth and spread of a healthy brand and network but on the sale and resale of franchises when operators fail. In the industry this unscrupulous practice is known as churning, and, from all reports, it is widespread. Churning occurs when a franchisor sells in a site or territory that cannot turn a profit and sits back and waits for the business to fold. The franchisor then reclaims the site for a nominal price and resells it to another, who inevitably also fails a year or two down the track.

While franchisees buy their franchise from the franchisor, or an outgoing franchisee, the terms of the franchise are in standard forms and the franchisors are unwilling to engage in meaningful discussion or negotiation as to its terms. Purchasers of a franchise have to take the contract or leave it. On its face, the agreement contains terms that seem fair and reasonable but are terms exercised according to the franchisor's discretion. This often results in devastating consequences. There is no mechanism by which a franchisee can have their views considered if the franchisor is unwilling to listen.

Franchise agreements are usually also limited by time with an option to renew. Renewal is at the discretion of the franchisor and requires the franchisee to agree to terms imposed by the franchisor. There is no equality of bargaining power and the terms of agreements are often one-sided. Franchisees in this situation have to make an unpleasant choice: lose their significant financial investment or agree to terms that, in many cases,

effectively make them a slave to the franchisor. As the author of the letter that was received by the Hon. Adam Searle stated, the financial investment made by the franchisor is often their entire financial resources, including their home. Restrictions are also placed on franchisees who wish to sell their business. The franchisor must approve a purchaser and can withhold consent. The effect of this—usually unknown to the franchisee when buying the franchise—is to limit the value of the business at sale.

There is a range of other issues relating to franchises but there is not enough time in this debate to canvass those. The law of contract developed in the nineteenth century side by side with the economic ideals of the free market. Its foundation lay in the three ideas of caveat emptor, freedom to contract and the sanctity of contract. The maxim caveat emptor is based on the idea that the individual is in the best position to judge his or her own interests. Consequently it is up to each individual to protect their own interests when entering into contracts. Freedom of contract and sanctity of contract were based on the idea that efficient market transactions require commercial players to have the liberty to contract with whoever is willing and that, once promises are made, they must be kept. It has become increasingly apparent that traditional laws of contract are not sufficient to control exploitative market practices and facilitate commercial fairness between all commercial participants. As a result, there needs to be legislation such as the bill before the House to ensure individual fairness in contracting. The real issue for us—the lawmakers—especially when considering changes which will affect the franchisor-franchisee relationship, are best demonstrated in the letter I referred to earlier.

Since preparing my contribution to this debate midway through last year I have come across another case in my neighbourhood in which this legislation could have been of great benefit to a small business in my local community. It is a small veterinary practice run by a couple and has more than 5,000 customers. The couple has suffered greatly in their negotiations with RailCorp over the compulsory acquisition of land on which their property is based. They have been in negotiations with RailCorp for some time now about the appropriate value for the acquisition of that site, for the investment that they have made in the business and compensation for the cost of closing it down and relocating it. It is a very expensive, complicated and stressful process to move a veterinary practice with equipment, kennels and cat stalls.

The couple who own the practice have been attempting for months to negotiate with RailCorp on what they believe are fair and reasonable terms. After many months and much cost to themselves for valuations and legal advice this much-valued small business in my neighbourhood has closed its doors. Its 5,000 customers have been devastated by the loss of that business to our community. The business provided an important community service by caring for stray, dumped cats. The couple was a great supporter of the RSPCA and the Cat Protection Society and found homes for many abandoned animals in the local area—particularly cats and kittens—and they did it at much cost to themselves. Their valued service has been lost to our community because RailCorp was not fair and reasonable in its dealings with them. As a small business they could not afford the time and money that was required to negotiate with a large government department that failed to deal with them fairly or empathetically.

The officers of RailCorp appeared to have no understanding of the impact the compulsory acquisition of land was having on this couple who were running their small business in a suburb of Sydney. I hope that a similar loss will not occur in the community again. This couple lost their livelihood as a result of the Government's actions due to an inability to negotiate fairly with a small business whose land was being compulsorily acquired, supposedly for the public good. The northern Sydney freight line has to proceed; there is no argument about that. However, one would think that a Liberal-Nationals Government that claims it is the champion of small business would have ensured that small businesses were not forced to close through no fault of their own and as a result of government policy and government decisions to compulsorily acquire the property of that small business.

Had this bill been enacted the Small Business Commissioner could have played a crucial role in ensuring that RailCorp, if it could not show some heart and negotiate fairly with this small business, was made to come to the table, at far less cost to the small business. It is a reality that small business people spend many hours working in their business, keeping it afloat, investing in it and planning for its future. But when a government department comes along and requires the business to use up so much of its time and money there is a significant impact on the business and its ability to continue to operate. If the Hon. Adam Searle's bill had been enacted the Small Business Commissioner could have played a role in ensuring that this couple got a fair deal out of the New South Wales Liberal-Nationals Government. Action needs to be taken now and the bill provides that action. I urge the House to support the bill.

**The Hon. AMANDA FAZIO** [12.01 p.m.]: I support the Small Business Commissioner and Small Business Protection Bill 2012, which was introduced in this place by my colleague the Hon. Adam Searle. I will outline the genesis of the bill. On 5 July 2011 the O'Farrell Government appointed Ms Yasmin King as the

Small Business Commissioner but provided no legal basis for her role or her work. Creating a Small Business Commissioner without giving her powers was a stupid decision and in fact a deceit and an insult to the small business community. From the time it appointed Ms King on 5 July 2011 the O'Farrell Government took 16 months to introduce a bill that would give the Small Business Commissioner some powers. That is an indication of the incompetence of the Minister responsible for this matter—16 months elapsed between the appointment of the commissioner and the introduction of the Government's bill.

The Government introduced its bill on 21 November 2012. In the interim, on 23 May 2012, the shadow Minister for Small Business put the bill out for community consultation. As all members will be aware, debate on the bill commenced in the Legislative Council on 23 August 2012. One would have to say that the Government's actions in this regard have been found wanting. For a party that purports to support small business, the Liberal Party's actions have been found wanting. The Coalition promised in opposition they would appoint a Small Business Commissioner. They had 16 years in opposition to come up with a plan to help small business. The fact that they were so desperate to tick off something in their first-year report card that they appointed the Small Business Commissioner with no legislative framework to support her shows that this Government cannot be trusted and its actions need to be looked at very carefully.

The bill introduced by the Hon. Adam Searle aims to ensure that small businesses are treated fairly in their commercial dealings with other businesses and government agencies through enforceable codes of practice. That is what the commissioner needed from the moment she was appointed. Between 5 July 2011 and today, 21 February 2013, the Government gave Ms King no powers under which to operate. It just shows what a sham it is when the Government claims it has ticked off one of its election commitments but in fact has done nothing constructive to help the small business community. In part 3 of the bill introduced by my colleague, clause 11 talks about the codes of practice for fair treatment of small business. It states:

The regulations may prescribe a code of practice with respect to the fair treatment of small businesses in their commercial dealings with other businesses (whether or not small businesses) and in their dealings with government agencies.

We are saying in this legislation that small businesses deserve to receive equal treatment from their suppliers, manufacturers and wholesalers. The Coles-Woolworths duopoly should not be able to dictate to suppliers, manufacturers and wholesalers that they treat small businesses unfairly. If we look at the problems of the market duopoly of the two major retail chains, Woolworths and Coles, we see there are rightly some community concerns about the way in which they operate. That is being played out in public at present in the Australian Competition and Consumer Commission, which is looking at the trade practices of the two major supermarket chains in relation to suppliers and producers, particularly things such as paying for premium shelf space, because all those costs are passed on to consumers.

In his contribution to the debate Dr John Kaye of The Greens talked about his courageous campaign against the establishment of a Woolworth's supermarket in Bermagui. There is a distinct difference between ensuring that small business is treated fairly and trying to block the legitimate entry of a major player into a particular locality. While small businesses deserve to be treated fairly it must be recognised that in a lot of cases small businesses, particularly small corner stores and grocers, have fewer opportunities for economies of scale so their prices are higher. It is not the intention of this bill to block major retailers from entering the marketplace but to ensure that their presence in the marketplace does not mean that small businesses are treated unfairly. I would not be party to opposing the development of a major supermarket, particularly in an area such as the South Coast where there are a lot of disadvantaged people and many are in receipt of Centrelink payments. They deserve to be given some competition in relation to the supermarket goods they purchase. To suggest that a campaign against the entry of a major supermarket in Bermagui is a badge of honour might have been a nice campaign for The Greens but in effect it has nothing to do with the content of the bill.

Dr John Kaye also mentioned that some small business owners have invested their life savings in their business and deserve to be protected. I concur with him that they deserve to be protected from unfair business practices but they do not deserve to be protected from competition in the marketplace. That means we have to ensure we have the opportunity, through strong legislation such as that being proposed by the Hon. Adam Searle, to stop manufacturers, wholesalers and suppliers who attempt to discriminate against small business in their pricing or supply practices. It is not a matter of stopping other entrants into the marketplace but of ensuring there is a fair set of practices that apply to small businesses and that they have a legislative basis for complaint. The Small Business Commissioner has to have a legislative basis to seek injunctions to stop unfair business practices. Supporting small business does not necessarily mean small business is better than big business; it means we must ensure small businesses are treated fairly.

I commend my colleague the Hon. Helen Westwood for giving us details of some of the inequities that exist in franchising arrangements, and that would be assisted by the implementation of this legislation. Members would be aware that some franchise arrangements discriminate severely against people, many of whom have put their life's savings into purchasing a franchise. It is worth investigating the desire by Australians to start a small business when retiring from full-time employment. They are investing their superannuation in small business. A huge proportion of small businesses fail within the first two years of establishment. Sometimes it is because of unfair franchising arrangements, and sometimes it is because of unrealistic business plans and inaccurate cash flow and sales projections. Governments must provide advice to people who are considering establishing a small business. People should not obtain advice from franchise outlet promoters or financial advisers who may have an underlying motive when suggesting investments in certain products.

Good, practical government advice should be readily available, particularly to those involved in regional development, in order to ensure that people understand what they are doing. Once a small business has been established, the bill proposed by the Hon. Adam Searle will ensure fair treatment. The bill was introduced on 23 August 2012, three months before the Government introduced its bill on small business. This bill is superior to the bill proposed by the Government. This bill will give the Small Business Commissioner legislative powers to attack unfair business practices that impact on small businesses. It will ensure the clear enforcement of codes of practice when dealing with government agencies. The Government should be condemned for dragging its feet on this matter. This bill is worthy of support. I commend the bill to the House. I move:

That this debate be now adjourned until the next sitting day.

**The Hon. Dr PETER PHELPS** [12.12 p.m.]: Pursuant to Standing Order 101 (2) I wish to debate the adjournment motion. The Government will not be supporting adjournment of this debate. The Government believes that this debate should be brought to a vote today. For the record, the Government will be voting against the proposed adjournment of debate and against the substantive motion.

**Question—That the debate be adjourned—put and resolved in the negative.**

**Motion for adjournment of debate negatived.**

**The Hon. JAN BARHAM** [12.13 p.m.]: I support the Small Business Commissioner and Small Business Protection Bill 2012. I thank the Hon. Adam Searle for introducing this important bill. I want to state my concerns relating to small business and inform the House why this bill is important for the North Coast. I also raise feedback about concerns for the future of small business in country areas where major businesses are taking over. People think fondly of small, locally owned rural businesses. They strengthen the local economy and the stability of a region, and they add charm and character to a region. They provide independence and individuality, which is important in country areas, particularly for the tourism industry.

I refer to ongoing issues relating to the Far North Coast Regional Strategy. The importance of the individual character of this area is recognised through its value to the region and its contribution to economic development. Small businesses with local ideas, employing local people are of great benefit to the local tourism industry. Unfortunately, they are being squeezed out by franchises and the large corporations. In recent times, major businesses and franchises have taken over and changed the local character of an area.

As a representative of The Greens on the North Coast, I hope that this bill supports small business. Local businesses and opportunities for more small businesses are at risk because big business is taking over the major areas in our towns and villages. Small business has provided character to the local area and significant employment opportunities for local people. Economic development and employment opportunities for residents of the North Coast are impacted by overseas residents with employment visas. The Visitor Economy Taskforce has recommended support for visa extensions. We need to take a long, hard look at whether the people of New South Wales, particularly in regional areas, are being supported by the local businesses and are gaining benefit from the economy of their local area. They have a right to jobs when their area becomes an asset to an industry. The industry may be highly regarded but it has not been properly assessed whether it provides any benefit to the local area.

Small businesses have a right to be heard and supported. I acknowledge the concerns on the far North Coast. As I have discussed with the Hon. Adam Searle, people are frustrated. They do not know where to obtain advice and support when they perceive they are being treated unfairly. Local small businesses are being

outriced for rental premises in Byron Bay. Large businesses will offer higher rents to acquire desirable locations that enable them to take advantage of the 1.5 million visitors. It is known as brand identification and marketing. Byron Bay, a town once noted for its local character and individuality, has been taken over by big business brands and stores.

