LEGISLATIVE COUNCIL

Wednesday 19 March 2014

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

The President read the Prayers.

DISTINGUISHED VISITORS

The PRESIDENT: I welcome to the public gallery a delegation from the Gyeonggi Provincial Assembly Secretariat, Republic of Korea, led by Jin Ho Lee, the Secretary-General. I hope you enjoy the program we have put together in the Parliament of New South Wales today.

CRIMINAL ASSETS RECOVERY AMENDMENT BILL 2014

MINING AND PETROLEUM LEGISLATION AMENDMENT BILL 2014

Bills received from the Legislative Assembly, and read a first time and ordered to be printed on motion by the Hon. Duncan Gay.

Motion by the Hon. Duncan Gay agreed to:

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

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

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

VIEW CLUBS OF AUSTRALIA INTERNATIONAL WOMEN'S DAY LUNCHEON 2014

Motion by the Hon. MARIE FICARRA agreed to:

(1) That this House notes that:

(a) on Thursday 6 March 2014 VIEW Clubs of Australia held a luncheon at New South Wales Parliament House in support of International Women's Day;

(b) VIEW stands for the Voice, Interests and Education of Women and is a leading women's volunteer organisation and support network that empowers women to have their voices heard on issues of importance for the future wellbeing of the Australian society;

(c) VIEW provides women with the opportunity to meet regularly with other women from all walks of life, establish lasting friendships and help disadvantaged Australian children through supporting the work of children's charity, the Smith Family;

(d) VIEW continues to hold a unique place in society as the only national women's organisation solely focused on supporting and advocating for young disadvantaged Australians in need;

(e) VIEW members actively raise funds, sponsor Learning for Life students and volunteer in their communities to support the work of the Smith Family, helping young Australians in need to build better futures for themselves by providing long-term support for their education;

(f) in New South Wales there are 213 VIEW clubs with 9,987 members who sponsor 511 Learning for Life students;

(g) over the past 54 years VIEW has grown to a national membership of more than 18,000 women drawn from all parts of Australia in the predominately 40-plus age group, and VIEW members live and work in 353 Australian communities with 60 per cent of members living in regional and rural areas;

(h) each year VIEW members contribute more than 50,000 hours of their time and talents to support disadvantaged students, raise in excess of $1 million annually and sponsor 1,082 disadvantaged children through the Smith Family's Learning for Life suite of programs that aim to break the cycle of disadvantage; and members read with local children to advance their literacy skills, help children with homework at Smith Family after school Learning Clubs, act as mentors for students, make library bags, donate school stationery packs for use at home and school, and fundraise for the Smith Family's Toy and Book Appeal at Christmas time;

(i) keynote speakers at the event included:

(i) the Hon. Shelley Hancock, MP, Speaker of the Legislative Assembly and member for South Coast, as host;

(ii) the Hon. Pru Goward, MP, Minister for Family and Community Services, and Minister for Women;

(iii) the Hon. Victor Dominello, MP, Minister for Citizenship and Communities, and Minister for Aboriginal Affairs;

(iv) Dr Lisa O'Brien, Chief Executive Officer, the Smith Family;

(v) Mr Rodney Williams, Program Coordinator Learning for Life, the Smith Family; and

(vi) Mr Trent Hunter, Learning for Life student; and

(j) dignitaries who attended the event included:

(i) the Hon. Marie