I do not dispute that this proposed bill supports franchises. Franchise owners are disadvantaged in some areas, but concerns have been raised about franchises taking over in small regional areas. The real concern is businesses being charged increasingly high rents without any cap. They have no redress when their leases are changed and when their rent is increased beyond their capacity to pay, and that results in people being forced out of business. There should be some method by which people can have their complaints heard and they should be respected for the contribution that they make to local and regional economies.

**The Hon. ADAM SEARLE** (Deputy Leader of the Opposition) [12.20 p.m.], in reply: I thank all members for their contributions to debate on the Small Business Commissioner and Small Business Protection Bill 2012. I also thank the Hon. Paul Green for his encouragement, if not for his vote. Government members' contributions to this important debate were high on rhetoric but low on facts. I will cite two examples. The Hon. Marie Ficarra stated that one of the flaws in this bill is that it applies only to small businesses that are corporations and, given that most small businesses are not corporations, it will be of very limited use to the small business sector. The Hon. Charlie Lynn, and perhaps others, repeated that proposition. I refer honourable members to page 2 of the bill, which contains a definition of "small business", and note that the Government's bill, which is before the other place, contains no such reference. This bill provides:

*small business* means a business enterprise, whether operated by a natural person, sole trader, partnership, corporation or other entity, with:

- (a) no more than 20 full-time equivalent employees at the one time, or
- (b) an annual income or annual expenditure of between \$10,000 and \$5,000,000

That specifically covers small businesses that are natural persons, sole traders, partnerships and corporations. Therefore, the argument put by members opposite against the bill is incorrect. Another inaccurate argument advanced in this place and elsewhere relates to the provisions of the Contract Review Act 1980, which include an unfair contract review mechanism through which this bill seeks to expand and provide access for small businesses to the regime that has operated in this State since 1980. It has been claimed that most small businesses already have access to that Act. Before voting on this legislation, I invite members to reflect on section 6, which makes it clear that its provisions are not available to a person where the contract is in trade or commerce or in pursuit of a profession, occupation or another calling, with the exception of farming. Unincorporated farmers and consumers do have access to the legislation. Section 6 provides:

- (2) A person may not be granted relief under this Act in relation to a contract so far as the contract was entered into in the course of or for the purpose of a trade, business or profession ...

Clearly, the doors of the Contracts Review Act are closed firmly in the face of any small business. The proposition that people should be able to seek relief from unfair contracts is not particularly new. As I indicated, in 1976 Professor Peden, a noted jurist, provided a report to the then State Government on harsh and unconscionable contracts in which she argued persuasively that all contracts that are harsh and unconscionable should be able to be reviewed upon certain criteria. That report was encapsulated in the Contracts Review Act, although the Act is restricted to only consumers and unincorporated farmers.

Similar notions have been incorporated in legislation elsewhere. For example, the Howard Government enacted the Independent Contractors Act 2006 at the Federal level and it takes up some of those ideas. They are also found in unfair contract provisions in the industrial relations field. Of course, protections for consumers against standard forms of unfair contracts are included in the Consumer and Competition Act 2010. I note that the Federal Coalition seems to have embraced the notion of unfair contract rights by proposing the extension of the provisions in the Competition and Consumer Act 2010 to small businesses. I find it strange that its State counterpart has been uninterested or unwilling to come to the aid of small businesses by providing them with unfair contract rights under State law when it has had the opportunity to do so.

**The Hon. Dr Peter Phelps:** Are there not unfair contract rules in common law?

**The Hon. ADAM SEARLE:** Yes, there are protections at common law and equity from unconscionable conduct. However, as I indicated in my second reading speech, the notions of unconscionability are at a much higher

level of moral culpability and transgression. In fact, I refer the honourable member to page 3 of his Government's own discussion paper entitled "A legislative framework for the New South Wales Small Business Commissioner—Consultation Paper June 2012". While addressing the needs of the small business sector, the commissioner refers to small businesses often raising concerns about what they perceive to be unconscionable conduct.

The problem is often unfair practices when dealing with other businesses, particularly when it involves a demonstration of anti-competitive behaviour. However, the discussion paper makes it clear that they are not talking about conduct that is already illegal under the Competition and Consumer Act 2010 or other legislation such as the Fair Trading Act 2010. The point is that small businesses have significant problems with unfair conduct and unfair practices and, to give due credit, the paper has identified that problem. It is unfortunate that the Government's bill in the other place does nothing to address that issue. Of course, it is addressed in the Opposition's bill.

I ask members to reflect upon their contributions. When they have spoken about the Small Business Commissioner and her work they have been full of praise for her consultative approach and advocacy in support of the rights of small business operators—and some of her successes were cited to demonstrate her good work. However, no-one pointed out that there is a limit to advocacy in ensuring fair treatment of small businesses. At the end of the day, if one cannot persuade another party, how does one take the next step to ensure fairness or take any meaningful action? That is the difficulty I have with the Government's approach both in this debate and in the debate on the bill in the other place. There is simply nothing behind the Small Business Commissioner other than moral suasion and some investigative functions, including the power to compel information. The existing legislation has no teeth.

This bill provides teeth in two ways. First, it gives the Government the ability to introduce codes of practice after consultation with industry stakeholders and to enforce those codes of practice using injunctive powers. That is the provision that gives teeth to the Opposition's legislation. Of course, in addition to that the Opposition believes that small businesses should be given additional legal rights. We acknowledge that not all small businesses would be able to enforce those rights themselves; we understand that they often do not have the resources to engage in litigation. That is why it is important for the Small Business Commissioner to be able to stand in the shoes of small businesses and to run those cases, which this bill allows.

Having consulted with the industry and set out the acceptable modes of behaviour to ensure fair treatment of small business, the commissioner could also judiciously use the injunction power to stop systematic transgressions and unfairness against small business operators. I would be the first to acknowledge that the terms of this bill are not perfect but a good solid effort has been made to try to provide a flexible and open architecture, and there are lots of building blocks and tools in the toolbox for the Small Business Commissioner to utilise to try to ensure that small businesses are treated more fairly by larger businesses and government agencies. In this debate I have yet to hear a better idea. The only idea seems to be advocacy, which is comprehensively provided in this bill.

There are other matters that are provided for in this bill that have not been focused upon or touched on. There is a lot of conversation in the small business sector and I have also heard it from members of this Chamber about the burdens that are placed by a regulation upon small businesses. Clause 8 on page 5 of the bill specifically requires the Small Business Commissioner to report on the regulatory burden on small businesses every year and to include in any such report the sources—whether they be legislative, procedural or administrative requirements—of the regulatory burden on small business, and recommendations for alleviating such a burden.

No such focus is in the Government's approach. I am concerned that if the Small Business Commissioner is not given a specific charter, instead of the very important work of quantifying and identifying this difficulty and being required to promulgate or suggest solutions, we will be left with a situation where small business talks globally about a regulatory burden but no-one actually takes the time and effort to quantify it, to set it down and to chart a course for how it can be improved. That is an important feature of this bill.

**The Hon. Dr Peter Phelps:** Now you are just trying to win my vote.

**The Hon. ADAM SEARLE:** I acknowledge that interjection. If the Hon. Dr Peter Phelps were honest and true to himself I am sure he would support at least this aspect of the bill. I think that is a very important aspect of the bill that is currently before the House and one that is simply missing from the Government's approach, identified in its bill in the Legislative Assembly. The other aspect of the work of the Small Business Commissioner that she and others like to talk about is the low-cost mediation service that she provides. Mediation or conciliation in advance of litigation is to be encouraged and, if it is done properly and effectively,

up to 90 per cent—perhaps even more—of all disputes can be resolved without the need for parties to engage in protracted and expensive litigation. That is why clause 5 (1) (b) in this bill provides a possibility for the commissioner to not only provide a mediation function but to also provide a compulsory mediation scheme.

Mediation has worked for more than 100 years in State and Federal industrial jurisdictions—that is, requiring parties to attend and at least have an initial attempt to talk the matter through. In such cases the vast majority of disputes can be resolved without litigation. Presently the Small Business Commissioner is operating without any legislative support and she can offer only an informal mediation services. A respondent does not have to turn up; does not have to engage. My intelligence is that frequently when a party learns they do not have to mediate, they do not in the present context. The Government bill in the Legislative Assembly—I am sure we will deal with it next week—provides for a low-cost mediation service but does not provide for even the possibility for that to be made compulsory. I would suggest that that is a significant omission in the Government's approach.

The culture is clearly that larger businesses do not co-operate in their disputes with smaller businesses unless they either feel they are legally exposed or they have to. A good example is in the franchising area. Under the Federal franchising code, which is currently under review, parties have to mediate before they can proceed to litigation. A franchisor is required to attend and participate in mediation by the code, so it is compulsory in that regard. It is a very small step but I think that it is necessary if we are to change the culture where big business says to small business, "I'll see you in court. I'll see how serious you are about this dispute. If you serve a statement of claim on me then maybe we will talk." Of course, most small businesses, not having the ability to take on larger corporations or to spend their limited resources in this way, go away without having their disputes even heard and without even being able to sit around the table to talk a matter through unless the larger business voluntarily consents.

I think a scheme of compulsory mediation would be a step in the right direction towards changing this unfortunate culture in our commercial landscape. Other aspects of the bill have been well and truly rehearsed on both sides of the argument. I ask members to give consideration to supporting this bill. There has been an ongoing debate not just in the small business sector but also in the big business sector about whether good faith obligations should be included in commercial contracts. This bill does not mandate that but it leaves it open as a possibility for such obligations to be included in codes of practice.

The Opposition recognises that in some industry sectors it may be appropriate to mandate the inclusion of good faith requirements and in others it may not but certainly that is something that should be seriously considered because many of the disputes that arise involving small businesses do not involve strict breaches of commercial contracts but rather allegations that the rights of a larger, stronger party are being exercised arbitrarily or capriciously, although legally. Of course, that results in a harsh or unfair impact upon the smaller business. Those are matters that should be included at least in the architecture of a legislative regime dealing with small businesses so that it is a tool that can be deployed where useful and necessary.

There is a lot of support for such a notion in the small business sector. I urge all members to embrace these elements together: the code-making power to provide for fair treatment, which can be enforced by the commissioner; the unfair contract rights for small businesses, which as I have noted Tony Abbott seems to think is a good idea; the good faith requirements, which should be available as a tool to be used where needed; and the ability for the commissioner when investigating complaints to take steps to resolve the dispute—not just to write letters, make representations, refer it off to another already existing government body, presumably whose job it is to do this sort of work anyway; and, when it cannot be resolved through mediation, to be able to enforce standards of fairness and decency as they apply to small businesses. I urge all members to support the bill that is before the House.

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

**The House divided.**

**Ayes, 17**

Ms Barham  
Mr Buckingham  
Ms Cotsis  
Mr Donnelly  
Ms Faehrmann  
Mr Foley

Dr Kaye  
Mr Moselmane  
Mr Primrose  
Mr Searle  
Mr Secord  
Ms Sharpe

Mr Shoebridge  
Ms Westwood  
Mr Whan  
*Tellers,*  
Ms Fazio  
Ms Voltz

**Noes, 20**

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

**Pairs**

Mr Clarke	Mr Roozendaal
Mr Gay	Mr Veitch

**Question resolved in the negative.**

**Motion negatived.**

**Bill not read a second time.**

**COMMUNITY BUILDING PARTNERSHIP PROGRAM**

**Debate resumed from 18 October 2012.**

**The Hon. SOPHIE COTSIS** [12.47 p.m.]: I speak in support of the motion moved by my colleague the Hon. Shaoquett Moselmane who is passionate about the Community Building Partnership Grants program. As the former mayor of the City of Rockdale, he knew the importance of direct funding to local community groups and worked extensively with many groups to ensure that this funding was put to best use. I commend the Hon. Shaoquett Moselmane for his fantastic work in this regard. The Community Building Partnership Grants program was established in 2009 under the former Labor Government. It has provided communities across New South Wales, regardless of political persuasion, with much-needed funding to ensure that residents, ratepayers and small businesses are able to shape the infrastructure and services best suited to their local communities. The model of this fantastic program was used—

**The Hon. Shaoquett Moselmane:** Point of order: I am trying to listen to the Hon. Sophie Cotsis, but the noise on the other side of the Chamber is making it so difficult that she is inaudible.

**DEPUTY-PRESIDENT (The Hon. Natasha Maclaren-Jones):** Order! Quite a lot of noise is coming from both sides of the Chamber.

*[Interruption]*

**DEPUTY-PRESIDENT (The Hon. Natasha Maclaren-Jones):** Order! I call the Hon. Matthew Mason-Cox to order. I remind members that if they wish to engage in conversation they should use the members' lounge.

**The Hon. SOPHIE COTSIS:** The program was a good model for the Federal Government's economic stimulus package, which supported many local communities during the global financial crisis. The program is a good model for this Government and future governments in respect of directly funding local community groups. Groups provide information to the Government about what infrastructure they want to build and they know how to get value for money. The program has helped address problems with infrastructure backlogs in local communities. It unlocks funds for investment and creates opportunities for local businesses and tradespeople. Many small businesses, sole traders and tradies across New South Wales have had an opportunity to seek work under this program. When Labor set up the Community Building Partnership Program it allocated \$300,000 to each electorate, with an additional \$100,000 to 48 electorates identified as having higher unemployment levels. The program is a great model because it targets electorates with high unemployment and skills shortages in particular areas. In total, the former Labor Government provided \$93.4 million for 2,955 projects.

**The Hon. Dr Peter Phelps:** What proportion went to Labor electorates?

**The Hon. SOPHIE COTSIS:** At the beginning of my contribution I said that it spread across New South Wales. The former Labor Government provided \$400,000 to each of my three duty electorates of Port Stephens, Maitland and Smithfield. That funded fantastic local organisations such as Carrie's Place, which helps victims of domestic violence.

**The Hon. Dr Peter Phelps:** You lost all three of your duty seats.

**The Hon. SOPHIE COTSIS:** That shows the lack of interest of the Hon. Dr Peter Phelps in how these programs have created local jobs and helped local communities and groups suffering under this Government. The Government has cut funding for this program. It is cost shifting, and it does not realise what it is doing. Community groups are so desperate that they must sell raffle tickets to raise funds. The Hon. Dr Peter Phelps should visit Maitland with me and see what the women's groups are doing. They are selling raffle tickets to fund an additional worker to help them deal with domestic violence. That is how passionate I am about this program. If the member wants to make fun of it, he should come with me to see what community groups are doing. The member is a disgrace.

**The Hon. Niall Blair:** Point of order: The Hon. Sophie Cotsis should direct all her comments through the Chair and not goad other members across the Chamber.

**DEPUTY-PRESIDENT (The Hon. Natasha Maclaren-Jones):** Order! I uphold the point of order.

**The Hon. Penny Sharpe:** Point of order: I ask that you ask your side of the Chamber to stop interrupting incessantly while the Hon. Sophie Cotsis is speaking.

**The Hon. Dr Peter Phelps:** To the point of order: The Chair does not have a side. If the member wished to say "to the Government side of the Chamber", that would be fine. It is a reflection on the Chair to suggest that the Chair takes sides.

**DEPUTY-PRESIDENT (The Hon. Natasha Maclaren-Jones):** Order! I do not uphold the point of order. I remind members not to interject and the member with the call will not respond to interjections from either side of the Chamber.

**The Hon. SOPHIE COTSIS:** As I said, the Community Building Partnership grants funded fantastic local organisations such as Carrie's Place, which helps victims of domestic violence, police and citizens youth clubs and men's sheds. It funded upgrades of sporting facilities, playgrounds, amenity blocks, community colleges and disability access to the Hunter Botanic Gardens. All of us, regardless of our political colour, have seen the wonders of these projects and how fantastic they are in terms of ensuring that kids are playing on brand-new local sporting facilities and that ovals are upgraded. All these local projects were chosen by local people. Local communities decided how the money should be spent by local people to make the best use of the little funding they received from government. These projects put taxpayer dollars to good use, injecting them into local economies.

In Opposition, Barry O'Farrell and his team spoke about returning power to local communities. When in Opposition they promised to keep the Community Building Partnership Program. However, in government the Coalition has set out a very different agenda to what it promised. The O'Farrell Government slashed funding for the Community Building Partnership Program by \$47 million. In 2010-11 Labor invested \$58 million in local communities; the O'Farrell Government is spending only \$11 million. Some community groups in Maitland, Port Stephens and Smithfield had hoped to receive funding to deliver essential community services but they will receive less than they hoped for. This means less money for councils to upgrade their local parks, sporting grounds, halls and other facilities. It means increased pressure on local councils at a time when the O'Farrell Government is cutting a range of programs and services, leaving councils to fill the shortfall.

The O'Farrell Government has cut funding for International Women's Day grants; frozen the Domestic and Family Violence Grants Program; begun outsourcing road maintenance; cut \$1.24 billion in State programs and services; cut \$5.5 million from graffiti prevention programs; failed to deliver on its Resources of Regions funding. In 2011-12 no funding was allocated; this year only \$9 million of the promised \$160 million was provided. Funding for asbestos disposal seems to have ground to a halt. No details for 2011-12 funding have been made available; nor has any information about funding into the future.

**The Hon. Michael Gallacher:** What is the link again? Community partnerships?

**The Hon. SOPHIE COTSIS:** Not for councils. The Minister should look at what the Government has done to councils. Cutting the Community Building Partnership Program is just the most recent blow the Government has delivered to local communities. These cuts are particularly harsh in Maitland and Port Stephens. Last year the O'Farrell Government slashed the community building partnership grants in Maitland and Port Stephens by 80 per cent. In 2010-11, the last year Labor implemented the program, more than \$1.3 million was invested in 50 local community projects across those two areas.

In Port Stephens 27 projects shared more than \$697,000 in funding. In Maitland 24 projects shared \$689,000 in funding. The money went towards terrific local projects, including \$130,000 for the Karuah Progress Association to build a new skate park, \$56,000 for Port Stephens Council to extend Medowie skate park, \$50,000 for the Raymond Terrace Business Association to install a closed-circuit surveillance system in Raymond Terrace, \$100,000 for Maitland Bridge Club to build a clubhouse and pave a car park, \$69,200 for heritage restoration of Maitland Anglican Church, and \$26,989 for King Street Community Preschool in east Maitland to build an access ramp.

Last year I organised a community petition to oppose these cuts. The response was overwhelming. Of course, the Government has not listened to the concerned residents in Maitland and Port Stephens. This year the funding has been cut even further. The funding for both Maitland and Port Stephens will be cut from \$400,000 to \$30,000, and they may not get any funding next year. I call on the Government to honour its pre-election promises and reinstate the Community Building Partnership Program at its full value. As I said at the outset, the Community Building Partnership Program is important to electorates across New South Wales. Many community groups made good use of every dollar they received from the Government. I urge Government members, particularly those in regional and rural communities where there is a high infrastructure backlog, to consider the issues. There is no capacity to lift rates, as some are suggesting on the other side of the House. That will be a matter for another debate as we lead into the proposed changes to local government. I would like members opposite to encourage the Treasurer and the Premier when they deliver the budget this year—

**The Hon. Walt Secord:** To spend it.

**The Hon. SOPHIE COTSIS:** To do as my colleague the Hon. Walt Secord said, but to provide more money to local communities. We have seen that each dollar invested in the local community helps to create jobs—there is a multiplier effect. We must make sure that small businesses also receive that funding. We have heard from community groups and received hundreds of letters, emails and phone calls telling us that this is an important program because they get to see taxpayer dollars working on the ground. They have been able to see how direct funding worked and how it ensured that local businesspeople and local tradies received maximum benefit. I commend the motion to the House.

*[The Deputy-President (The Hon. Natasha Maclaren-Jones) left the chair at 1.02 p.m. The House resumed at 2.30 p.m.]*

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

**Item of business set down as an order of the day for a later hour.**

#### **DEATH OF THE HONOURABLE JOHN JOSEPH MORRIS, A FORMER MEMBER OF THE LEGISLATIVE COUNCIL**

**The PRESIDENT:** I announce the death on 8 February 2013 of the Hon. John Joseph Morris, aged 77 years, a member of this House from 1976 to 1984. On behalf of the House I have extended to his family the deep sympathy of the Legislative Council in the loss sustained.

*Members and officers of the House stood in their places as a mark of respect.*

#### **QUESTIONS WITHOUT NOTICE**

#### **FIRST HOME BUYERS ASSISTANCE**

**The Hon. LUKE FOLEY:** My question is to the Minister for Finance and Services. Given that the number of first home buyers in New South Wales is the lowest in 20 years will the Government reverse its billion dollar stamp duty increase as it is locking hundreds of first home buyers out of the housing market?

**The Hon. GREG PEARCE:** I am astonished that the Leader of the Opposition asks such an idiotic question.

**The Hon. Melinda Pavey:** Why are you surprised?

**The Hon. GREG PEARCE:** That is a good point. Why am I surprised? We welcome the latest figures on housing approvals in Sydney which show the highest annual housing approvals since 2003-04. Under the New South Wales Government we have seen housing approval figures increase steadily and the latest figures show that the trend remains strong. The New South Wales Department of Planning and Infrastructure published on 19 February its December monitor of Sydney's housing supply, which shows a 22 per cent jump in approvals and a 31 per cent jump in new home completions in the last six months of 2012. The Government's policies to encourage construction of new housing address the affordability and availability problems left by this mob opposite. They were so busy on the ski slopes and taking their free holidays in Eddie's chalet that they did not do anything about housing; they were only interested in holidays—

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

**The Hon. Walt Secord:** Point of order: It is relevance. The question was about first home buyers not approvals.

**The PRESIDENT:** Order! The Minister was being generally relevant.

**The Hon. GREG PEARCE:** Just as an aside, I turned the television on the other day and I saw the movie *Being John Malkovich*. Now that is a bizarre movie, but then I thought about what we live with every day—

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

**The Hon. Adam Searle:** Point of order: With the best will in the world, the Minister is no longer being even generally relevant. I ask you to call him back to the leave of the question.

**The PRESIDENT:** Order! Yes, I think the Minister is playing to the gallery! I advise the Minister to be generally relevant.

**The Hon. GREG PEARCE:** Those are the Department of Planning and Infrastructure's figures. There was a 22 per cent jump in approvals and a 31 per cent jump—ski jumps; how can I not go back to the ski jumps—in new home completions in the last six months of 2012. There you have it. This Government's policies of encouraging construction of new housing are working. We are addressing the housing affordability and availability problems left to us by that mob opposite. Then we have "Being Walt Secord", the most bizarre thing playing out before us—

**The Hon. Adam Searle:** Point of order: The Minister is clearly reflecting on another member of the House and he well knows that if he wishes to do so it must be by way of substantive motion. He cannot do it in this sidwinding way.

**The Hon. Catherine Cusack:** To the point of order: The Hon. Adam Searle is simply envious because he was not one of the members invited.

**The PRESIDENT:** Order! It is disorderly at all times for members to reflect on other members of the Chamber. If that is what the Minister was doing he should stop doing it. The Minister's time has expired.

#### **NSW POLICE FORCE LOCAL AREA COMMAND MERGERS**

**The Hon. SCOT MacDONALD:** My question without notice is directed to the Minister for Police and Emergency Services. Will the Minister provide details on the latest work being done by the NSW Police Force to return police to the front line?

**The Hon. MICHAEL GALLACHER:** I thank the member for his question. As I noted in the House earlier this week, the NSW Police Force, with the support of the Government, has announced it will merge 20 local area commands in the Sydney metropolitan region into 10 over the next two years. It is anticipated these proposed mergers will return more than 100 senior management and other support officer positions currently in command headquarters and support roles to operational positions working on the front line. This year it is proposed to merge eight local area commands into four.

Following further consultation with the NSW Police Force I can now confirm these commands will include City Central and The Rocks, Manly and Northern Beaches, Eastwood and Gladesville, and St George and Hurstville. These commands have all been proposed by the NSW Police Force, which is committed to consulting extensively with the local communities and councils that are covered by these proposals. I am pleased to again confirm that no merged command will lose police numbers, no police officers will be retrenched, nor will any police station close as a result of these proposed mergers. These proposed mergers will release police officer positions in management and support roles within a command and allow the return of more police officers to front-line positions.

Although the Police Force originally proposed merger of the Botany Bay and St George commands, it had sought approval to change the commands proposed for merger. Today I can confirm the Police Force will pursue a merger of the St George and Hurstville commands. I am advised this change has been proposed by the Police Force following further detailed planning for the proposed mergers. Through further canvassing the Police Force has identified significant operational and financial concerns regarding the changing of radio channels necessary for a St George and Botany Bay merger. I am also advised the geographic fit of St George and Hurstville is better than St George and Botany as proposed and that the local government areas are more aligned to a St George and Hurstville merger. The mergers of The Rocks and City Central, Gladesville and Eastwood, and Manly and Northern Beaches remain unchanged.

I suspect members of the public may have been surprised to learn there are currently two police commands covering the Sydney central business district, namely City Central and The Rocks. This means two sets of command teams and two sets of support staff and all of the administration that comes with that, all because there is a command boundary drawn down King Street. These mergers, how they will be implemented and what outcomes they deliver will be thoroughly reviewed and evaluated by the NSW Police Force. This review will help inform planning for a second stage of mergers announced for 2014, which at this time include Ku-ring-gai and The Hills, Kings Cross and Rose Bay, Marrickville and Ashfield, Harbourside and North Shore, Redfern and Surry Hills, and Sutherland and Miranda.

I understand the mergers for the second stage are still subject to local consultations and may be altered as part of this process or indeed as a result of the evaluation lessons learned from stage one. The Government has endorsed this stage-by-stage process because it is keen to ensure the NSW Police Force does not get gridlocked in pursuing reform. The NSW Police Force considers the proposed mergers to be manageable, desirable and achievable while allowing the Police Force to continue its focus on its operational duties. As indicated previously, the Police Force has foreshadowed the opportunity for further local area command mergers after the first two stages have been implemented, subject to those mergers being evaluated as successful. This Government is committed to supporting the Police Force to deliver the reforms to build and strengthen the NSW Police Force to achieve a better result for the community.

#### **GOVERNMENT DEPARTMENTS BILL PAYMENT POLICY**

**The Hon. ADAM SEARLE:** My question is directed to the Minister for Finance and Services. In light of the Minister's promise to ensure government departments and agencies pay their bills within 30 days, what action has the Department of Finance and Services taken as a result of Transport for NSW having more than \$10 million worth of payments outstanding to small businesses?

**The Hon. GREG PEARCE:** Let me start by acknowledging that the Deputy Leader of the Opposition is one of the few members of the Labor Party who is likely to be truthful in the information that he supplies to the House in a question. Having said that—

**The Hon. Greg Donnelly:** Point of order: The Minister knows better than to cast aspersions on members of the House either collectively or individually. That is against the traditions of this House.

**The PRESIDENT:** Order! I have the gist of the point of order. While the Minister did not make a personal reflection on an individual, which he would have to withdraw, his comment was inflammatory. I remind the Minister that only two Ministers are present for question time today; it would be dull if he were asked to leave the Chamber.

**The Hon. GREG PEARCE:** It would only be dull if the Leader of the Government had to leave.

**The PRESIDENT:** Order! The Minister should cease talk of a mutual admiration society and address the question.

**The Hon. GREG PEARCE:** Before I can give a proper answer to the question, I need to have the quoted figure, the premise of the question, checked and verified. I can say that this Government has a policy to pay bills on time, unlike that mob on the other side which did not pay millions of dollars, particularly to small and medium businesses in regional areas. That was the policy of the Opposition.

**The Hon. Adam Searle:** Point of order: As entertaining as the Minister is, he is debating the question. If he does not have an answer he can take the question on notice.

**The PRESIDENT:** Order! The Deputy Leader of the Opposition will resume his seat or I will call him to order. There is a difference between debating the question and debating the issue that is the subject of the question. The Minister was in order.

**The Hon. GREG PEARCE:** This Government has a policy to pay our creditors within 30 days. My department and other agencies monitor payment, so we can publish the figures and follow through. Agencies will be named and shamed. If they do not pay their bills on time I will pursue them. This Government will not tolerate the other world of "Being Walt Secord" where bills are not paid. Small and medium enterprises have gone broke because the previous Government was so far out there in "Being Walt Secord" and they did not take any responsibility.

**The Hon. Luke Foley:** Point of order: The Minister has strayed into the territory of personal reflections on an honourable member.

**The PRESIDENT:** Order! The Minister was sailing close to the wind. The Minister's time has expired. I will not take up any more of question time.

#### HUNTING IN NATIONAL PARKS

**The Hon. JAN BARHAM:** My question without notice is directed to the Minister for Police and Emergency Services, representing the Minister for Tourism. Can the Minister advise the House if a cost benefit analysis has been conducted to determine the impact of hunting in national parks on the tourism industry? Given that the Visitor Economy Taskforce report identified natural areas as a key attractor for visitors to the State, has an assessment of lost income through reduced visitation due to the closure of parks and/or public safety concerns been undertaken and has compensation for affected businesses been considered?

**The Hon. MICHAEL GALLACHER:** I will take that question on notice. As the Hon. Jan Barham has asked a specific question about whether a cost benefit analysis has been done, I will seek advice from the Minister.

#### CONTINGENT WORKFORCE PRE-QUALIFICATION SCHEME

**The Hon. MATTHEW MASON-COX:** My question without notice is directed to the Minister for Finance and Services. Can the Minister advise how the pre-qualification scheme for a contingent workforce would deliver benefits for New South Wales?

**The Hon. GREG PEARCE:** I thank the Hon. Matthew Mason-Cox for his interesting and important question. I can advise the House that in line with the objective of reducing red tape, the Government has introduced a new approach to government agencies hiring temporary workers, also known as contingent workers. A new pre-qualification scheme has been established which encourages participation by a greater number of suppliers, reduces red tape and streamlines the processes for suppliers wishing to do business with the New South Wales Government. A major advantage of the new scheme is that it does not lock up a market. New suppliers are able to register at any time through a new self-service online application. This also provides government with immediate access to expert resources. Suppliers are able to apply for business opportunities by regions and categories.

**The Hon. Amanda Fazio:** Labour supply companies. Is that what you mean by suppliers?

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

**The Hon. GREG PEARCE:** This will enable a greater number of small and medium enterprises to participate and also cater for greater specialisation and niche markets. In addition, the new scheme reduces red

tape by removing the need for suppliers to collect and reimburse a management fee that was imposed under the Labor Government. It reduces the professional indemnity and public liability insurance requirements of suppliers. In some cases this is reduced from \$20 million to \$5 million. Specific assurances will still apply for some transport roles.

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

**The Hon. GREG PEARCE:** The scheme will deliver greater buying power for New South Wales government agencies. It delivers better value for money for taxpayers. I will need a supplementary question. The scheme includes standardised supplier fees and WorkCover rates across all categories, reduced supplier fees for long-term contractors, and a sliding scale fee for contractors who are permanently appointed within the first 12 months. Data collected from the scheme will be used to help the Government manage demand by benchmarking the pay rates of contractors and integrating workforce planning across government.

**The Hon. Sophie Cotsis:** Tell us about labour hire.

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

**The Hon. GREG PEARCE:** The scheme opened to applications on 24 January 2013 and industry briefings were conducted on 30 January.

**The Hon. Sophie Cotsis:** How many turned up?

**The Hon. GREG PEARCE:** That is a very good question, and I was going to get to that. Interest in the new scheme has been high. Unfortunately, I have run out of time to tell members how high. [*Time expired.*]

**The Hon. MATTHEW MASON-COX:** I ask a supplementary question. Will the Minister elucidate his answer?

**The Hon. GREG PEARCE:** I will, given the interest shown by members opposite. Normally they are not interested in my answers about good reforms.

**The PRESIDENT:** Order! The Minister will not respond to interjections.

**The Hon. GREG PEARCE:** As I said, there has been great interest in the scheme. More than 400 suppliers attended the briefings.

**The Hon. Walt Secord:** Name them.

**The Hon. GREG PEARCE:** I could name them; that is a thought. The majority of the attendees were from small and medium-sized enterprises and a number of suppliers who were unable to attend have requested videos. I will send a copy to each member of the Labor Party so that they will also have the information.

**The Hon. Steve Whan:** Are you in it?

**The Hon. GREG PEARCE:** I am definitely in it. There are some really good shots of me, but there is no picture of me on the front. Feedback from small and medium-sized enterprise suppliers has been very positive, including compliments about the simplicity of the process, the ease of submitting applications, the reasonable timelines and the flexibility of updating supplier details. Small and medium-sized enterprises have expressed confidence that they will have real access to opportunities to supply government and that they will not be locked out of contracts as they were under the Labor Government. Small and medium-sized enterprises also like the fact that supplier fees have been standardised and that they will now be judged on the quality of their service rather than the discussion being devoted to fees. The scheme begins on 5 March 2013 and the online registration processes for suppliers have already begun. Small and regional enterprises and suppliers are encouraged to apply. This is a great piece of reform introduced by this Government.

#### COUNCIL OF AUSTRALIAN GOVERNMENTS BUREAUCRACY

**The Hon. ROBERT BORSAK:** I direct my question to the Minister for Police and Emergency Services, representing the Premier. Is the Premier aware of calls by the former Victorian Premier Jeff Kennett

for the Council of Australian Governments to be abolished because it has become, in his words, "an animal that is eating government", slowing gross domestic product growth and bogging down the political decision-making process? Will New South Wales be making representations to Canberra to seek a constitutional convention to ease the mounting revenue pressures on the States and to remove from the Council of Australian Governments the new layers of bureaucracy affecting the public and business communities?

**The Hon. MICHAEL GALLACHER:** It will come as no surprise that because the question was asked of the Premier I will seek an answer from him about this very important issue and report back to the honourable member.

#### **SYDNEY WATER DIVIDENDS**

**The Hon. WALT SECORD:** I direct my question to the Minister for Finance and Services, representing Sydney Water. Given that Sydney Water's "Statement of Corporate Intent: 2012-13" reports that it plans to increase water usage from 482 gegalitres to 491 gegalitres by 2015, a total of nine billion litres, how much will that mean in higher dividends for the New South Wales Government?

**The Hon. GREG PEARCE:** It is horrible. The shadow Minister for Water—

**The Hon. Michael Gallacher:** Who is it?

**The Hon. GREG PEARCE:** It is the Hon. Walt Secord. Every time he gets to his feet he demonstrates his ignorance of the basic structure. I am not the Minister representing Sydney Water; I am the Minister for Sydney Water. Because he has no understanding—

**The Hon. Walt Secord:** Point of order: The Minister is clearly debating the question.

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

**The Hon. GREG PEARCE:** He does not understand the structure and I was explaining it. First, we have Sydney Water, which is a State-owned corporation.

**The Hon. Catherine Cusack:** Do not help him; make him do some reading.

**The Hon. GREG PEARCE:** I am prepared to help him because he has been struggling. As a State-owned corporation, Sydney Water has two shareholders. The shareholding Ministers sign off on the statements of corporate intent.

**The Hon. Catherine Cusack:** Are you writing this down, Walt?

**The Hon. GREG PEARCE:** It will be in *Hansard* and we will give him a copy. I am the portfolio Minister. There is another element of this that the honourable member does not understand. He has made a fool of himself on so many occasions and I cannot let him continue to do so. During the estimates committee hearings last year he asked me questions about Sydney Water's capital program and capital spending. His question about Sydney Water's dividends today again demonstrates that he does not understand the structure and the way it works. He also does not understand the role of IPART, the independent pricing authority.

**The Hon. Greg Donnelly:** It is the Independent Pricing and Regulatory Tribunal.

**The Hon. GREG PEARCE:** I thank the Hon. Greg Donnelly. He knows more about it than the Hon. Walt Secord; he knows what IPART is. He is sitting behind the Hon. Walt Secord, so perhaps he can whisper in his ear. The Independent Pricing and Regulatory Tribunal—

**The Hon. Michael Gallacher:** What about the Independent Commission Against Corruption?

**The Hon. GREG PEARCE:** We are not going there.

**The Hon. Jeremy Buckingham:** I'm not sure about that.

**The PRESIDENT:** Order! The Hon. Jeremy Buckingham will have his turn in due course.

**The Hon. GREG PEARCE:** What, at the Independent Commission Against Corruption?

**The PRESIDENT:** Order! The Minister should not continue to try my patience.

**The Hon. GREG PEARCE:** We have Sydney Water, which is a State-owned corporation with two shareholders, a statement of corporate intent and the Independent Pricing and Regulatory Tribunal. Every five years the tribunal goes through a process that involves submissions being lodged, and Sydney Water lodges a submission. The tribunal sets Sydney Water's prices and its capital spending program. As a result, the shareholder Ministers, in consultation with the Sydney Water management team, agree on a dividend policy with the Treasurer during the budget process. I will address that process. The current dividend ratio is 70 per cent— [*Time expired.*]

**The Hon. WALT SECORD:** I seek leave to table Sydney Water's "Statement of Corporate Intent: 2012-13" to assist the Minister.

**Leave not granted.**

### TOXIC CANISTERS DISPOSAL

**The Hon. MELINDA PAVEY:** I direct my question to the Minister for Police and Emergency Services. Will the Minister inform the House about Fire and Rescue NSW's recent handling of toxic canisters that are washing up on the State's beaches?

**The Hon. MICHAEL GALLACHER:** I most certainly will. I was not expecting to answer this question until later today. Fire and Rescue NSW is urging residents along the New South Wales coast to avoid handling silver canisters or containers washed up on beaches following the recent storms and to call 000 to report them to authorities immediately. The warning comes after containers were found washed up at Batemans Bay, Warriewood, Mona Vale, Tuncurry, Avalon and Palm Beach this month alone.

It is believed the contents of the canisters could be aluminium phosphide, which is potentially fatal if inhaled or ingested. This is a highly restricted toxic substance, and a very dangerous poison. The canister found on 14 February at Tuncurry was opened, causing the person who opened it to be rushed to hospital. Fire and Rescue urges if any member of the public comes across any more of these canisters he or she should report the situation immediately. People should not try to inspect, open or transport them. They should stand well away from them. Due to the significant amount of heavy swell in the ocean we could well find canisters being uncovered during the next months as sand returns to the ocean.

**The PRESIDENT:** Order! I would be grateful if Government backbenchers would compose themselves.

**The Hon. MICHAEL GALLACHER:** Fire and Rescue hazardous material officers have responded to each of these instances to identify and confirm the contents of the canisters and to confirm whether any of the contents were leaking, using state-of-the-art detection equipment. The canisters are then sealed in specially designed airtight drums and disposal is arranged through the Environment Protection Authority and the local council. I thank the Hon. Amanda Fazio for making her backyard available. Fire and Rescue has ensured that all relevant organisations are aware of the risks involved and what should be done if one of these canisters is found on a New South Wales beach.

This information has been provided to police, local councils and surf lifesaving clubs, and there has been ongoing liaison with the Australian Maritime Safety Authority and emergency services in Queensland and Victoria. Fire and Rescue hazardous material personnel are highly dedicated firefighters trained to respond to more than 15,000 chemical spills per year in New South Wales. All firefighters are trained to respond to hazardous material incidents. Every frontline fire truck has chemical protective clothing and detection equipment, which keeps the community of New South Wales protected.

### NSW WATER SAFETY STRATEGY

**The Hon. ROBERT BROWN:** My question is directed to Minister for Finance and Services, representing the Minister for Local Government. Given the audit occurring of every beach and rock platform in New South Wales so as to provide safety recommendations to local councils in a bid to design a drowning

prevention strategy for rock fisher persons, will the Minister ensure that councils consult with fishing groups and other interested parties, and consider all available options before making any decisions to lock anglers out of any areas?

**The Hon. GREG PEARCE:** It is unfortunate that a number of rock fishermen disappear off the edge of rocks. I assure the Hon. Robert Brown that the Government and the Minister for Local Government are concerned to ensure that we do not do anything precipitous in this area. I am sure that he will make sure that there is proper consultation. According to police statistics, six coastal drowning deaths are suspected of being related to rock fishing this year. Surf Life Saving New South Wales has been funded under the Water Safety Black Spots Fund for two years to conduct audits of locations along the coast. The audits commenced in mid-2012 and initial draft reports were prepared by Surf Life Saving New South Wales in late 2012. I am advised that the reports will be handed to the Water Safety Advisory Council, along with treatment options to land managers for their consideration.

This project will assist in identifying what actions can be taken to reduce the number of drowning deaths along the coast. Education and awareness are the keys: wear a life jacket, wear the right gear, do not put yourself in dangerous positions, do not fish alone and do not turn your back on the ocean. Any and all options to keep rock fishermen safe will be considered by the Water Safety Advisory Council, in conjunction with appropriate bodies such as the State Rescue Board and police. The Government takes all drowning deaths seriously. In the first round of the new Water Safety Black Spots Fund, the Government allocated approximately \$320,000 to the Recreational Fishing Alliance to undertake a number of projects, including the delivery of rock fishing safety workshops for communities, consistent fishing safety messages and alerts over a six-month period in various print, radio and television media.

Water safety is an important issue that affects our entire community. The council has developed the draft New South Wales Water Safety Strategy, which will be released later this year following a consultation period with water safety experts. I understand media reports have fuelled fears of rock fishers they will be locked out of favourite fishing spots. I am confident that local councils and other land managers, along with key stakeholders and the Water Safety Advisory Council, will be able to work together to consider the recommendations, rather than jumping to conclusions. If local councils are undertaking their own surveys of black spots this should only help the debate about what can be done. I will personally raise this with the Minister to ensure that councils are consulted.

### **POLICE TRANSPORT COMMAND**

**The Hon. PENNY SHARPE:** My question is directed to the Minister for Police and Emergency Services. Figures from the NSW Police Force show that in the five months to December 2012, 50 police officers have been recruited to the Police Transport Command but only 12.2 of those officers are operational. Why are there so few new police patrolling our public transport network?

**The Hon. MICHAEL GALLACHER:** The Opposition would love to make us believe that there are few police on our public transport system—

**The Hon. Sophie Cotsis:** I haven't seen them.

**The Hon. MICHAEL GALLACHER:** Because you do not travel on public transport. The Hon. Sophie Cotsis needs to travel on public transport to see firsthand this wonderful initiative of our police on our public transport system. They are on buses, trains and ferries. I implore those opposite once in a while to try public transport.

**The Hon. Luke Foley:** Point of order: I am offended by the comments of the Leader of the Government. I catch public transport every day, but I never see a police officer.

**The PRESIDENT:** Order! The Leader of the Opposition knows that that is not a point of order.

**The Hon. MICHAEL GALLACHER:** The point is they see you; they have been watching you. That is why we moved the covert operations legislation yesterday. Just keep doing what you are doing. He does not go by his name anymore; he goes by the codename ALP 1—he is now known like some of these other organisations. The Police Transport Command was established in May 2012. Its focus is to reduce crime levels

on and around public transport, co-ordinate transport policing activities and tasking, increase community perceptions of safety on public transport—something that was ignored by the former Government for 16 years—and increase community engagement.

As of 1 February 2013 the authorised strength of the Police Transport Command was 351 sworn officers, plus 14 unsworn staff. This aligns with the Government's commitment to increase the authorised strength to 610 by December 2014. The latest six-month performance report speaks for itself. From 1 May to 31 October 2012 the report of the command shows that it has made 1,295 arrests and issued 16,274 infringements on our public transport—something that those opposite—

**The Hon. Amanda Fazio:** That is just revenue raising. It is a disgrace.

**The Hon. MICHAEL GALLACHER:** Once again the Hon. Amanda Fazio, as a non-public transport user, has got a hide because the people who are getting these notices on our public transport system have broken the law—

**The Hon. Amanda Fazio:** Point of order: The Minister is making a reflection upon me that is untrue. I ask you to ask him to withdraw it. While it is true that I do not use trains, I am a frequent user of government buses.

**The PRESIDENT:** Order! As there was nothing offensive in what the Minister said, I will not require him to withdraw his remarks. I remind the Minister that it is disorderly for him to reflect upon other members in his contributions.

**The Hon. MICHAEL GALLACHER:** The command conducted 110 operations, including Merge, Rushmore, Javelin and Dora. Additional positions were added to the Police Transport Command, the Traffic and Highway Patrol Command and the Major Events and Incidents Group in December. It will take a short time for those commands to organise recruitment and transfers to these new positions. Those opposite do not want to accept that the Government has listened to the public or that the public wants to see a significant police presence across our public transport system. [*Time expired.*]

**The Hon. PENNY SHARPE:** I ask a supplementary question. Will the Minister elucidate his answer and confirm that although 50 police officers were recruited to the Police Transport Command only 12 of those officers are operational?

**The Hon. MICHAEL GALLACHER:** This was a design proposal that was put to the former Labor Government and it was ignored for years, just as the former Labor Government ignored the problems associated with our public transport system. The O'Farrell Government is getting on with the job of ensuring confidence in our public transport system by ensuring a visible police presence on it. As I said before, it will take a short time for the new Police Transport Command in particular to organise recruitment and transfers to these new positions. As a Parliament we should be offering our continuing support. We will continue to see those numbers build, as we will continue to see those opposite refusing to accept that as a community we are finally addressing the issue of public safety on our public transport system—something they ignored for far too long.

#### **NSW POLICE FORCE TRANSCULTURAL MENTAL HEALTH TRAINING**

**The Hon. JENNIFER GARDINER:** I address my question to the Minister for Police and Emergency Services. How is the NSW Police Force helping its officers to better manage mental health emergencies involving persons in the community who come from culturally diverse backgrounds?

**The Hon. MICHAEL GALLACHER:** Police officers in New South Wales attend an average of 36,000 mental health related incidents each year—that is, around 102 incidents per day across the State. Each local area command has a Mental Health Contact Officer to liaise with support services and assist local officers in their interactions with mental health consumers. At the State level, the Mental Health Intervention Team [MHIT] develops police and inter-agency protocols for dealing with mental health emergencies. It was established as a full-time police unit in July 2009, following a successful two-year pilot program.

One of the key achievements of this team is the development and delivery of a four-day training program to improve the capacity of front-line police to deal with people living with a mental illness who may experience a mental health crisis. Developed in partnership with the Schizophrenia Fellowship of NSW and

NSW Health, the training gives police communication strategies, risk assessment skills and de-escalation and crisis intervention techniques to reduce the risk of injury to mental health consumers, the public and police themselves during a mental health crisis. More than 1,000 officers have already received the four-day training and it has received positive affirmation from mental health consumers and advocates, police in other jurisdictions, and academics.

Despite the positive accolades, the NSW Police Force is not resting on its laurels. The Mental Health Intervention Team is constantly seeking to improve the course to ensure that it remains relevant. To that end, I am delighted to advise the House that a new multicultural mental health module has been added to the curriculum. It has been developed in consultation with the Transcultural Mental Health Centre within the NSW Ministry of Health and was formally launched yesterday morning by the Minister for Mental Health and the Parliamentary Secretary for Police and Emergency Services. The new module will enhance the ability of police officers responding to incidents involving mental health emergencies where people are from culturally diverse backgrounds.

New South Wales has the largest number of residents born in countries where English is not the main language and many new arrivals to New South Wales come from war-torn countries or regions in which the police are not trusted because of previous negative experiences. Therefore it is important that our police officers receive additional training to enable them to interact sensitively and safely with these community members during incidents involving a mental health emergency. The training they will receive as part of this new module will add to the skills and experience that they will develop during the four-day course. I thank everyone involved in developing the new module, and I wish the Mental Health Intervention Team well for its roll-out. I thank also all members who have shown their support for me and the Minister for Mental Health over the past 24 hours for this wonderful initiative.

#### **MOUNT PENNY AND DOYLES CREEK COAL EXPLORATION LICENCES**

**The Hon. JEREMY BUCKINGHAM:** I direct my question to the Minister for Police and Emergency Services, representing the Premier. In light of the Premier's announcement in the other place regarding the Mount Penny and Doyle's Creek coal exploration licences, will the Minister clarify whether the Government will be acting to suspend these licences given the clear public interest, or has the Government squibbed it again?

**The Hon. MICHAEL GALLACHER:** Mr President, the question contains argument.

**The PRESIDENT:** Order! While the question does contain argument, I will allow the Minister, if he wishes, to answer that part of the question which does not contain argument.

**The Hon. MICHAEL GALLACHER:** I refer the Hon. Jeremy Buckingham to the comments that the Premier made in the Legislative Assembly earlier today.

#### **CITYRAIL GUARDIAN SERVICES POLICE PATROLS**

**The Hon. HELEN WESTWOOD:** I direct my question to the Minister for Police and Emergency Services. Will the Minister guarantee that police officers will be assigned to undertake physical on-board patrols of all Guardian services on the CityRail network on Friday and Saturday nights?

**The Hon. MICHAEL GALLACHER:** As the Hon. Greg Donnelly would be the first to say, that is an operational matter. That is a matter for the Commissioner of Police.

**The Hon. Penny Sharpe:** So you are walking away from Guardian services?

**The Hon. MICHAEL GALLACHER:** I am not telling the Commissioner of Police where to place his police officers.

**The Hon. Penny Sharpe:** Will you find out and report back to the House?

**The Hon. MICHAEL GALLACHER:** I was not asked that. I was asked to guarantee it.

### CLOUD COMPUTING TRIAL

**The Hon. SARAH MITCHELL:** I address my question to the Minister for Finance and Services. Will the Minister update the House on the progress of the Government's innovative cloud pilot project?

**The Hon. GREG PEARCE:** I thank the member for that very good question. Cloud-based information and communications technologies are a large part of our computing future. They are expected to provide the New South Wales Government with opportunities for better value Agency Capability Initiative Information and Communications Technology [ICT] investment and improved services. For those not in the ICT space—that is, those opposite—cloud computing is a model for enabling on-demand access to computing resources such as networks, services, storage and applications.

Unlike the traditional way of procuring ICT infrastructure and services, cloud solutions are delivered, shut down, upgraded or switched quickly with minimal effort. "On-demand" means we pay only for what we need, which provides for efficient purchasing and gives government the flexibility to respond to changing service delivery requirements. The New South Wales Government identified cloud-based ICT as a key component of the whole-of-government ICT strategy it released last year. On 5 February this year I announced the Government's cloud pilot project to evaluate the benefits and challenges of implementing cloud services in New South Wales Government agencies.

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

**The Hon. GREG PEARCE:** The cloud pilot project will examine key areas of five different cloud implementations. These include technical, regulatory, cost, contractual and usability aspects.

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

**The Hon. GREG PEARCE:** The aim is to understand the implications of the key differences in cloud services that are on offer from current ICT sourcing and management. This will be done by making detailed case studies of a range of cloud offerings that have been implemented by New South Wales Government agencies. The five pilot projects identified for the trial are: deployment of email, as a service in a single agency; enterprise resource planning, as a service; deployment of email, as a service across a number of agencies—

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

**The Hon. GREG PEARCE:** —with different requirements; infrastructure, as a service; and messaging and desktop, as a service. Work is already underway on five of these projects, with WorkCover, Fire and Rescue NSW, the Department of Trade and Investment, and Businesslink examining the key areas in the development and implementation of these services. The fifth project has involved government agencies engaging the market to identify innovative cloud-based desktop and email offerings.

The project is being led by the Government's shared service provider, ServiceFirst, to broaden the scope of our understanding and gain experience of cloud implementations across a number of agencies. The call to the market is due to close on 1 March 2013. So I will be able to report back to the House shortly on our cloud pilot projects. The outcomes of the five projects will provide an evidence-based approach to the development of whole-of-government policies and standard contract terms and the implementation of service offerings— [*Time expired.*]

### OUT TONIGHT? PARTY RIGHT WEBSITE

**Dr JOHN KAYE:** My question without notice is directed to the Minister for Police and Emergency Services, representing the Minister for Tourism, Major Events, Hospitality and Racing. Did the Office of Liquor, Gaming and Racing request any organisation to provide financial support for the development of the Out Tonight? Party Right website? If so, which organisations and how much? What proportion of the total cost of developing the website was funded from non-government sources?

**The Hon. MICHAEL GALLACHER:** I am aware of media reports that the Out Tonight? Party Right education resource for senior high school students, their teachers and parents contains internet links that lead to other sites that carry inappropriate material about peptides and relationship advice. Out Tonight? Party Right is a

valuable resource that utilises a range of teaching resources, videos and games, combined with current real-life examples to help teach senior high school students about responsible decision making and develop appropriate attitudes towards alcohol. The resource was developed by the Office of Liquor, Gaming and Racing, in conjunction with the Department of Education and Communities and in consultation with teachers, students, police, local liquor accords and industry associations. All these groups share a genuine aim of educating and reducing risky drinking by young people.

A wide variety of stakeholders who have real-life experiences of the consequences of young people's alcohol misuse gives this resource a practical dimension. The new initiative was fully funded by the Government. Importantly, the resource is online and it is well known that young people are prolific users of the internet. The website is designed for senior high school students on the cusp of adulthood and legal drinking age. The resource provides links to several external websites to provide a mix of useful information resources about alcohol. This includes links to news reports hosted by media outlets, including Fairfax Media, on young people's attitude to drinking as these can be a valuable source of learning. The external websites are subject to change of content or advertising at any time without warning. When these news articles carry freshly added advertising material about adult relationships or present other problematic content the links to those articles will be and have been taken down.

**Dr JOHN KAYE:** I ask a supplementary question. The Minister said that the site was fully funded by the Government. Will the Minister elucidate his answer by saying whether other organisations were asked to fund the development of the website?

**The Hon. MICHAEL GALLACHER:** The Office of Liquor, Gaming and Racing does not control the external websites or their advertising, but it has monitored, and will continue to actively monitor, links on the Out Tonight? Party Right website to ensure that any accessible content remains appropriate for senior high school students. Any links that cross-reference newly added inappropriate material will be removed or replaced. On 18 February the Office of Liquor, Gaming and Racing removed two web links to external websites as soon as inappropriate content was identified. As is the usual practice with links to external sites, the Office of Liquor, Gaming and Racing website has a disclaimer which reads:

Recognising that some of the information in this document is provided by third parties, the State of New South Wales, the author and the publisher take no responsibility for the accuracy, currency, reliability and correctness of any information included in the document provided by third parties.

This was acknowledged in the development of the website by the steering committee, which comprised community, police and industry representatives. The disclaimer reflects that the Office of Liquor, Gaming and Racing does not have editorial control of content and advertising that appears on these websites. Any links that cross-reference newly added inappropriate material will be removed or replaced by the Office of Liquor, Gaming and Racing. Despite these distracting issues, the Out Tonight? Party Right website is an important contribution to addressing alcohol education for young adults. As to the specifics of the supplementary question, I will seek advice from the Minister.

*[Business interrupted.]*

#### DISTINGUISHED VISITORS

**The PRESIDENT:** I welcome to the public gallery the former member for Lake Macquarie, Mr Jeff Hunter.

#### QUESTIONS WITHOUT NOTICE

*[Business resumed.]*

#### MILLERS POINT PUBLIC HOUSING

**The Hon. SOPHIE COTSIS:** My question is directed to the Minister for Finance and Services. What message will the Government have on the future of public housing assets at Millers Point for the local residents at the community meeting tonight?

**The Hon. GREG PEARCE:** I know that Housing representatives will be at the meeting tonight to talk to people. I was a bit mystified by the anonymous note that was distributed inviting people to attend the meeting

tonight, because we are transparent and open in talking to public housing residents. I guess it must have been someone from the Labor Party or The Greens trying to stir up trouble or start a scare campaign. The message to the residents of Millers Point, as with the residents of all public housing in New South Wales, is that they now have a competent Government in office in New South Wales, and in the housing space they have not one but two Ministers responsible for their wellbeing.

The waiting list that we inherited from Labor—I think it was about 54,000 that members opposite count—is simply not acceptable and the previous Government's failure to properly maintain the housing stock was a disgrace and irresponsible. We are trying to fix the mess that Labor left us in respect of the waiting list and the maintenance of public housing. We are trying to attend to the needs of people. We have provided not one but two Ministers because this compassionate, caring Government is interested in the needs of those who are less fortunate in this State. We are talking about people who have a basic need for housing. We are not focused on ski holidays or chalets—

**The Hon. Sophie Cotsis:** Point of order: My point of order is relevance. This matter is serious. Elderly and frail people are concerned—

**The PRESIDENT:** Order! Does the member have an adjournment speech or a point of order?

**The Hon. Sophie Cotsis:** My point of order is relevance.

**The PRESIDENT:** Order! I think the Minister was starting to stray. I will give him the call if he is able to supply more information.

**The Hon. GREG PEARCE:** I think I have made clear the Government's serious messages for public housing tenants.

#### **POLICE AND EMERGENCY SERVICES AUSTRALIA DAY HONOURS**

**The Hon. NIALL BLAIR:** My question is addressed to the Minister for Police and Emergency Services. Will the Minister update the House on the Australia Day honours awarded to police and emergency services personnel?

**The Hon. MICHAEL GALLACHER:** I thank the member for a timely and important question. I am pleased to inform the House that 22 New South Wales police and emergency service personnel were recognised in the 2013 Australia Day honours. These honours are: the Australian Police Medal, the Australian Fire Service Medal and the Emergency Services Medal. All three medals are extremely prestigious and the officers awarded them should feel justifiably proud of their achievements, as should their families, friends and employers who have supported them in their work.

Nine New South Wales police officers were awarded the Australian Police Medal. They are: Sergeant Kevin Daley, Inspector Edward Bosch, Sergeant Peter Lunney, Superintendent Luke Freudenstein at Redfern, who is carrying out wonderful work with the local Aboriginal community, Superintendent John Stapleton, Inspector Guy Guiana, Detective Sergeant John Robertson, Inspector Stephen Henkel and Superintendent Darren Spooner. The awarding of the Australian Police Medal is an opportunity for us to publicly recognise the dedication, commitment and expertise of these police.

The Australian Fire Service Medal was awarded to three Fire and Rescue NSW firefighters and seven Rural Fire Service members. From Fire and Rescue NSW the recipients were Chief Superintendent Gregory Buckley, Station Officer Wayne Staples and Captain David Milliken. From the Rural Fire Service the recipients were Group Captain Lindsay Henley, Group Captain Barrie Hewitt, Captain Tom Nolles, Superintendent Ian Stewart, Group Captain Errol Smith, Group Captain James Smith, who is known as Pat, and Deputy Group Captain Barry Tindall.

The Emergency Service Medal was awarded to two members of the State Emergency Service and one member of the Volunteer Rescue Association. From the State Emergency Service the recipients were John Gregory and James McTavish, who is known to some members of this House. The medal recipient from the Volunteer Rescue Association was Russell Ashdown.

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

**The House continued to sit.**

**The Hon. MICHAEL GALLACHER:** Unfortunately, this summer we have been reminded through devastating fires and flood just how much we rely on our emergency services and the people who serve tirelessly in them. The award of these medals formally recognises the contribution these outstanding firefighters and emergency service members have made. The recipients of these medals come from a variety of backgrounds and serve in areas scattered across the State, from the ski fields, to western New South Wales and to inner city Redfern.

What they have in common is that they have all given years of dedicated service and most have given decades of service. They have all gone above and beyond the call of duty in protecting their communities and striving to make them safer and stronger. These dedicated people do not expect awards or accolades. Some are volunteers who undertake this work without expecting any payment or recognition. I congratulate all award recipients on their service to our community and I extend my sincere appreciation and the appreciation of the people of this State for the work they do and the significant contributions they have made.

#### **ORGANISED CRIME AND DRUGS IN SPORT REPORT MEDIA CONFERENCE**

**Reverend the Hon. FRED NILE:** My question is directed to the Minister for Police, the Hon. Michael Gallacher, representing the Minister for Sport, Graham Annesley. What is the impact of the startling Federal allegations—for which there is no evidence—against New South Wales sports men and women by the Australian Labor Party Minister for Justice, the Hon. Jason Clare and the Australian Labor Party Minister for Sport, the Hon. Kate Lundy? Has the allegation been investigated?

**The Hon. Penny Sharpe:** Point of order: Did you just indicate that the time for question time had expired?

**The PRESIDENT:** No, I did not.

**The Hon. Penny Sharpe:** Why are we still having a question?

**The PRESIDENT:** Order! The sessional orders allow the Minister, at 3.30 p.m., to move the adjournment motion if he desires. However, that does not bring question time to an end.

**Reverend the Hon. FRED NILE:** Has the allegation been investigated that claims this high-powered television media conference was a cover-up for the Independent Commission Against Corruption investigation—

**The Hon. Amanda Fazio:** Point of order: My point of order is that the sessional orders allow for question time to be held for one hour a day. It is now clearly five minutes past the end of the time allocated for question time and it is improper for the Minister to sit on his hands and allow people to ask additional questions, based on the favours that those people do for the Government. I think that is entirely inappropriate. I seek your ruling on this matter.

**The PRESIDENT:** Order! The standing and sessional orders do not prescribe a one-hour period for question time. By convention, question time goes for one hour. The Minister may, if he wishes, conclude it before one hour or after one hour. I ask Reverend the Hon. Fred Nile to ask his question again.

**Reverend the Hon. FRED NILE:** Has the allegation been investigated that claims that this high-powered television media conference was a cover-up for the Independent Commission Against Corruption investigation of former Australian Labor Party Minister Ian Macdonald?

**The Hon. Luke Foley:** Point of order: I submit that the question is out of order on two grounds: firstly, it is argumentative in numerous places; and secondly, it is not a matter within the public affairs of the New South Wales Government. I note many rulings of former Presidents regarding actions of the Federal Government. The Minister was not asked by Reverend the Hon. Fred Nile to deal with any matter within the public affairs of the New South Wales Government.

**The PRESIDENT:** I ask the honourable member if he could give me a copy of the question please, as there were large parts of it that I did not hear.

**The Hon. Michael Gallacher:** To the point of order: It clearly does fall within the purview of the House, given that the comments that were made by the Federal Government at the time involved the NSW Wales Police Force and the investigative role that they would take in regard to this matter. Clearly, there is a relationship with a police investigation, let alone the comments of the Federal Minister for Sport that she had been in communication with State sports Ministers in relation to this matter.

**The Hon. Amanda Fazio:** To the point of order: I speak in support of the point of order raised by my colleague the Hon. Luke Foley. The question that was asked by Reverend the Hon. Fred Nile firstly contravenes Standing Order 65 (1) in that it contains argument, inferences and imputations, particularly imputations about the motives of the people concerned and, secondly, contravenes Standing Order 65 (2), which states that questions must not ask for an expression of opinion. It is clearly indicated in the question asked by Reverend the Hon. Fred Nile that he is asking for an opinion from the Minister about the matters he raised in his question. The rules are clear-cut in relation to what is allowable in a question and this question breaches both sections (1) and (2) of Standing Order 65. I urge you to rule accordingly.

**Reverend the Hon. Fred Nile:** To the point of order: Two different points of order have been raised, firstly, as to the relevance of the question to New South Wales. The question deals with New South Wales sportsmen and sportswomen, which is a direct interest of the Minister for Sport, represented here by the Minister for Police. Secondly, I asked whether there had been any investigations into this matter. Again, that comes within the purview of the Minister for Police.

**The Hon. Lynda Voltz:** To the point of order: The question not only contravenes Standing Order 65 (1) relating to inferences but also poses a hypothetical question.

**The PRESIDENT:** Order! There is no doubt the question contains substantial argument. Therefore, I rule it out of order.

**The Hon. MICHAEL GALLACHER:** The time for question time has expired. If members have further questions they should place them on notice.

**Questions without notice concluded.**

#### **TABLING OF PAPERS**

**The Hon. Greg Pearce** tabled the following paper:

Sydney Water Catchment Management Act 1998—Report of the Independent Pricing and Regulatory Tribunal entitled, "Sydney Catchment Authority Operational Audit 2011-12: Water Compliance Report", dated January 2013

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

#### **TABLING OF PAPERS NOT ORDERED TO BE PRINTED**

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

#### **ADJOURNMENT**

**The Hon. MICHAEL GALLACHER** (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [3.40 p.m.]: I move:

That this House do now adjourn.

#### **COAL SEAM GAS**

**Dr JOHN KAYE** [3.40 p.m.]: Statements I made referring to coal seam gas in Parliament in June 2008 and in the North Coast media in December 2009 have not stood the test of time. The overwhelming body of evidence about the environmental and health damage of coal seam gas drilling and advances in renewable energy technology have rendered those statements incorrect. The remarks were far from a comprehensive

analysis of coal seam gas. However, they have been used extensively by various O'Farrell Government Ministers to suggest that my opposition to coal seam gas and that of my party, The Greens, is in some way qualified or disingenuous. That imputation is completely incorrect.

While the statements were made in good faith and on the available knowledge of the coal seam gas industry at the time, the ensuing three years have exposed fatal flaws in the assumption that gas can be extracted from coal beds without substantial environmental and human consequences. The extent of the impact on aquifers and air quality and the intractable problems of highly polluted water produced were not widely known at that time. Many of the papers showing that fugitive emissions from coal seam gas drilling and handling can render it a more greenhouse-intensive fuel than even coal had not yet been written. The movie *Gaslands*, which alerted the world to the terrible consequences of widespread hydraulic fracturing coal beds for methane in the United States, had not yet been made.

At the time I made those statements the idea of creating 100 per cent renewable electricity without increasing gas burning as a transition fuel was a speculative vision. Now it is a realistic and affordable option that is supported by peer-reviewed engineering studies. Changes in knowledge of both coal seam gas and renewable energy technologies since June 2008 and December 2009 have rendered incorrect the statements I made at that time. It has been clear since late 2010 that there are substantial problems with coal seam gas drilling and that there is no need to increase gas production to wean New South Wales off its dependency on coal.

Since the evidence against coal seam gas became clear I have been an early and enthusiastic supporter of the local and statewide campaigns to stop coal seam gas exploration and drilling and of the work of my colleague Jeremy Buckingham and his office. The campaign at the time I made the December 2009 remarks focused on stopping a high-voltage powerline being run into Lismore. My point, and that of the Environmental Defender's Office, which agreed with me at the time, was that there were local energy supply and demand management alternatives that had done away with the need for the line. That part of the statement is still true, but we now know that coal seam gas is not one of the acceptable options. Others such as solar and demand management have not been adequately assessed and would be cheaper and have a lower environmental cost. In debate on the National Gas (New South Wales) Bill 2008 I raised substantial concerns about the environmental and social consequences of arrangements for the gas industry. I did, however, say in passing:

A national gas scheme with appropriate regulations will benefit New South Wales substantially, not only because we do not have large natural gas reserves within the borders of the State but also because there are other opportunities for coal seam methane gas to become part of the national gas grid.

While hardly a wholehearted endorsement of coal seam gas, it does suggest that it is a valid form of energy supply. I am prepared to admit that the evidence now runs overwhelmingly against my earlier statements, and has done so since 2010. It is a shame the O'Farrell Government could not admit that it too got it wrong on coal seam gas until this week and even then it is having an each-way bet.

While I am addressing some issues that arise from statements I have made in the past, I strongly suggest that the Premier of New South Wales engage better staff who are able to do research more accurately. The Premier has been touting the suggestion that The Greens voted against the legislation that would enable the Crime Commission to go to the Supreme Court and seek a freeze order on the assets of Mr Eddie Obeid and Mr Ian Macdonald. The Premier is 100 per cent incorrect on that. If he looks at the 2009 legislation that set up section 10A of the Criminal Assets Recovery Act he will see that The Greens, in the form of my then colleague Sylvia Hale, voted enthusiastically in favour of the legislation and supported it.

We did, however, oppose the 2010 legislation inasmuch as the 2010 amendment created the power for assets to be seized in the case of unexplained wealth. I must say that in the case of Eddie Obeid and Ian Macdonald there is nothing unexplained about their wealth. In the statements I made to the media this year in respect of using section 10A of the Act I did not rely on the changes that were made to section 10A in the 2010 legislation; I was relying on the 2009 legislation. In any event, even if we had voted against it the fact remains that that legislation should be used to freeze those assets.

#### **FAIRFIELD CITY COUNCIL DEVELOPMENT APPLICATION ALLEGATIONS**

**The Hon. CHARLIE LYNN** (Parliamentary Secretary) [3.45 p.m.]: The recent exposé of the greatest corruption inquiry since the days of the New South Wales Rum Corps has rocked public confidence in our political institutions to its very foundations. The exposé that I wish to bring to the notice of the House tonight is

not on the scale of the extraordinary coincidences that led to Mount Penny's new status as a significant geographical feature in New South Wales; however, the *modus operandi* of the players is the same. I refer to Fairfield City Council. On 13 November 2006 the *Sydney Morning Herald* exposed some dodgy relationships between a Labor mayor, a Liberal councillor, and a senior manager at Fairfield City Council. The Liberal councillor, Joe Molluso, was part of an elaborate scam to fraudulently obtain building licences. The Labor mayor, Nick Lalich, is the current member for Cabramatta. The senior manager, John Vuletich, was the head of development control at Fairfield. Rather than being servants of local—

**The Hon. Lynda Voltz:** Point of order: As the member knows full well, if he wants to make aspersions against a member of the other House he must do so by way of substantive motion in this House.

**The Hon. Dr Peter Phelps:** To the point of order: The member made no aspersions about the individual concerned. He simply related the fact that the member held a particular position in a particular council.

**The DEPUTY-PRESIDENT (The Hon. Jennifer Gardiner):** Order! There is no point of order. However, I ask the Hon. Charlie Lynn to be mindful of the standing orders in relation to adverse references to members of the other House.

**The Hon. CHARLIE LYNN:** I thought Labor would have learnt something about cover-ups. I first raised my concerns in regard to the political motivation behind Joe Molluso's ambush of Dai Le's endorsement as the Liberal candidate for Cabramatta for the last State election. I now have information that I will forward to the Independent Commission Against Corruption in regard to the circumstances surrounding her political ambush. Prior to the Liberal Party's endorsement meeting, which I chaired, Joe Molluso failed to declare that he had a controversial development application that required the support of Dai Le's political opponent Labor mayor Nick Lalich. Molluso also failed to declare that Nick Lalich and John Vuletich were fellow directors of Tojomi Investments, a shady development company, which was exposed in the *Sydney Morning Herald* article I referred to earlier.

**The Hon. Lynda Voltz:** Point of order: The reference to Nick Lalich, a member of the other Chamber, being a director of a shady company must certainly be an aspersion about a member of the other House. If the Hon. Charlie Lynn wishes to continue in that vein he should do so by way of substantive motion.

**The Hon. CHARLIE LYNN:** I retract the word "shady", Madam Deputy-President.

**The DEPUTY-PRESIDENT (The Hon. Jennifer Gardiner):** Thank you.

**The Hon. CHARLIE LYNN:** I have called on the Independent Commission Against Corruption to investigate the circumstances that led to the postponement of a scheduled council vote on Joe Molluso's residential-commercial development at 192 Canley Vale Road, Canley Heights, on 19 October 2010, and its convenient rescheduling to 23 November 2010—shortly after Molluso orchestrated Dai Le's political ambush. The Independent Commission Against Corruption was reminded that Councillor Molluso had previously advised it that he did not need or use the fake building licences he fraudulently obtained until they were cancelled when the fraud was exposed. I have requested that the Independent Commission Against Corruption investigate whether Councillor Molluso's company, Inbanco Pty Ltd, had utilised the fake building licences to get approval for the residential component of his development in 2002. The fake licences for both him and his company were registered to Molluso's business address in Liverpool. I have also requested that the Independent Commission Against Corruption investigate what role, if any, Mr Vuletich had in influencing the council staff to change their recommendation from non-approval prior to 19 October 2010 to approval on 23 November 2010.

Councillor Molluso was allowed to construct a duplex development on 397 square metres of land, which is in contravention of the council requirement of 450 square metres for such developments. I want the Independent Commission Against Corruption to investigate how the condition was waived in favour of Councillor Molluso's development approval. Why was Councillor Molluso's building the only building in the city of Fairfield that was approved for construction on a footpath without any setback and without any alignment to neighbouring properties? Why was he allowed a maximum floor space ratio of 61 per cent in contravention of council laws that permit only 50 per cent? Who approved the variation of 11 per cent, which is greater than the maximum variation allowed under delegated authority? The Independent Commission Against Corruption should ascertain who approved the subdivision and subsequent rezoning of the commercial component that provided Councillor Molluso with additional retail and mixed floor space.

I was advised that council authorised the occupation of all eight units of Councillor Molluso's building without an occupation certificate verifying that it complied with fire safety regulations. This is a serious breach of safety and governance that the Independent Commission Against Corruption should examine as part of its investigation. This building should never have been approved. Planning regulations require more than 20 car parking spaces for a three-level residential-commercial building of this type, but Councillor Molluso provided only nine. If the proper planning processes were enforced then Councillor Molluso would not have been permitted to build any of the eight units without providing the obligatory car parking spaces. If the value of each of those units is \$350,000 then Councillor Molluso has received a benefit of approximately \$2.3 million.

There are many other shonky aspects of Councillor Molluso's development that have been before the council for more than a decade. During this time he has lodged seven section 96 applications that have incrementally changed the entire nature of the application. All of them have had a litany of errors and non-compliance issues designed to provide special consideration for his development. I emphasise that all approvals for this shonky development took place during the previous term of local government when Fairfield City Council was effectively controlled by the former Labor mayor, Nick Lalich, which included two of his dodgy developer mates: Councillor Joe Molluso and the head of development control at Fairfield City Council, John Vuletich. [*Time expired.*]

**The Hon. Lynda Voltz:** Point of order: Given that the member's time has expired I will not pursue the point of order.

### CONSTITUTIONAL RECOGNITION OF INDIGENOUS AUSTRALIANS

**The Hon. SHAOQUETT MOSELMANE** [3.50 p.m.]: This month marked the birth of Islam's most revered human being, Prophet Mohammed. May peace be upon him. It is a momentous occasion that is celebrated by more than 1.5 billion Muslims worldwide. I had the pleasure of attending the celebration held by the United Islamic Association of Australia, where I addressed a gathering of new Australians, predominantly of Fijian Indian and subcontinent background. I began my speech with the usual greetings and acknowledgments. A look of curiosity appeared on faces of those in the audience as I acknowledged the rightful owners of the land: the Aboriginal people and their Elders, past and present. I paused and added that we ought to always acknowledge the original owners of this land who have cherished it for more than 50,000 years. The look of interest on people's faces turned into amazement as I spoke of the current debate on constitutional recognition of the rightful owners of the land. The people were amazed to hear that our advanced nation, which prides itself on the principles of democracy, liberty, fraternity and human rights, does not recognise the rightful owners of this land in its Constitution.

This amazement turned into astonishment when I noted it was only in 1967 that Australia's Aboriginal people were included in the national census and given the right to vote. It was not as if the ballot boxes were swamped with swags of Aboriginal votes that redrew the national political map. As of 30 June 2006, it was estimated that the Indigenous resident population of Australia was 517,200, or 2.5 per cent of the total population. This was hardly a figure that would provide a single quota to elect one Aboriginal person to our national Parliament. Constitutional recognition of Aboriginal Australians is now real and meaningful and no longer seen as a symbolic gesture. Noel Pearson stated:

This is much more than a question of symbolism, this is a question of national wellbeing and national identity. It's about coming to terms with who we are as a nation and deciding who we want to be in future.

With everyone's support, I feel once again a glimmer of hope for Aboriginal Australians. In hope, I share the views of our national leader, Ms Julia Gillard. She stated:

Constitutional reform will make us a better nation—more at peace with our past, and more confident and united as we face the future together.

For once I concur with the Federal Opposition Leader, Mr Tony Abbott, when he stated:

... it should be a unifying moment for Australia. It should be a healing moment for Australia.

I also agree with the views expressed by The Greens leader, Ms Christine Milne, when she stated:

What a great thing for Australia it would be if, at last, we recognised Australia's first people in our Constitution.

I also agree with Barnaby Joyce, the National Party leader in the Senate, when he stated:

I think we have a duty to do the right thing. So I'm encouraging you, as a person you know is pretty conservative, to move yourself to the position where we move this nation forward as one.

I hope at the next referendum our Aboriginal brothers and sisters are embraced and the nation is united in support of proper constitutional recognition of the original owners of the land. I hope we are genuine in taking this opportunity to work together to better treat and respect those who have cared for and lived on this land that we all love and cherish. I congratulate the Federal Parliament and hope that we can stand tall and united for a better future. In the words of Patrick Dodson, the father of reconciliation:

Recognition of the first people in the Constitution of a country starts to send a message that you are valued, you are important, that we want to respect you, and we want to deal with the things that have caused us division and discord in the past. I thank the House.

## HUMAN RIGHTS AND ANTI-DISCRIMINATION LEGISLATION

**The Hon. CATE FAEHRMANN** [3.55 p.m.]: I speak on the matter of the draft Human Rights and Anti-Discrimination Bill 2012, a move by the Commonwealth to consolidate Federal anti-discrimination legislation. As the current Federal anti-discrimination Acts—on sex, race, disability, age discrimination—and the Australian Human Rights Commission Act are set at different standards, have different definitions and contain different compliance rules, the Government has said that by consolidating the laws into a single Act the Government will ensure the highest current standards are consistently applied and enforced across all areas of public life, making these laws easier to understand. The bill is an important part of the Government's efforts to strengthen human rights and advance equality.

I commend the Federal Government for including prohibition of discrimination on the grounds of sexual orientation and gender identity for the first time at the Federal level. This is long overdue. It is extremely unfortunate that there has been a failure to extend protection to intersex Australians, those who are neither male nor female, based on their own and currently existing legal definitions. An intersex person may have the biological attributes of both sexes or lack some of the biological attributes considered necessary to be defined as one or the other sex. Intersex Australians still face some of the worst discrimination possible in their day-to-day lives. Gina Wilson, from Organisation Intersex International Australia, was recently quoted by Fairfax media. She stated:

Intersex people are generally considered to be freaks or weirdos. People stop and stare and point and look.

As intersex is poorly understood, people face daily difficulties, harassment and discrimination in the workplace, when receiving medical advice, and in the community. The Greens saw this review of anti-discrimination laws as an opportunity for genuine reform. While there are elements of the draft anti-discrimination bill that will result in positive steps forward for the nation, it is disappointing that the Government has fallen short of intersex inclusion.

It is also distressing that the Federal Government's draft bill has proposed that the majority of exemptions for faith-based groups remain. I was appalled to read the New South Wales Government's submission to the reform process, which advocates the continuation of all existing religious exemptions under the New South Wales Act. That submission argues in favour of religious schools that receive money from taxpayers being allowed to expel students and fire teachers based on their sexuality or gender identity. The submission argues that publicly funded hospitals run by churches should be allowed to fire the most qualified doctor based on their marital status, while they are pregnant or when they have committed adultery. In an opinion piece published on *The Vine*, Senthoran Raj clearly laid out the problem with the religious exemptions this Government is calling for. He stated:

If you receive public funding to provide community services you should not be entitled to discriminate. We need to differentiate between what is an inherently religious function and what is effectively public administration.

This issue goes beyond the provision of public services. A company—

**Reverend the Hon. Fred Nile:** The right of people's conscience.

**The Hon. CATE FAEHRMANN:** Your conscience, Fred. A company such as Sanitarium, which is recognised as a religious organisation owned and operated by the Seventh Day Adventist Church, is currently

allowed to discriminate on grounds of pregnancy, sexuality and other so-called moral objections. It is possible for Sanitarium to arbitrarily reject job applicants and fire existing staff based on grounds that would normally be ruled illegal under anti-discrimination laws.

This company has been reported to have a turnover of \$300 million a year, although the church is not required to lodge financial reports. That it is allowed to discriminate on grounds that are not allowable for other corporations is not acceptable to fair-minded, accepting Australians, the vast majority of whom celebrate diversity in the community. However, perhaps most outrageously of all, the New South Wales Government is asking in its submission that Commonwealth-funded aged care providers should continue to be able to refuse entry to sex and gender diverse seniors—one of the few positive steps towards removing exemptions contained in the consolidation bill. My view is that the majority of people in New South Wales will be disgusted to learn that the New South Wales Government is lobbying the Federal Government to maintain these last-century pacifiers to the far Right. We are in an age where a majority support full equality but we have senior Ministers advocating for cruel discrimination to continue unchecked.

This Government is bending over backwards to appease extreme elements of the Christian lobby, such as the Australian Christian Lobby. Its submission is more in line with the values of extremists such as Jim Wallace, the head of the lobby, than with the values of the people of New South Wales, who proudly celebrate diversity. Protecting freedom of religion is important, but it should not extend to allowing taxpayer-funded organisations to discriminate against people on the basis of their sexuality or gender. By pandering to the desires of the religious right this Government is turning its back on the majority of people in the State who support upholding the right to freedom from discrimination. The Premier should stand up to his Attorney General, who was once the President of the Right to Life Association, and demand that the New South Wales submission be withdrawn.

### AUSTRALIAN LABOR PARTY REFORMS

**The Hon. CATHERINE CUSACK** [4.01 p.m.]: A great deal has happened this summer: cyclones, bushfires and floods; the stock market surging into black and the Gillard Government's budget plunging even deeper into red. The O'Farrell Government Ministers have been opening new infrastructure and working on many more projects canyoning down the capital pipeline. However, one important area of reform eagerly awaited by the people of New South Wales is not in our power to deliver. It is up to the New South Wales Labor Party to action the internal reforms that have been repeatedly promised. Many former premiers and leaders have pledged to end the soap opera, to treat the New South Wales disease, to address what Senator John Faulkner calls "a Russian doll of nested caucuses that sees a tiny minority of members of Parliament exercising a controlling interest over the majority".

The *ouralp.net* website, which is subtitled "It's our ALP and we want it back!", is lobbying for the radical idea of giving ordinary Labor members and their branches a say in their party. It seems everyone in the Labor Party agrees—or at least they say they agree. Prime Minister Gillard has pledged reform, but over the break she stabbed one of her own Senators in the back and imposed her candidate against members' wishes. In his June 2011 blog, New South Wales General Secretary, Sam Dastyari, also threw his support behind a "path towards creating a stronger organisation where promotion through patronage is a thing of the past". Is that the same Sam Dastyari who organised the head office preselection to parachute his friend Walt Secord into Eddie Obeid's upper House seat while ordinary party members, locked out of the head office, protested on the street outside? Given the anger and protest surrounding this head office deal, described by one branch member as Eddie Obeid choosing his own successor, I found the remarks Mr Walt Secord made during his inaugural speech somewhat ironic:

A special thank you goes to Sam Dastyari, general secretary of the New South Wales ALP ... Sam, you have been a very good friend. Sam is now embarking on major reforms of the New South Wales branch of the Australian Labor Party. His proposed reforms are both courageous and necessary and I wholeheartedly support these measures.

A conga line of Labor leaders have unveiled bold six-point, 10-point and 20-point plans to rejuvenate their party and to address endemic corruption. It is media technique that echoes 16 years of transport master plans with nothing actually delivered. What is clear is that Labor is in the process of splitting into new groups. The fastest growing is the suspended members faction, founded by Milton Orkopoulos when he was arrested, charged and convicted of child sex offenses. Its influential membership includes union chief Michael Williamson, serving members of Parliament Craig Thomson and Eric Roozendaal, and former members Karen Paluzzano and Angela D'Amore. Former Ministers Ian Macdonald and Eddie Obeid are recent recruits. Not all suspended members like each other. For example, Mark Latham is unpopular, whereas Michael Costa is surrounded by old friends.

In opposition to the suspended members faction we have the absolutely horrified faction, founded by the Hon. Luke Foley, who is famously outraged, embarrassed and angered by just about everything to do with Labor. We also have the astonished faction led by Opposition Leader John Robertson. He had no idea his good friend Eddie may have been up to something dodgy. As a result the Independent Commission Against Corruption allegations have left him reeling with shock. Astonished faction members have fled the Terrigal and Centre Unity factions after belatedly realising Eddie Obeid was not putting them into Parliament simply because of their good looks. In the words of Mr Robertson: "I, like most people, can't believe the magnitude and the seriousness of these allegations."

The I-feel-sick caucus is home to right-wing unions under the leadership of Paul Howes, who summed up their position by stating, "The very possibility of Labor politicians behaving corruptly, as Eddie Obeid and Ian Macdonald are alleged to have done, makes me sick." The very disappointed group has been formed by the elites who relied on Eddie Obeid for their rise and in some cases their fall from power. Former Premier Kristina Keneally, who dedicated her career to promoting and defending almost all the members of the suspended members faction, now finds herself grappling with feelings of disappointment and even anger. Her faction includes Bob Carr, Morris Iemma and, strangely, Ian Macdonald. Although Mr Macdonald is officially a suspended member, he also told the Independent Commission Against Corruption he did not have a clue what his patron Eddie Obeid was up to and said that he now feels very personally let down. Frank Sartor, who has always wanted his own faction, has founded the Homer Simpson "Doh!" caucus. He has given evidence that Eddie Obeid offered him \$1 million to be paid when he retired, and that made him feel somewhat concerned. It was the Independent Commission Against Corruption hearings that caused the penny to finally drop.

I think I speak for the entire public when I say that any party that includes members who proudly declare themselves to be troglodytes is probably not the brightest cracker at the fireworks. However, are members opposite seriously asking us to believe that they are all so completely stupid? Our democracy urgently needs the establishment of a new honesty faction in the Labor Party to clear out the deadwood of spin doctors and hypocrites who are parachuted in to continue this sordid tradition of corruption.

#### **TRIBUTE TO MERVYN LESLIE HUNTER, FORMER MEMBER OF THE LEGISLATIVE COUNCIL**

**The Hon. LYNDA VOLTZ** [4.05 p.m.]: On his retirement from the New South Wales Parliament in 1991 Merv Hunter was father of the House. However, at the start of his political career he was, like many of his contemporaries, already old school. He was representative of a generation of Labor members from the working class for whom higher education was out of reach and remained the domain of the rich. He went from the workshop floor to represent his local community at both shire level, including as the president of the shire, and as the State member for Lake Macquarie.

Born the son of a train driver, Merv was educated at Adamstown Primary School, Newcastle Junior High School, Junee High School and Newcastle Technical College. He became an apprentice fitter and turner with the railways and worked at both Junee and Cardiff workshops. Later, he worked on the construction of the Wangi power station, which was built by the railways before the formation of an electricity commission. Merv, a member of the now Australian Manufacturing Workers Union, was a strong trade unionist, like his father. In 1969, he retired from the shire presidency to contest the election for the State seat of Lake Macquarie following the death of James Simpson, a former coalminer who had held the seat since its constitution. When Merv was elected as the member for Lake Macquarie in 1969 swathes of the area was without sewerage, decent roads or footpaths. The West Wallsend Colliery was under construction and the Nine Mile Beach dunes were still being mined for rutile.

In those days members of Parliament did not have an electorate office or secretaries, and meetings with constituents were held in their home or the town hall. Even though Merv was the local member, he was part of a team; the other half of which was Betty. Rod Cavalier told me that his best memory of Merv was when he was dressed up to the nines and he suggested that Merv behave himself. Merv retorted that he always had his handcuffs with him, that Betty would be by his side. Indeed, it is how I always think of Merv—making sure Betty was okay and always by his side.

The Hunter members of Parliament were particularly close and not only shared rooms at Parliament House but also travelled to Sydney on the Newcastle train and enjoyed camaraderie. Merv shared a room with his good mate Ken Booth. Merv was a crucial lynchpin for the Hunter members and part of the group that delivered the leadership of the party to Neville Wran. As Mike Steketee made the point in his book, "an important element in Wran's success was the Newcastle vote". Stories are still told of the barbeque built by Jack

Ferguson with Merv's assistance at Ken Booth's house. The purpose of the barbeque was to hold a gathering to secure the Hunter numbers for Neville for the leadership ballot. The ballot was also contested by Pat Hills and Kevin Stewart. The ballot was tied 22 to 22 after the distribution of preference from Kevin Stewart. Because Wran received a larger number of primary votes—18 votes to Pat Hill's 17 votes—he was declared elected. Steketee got it wrong in his portrayal of the Newcastle members as belonging to the Left. That was more an accident of history than a deep-seated ideology. To a person they fell within the conservative mainstream of the New South Wales Labor Party.

Many of Merv's former colleagues have spoken of his loyalty to the Left and it was no accident of history that Merv was closely aligned with Jack Ferguson and Ken Booth. The Left was an ideological force whose policies were reflected in many of Merv's speeches and he was vehemently opposed to control of the party by the groupers. One thing is undisputed about Merv Hunter and that is his love of Lake Macquarie. In his inaugural speech he said:

One does not have to yield to egotism to expound on the natural beauty of Lake Macquarie. This is a feature that can surely be spoken of with complete impartiality and devoid of political considerations.

From the start of his parliamentary career, Merv argued for the purchase of land to preserve for all time the natural environment from the rape of developers. The impact of development and its impact on ratepayers in the Lake Macquarie area was a constant theme to Merv's career. They do not make politicians of the ilk of Merv Hunter anymore. We live in a wealthier nation that no longer waits for the footstep of the dunny man or has to fight to ensure that teachers have classrooms in which to teach children, as Merv had to do. But much of Merv's legacy lives on: the fight to protect the local environment; affordable housing with social infrastructure for local youth; and training for a skilled workforce. Whilst Merv has been described to me variously as a "scallywag who loved a joke" and "a loyal friend and leftie", he was undisputedly a fighter for his local community and a true believer.

#### KURT COBAIN

**The Hon. Dr PETER PHELPS** [4.09 p.m.]: In the short time remaining I note that this is the forty-sixth anniversary of the birth of Kurt Cobain. In that regard I will say these few words:

*With the lights out, it's less dangerous  
Here we are now, entertain us  
I feel stupid and contagious  
Here we are now, entertain us*

*A mulatto, an albino  
A mosquito, my libido  
Yeah, hey, yay*

[Time for debate expired.]

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

**Motion agreed to.**

**The House adjourned at 4.10 p.m. until Tuesday 26 February at 2.30 p.m.**

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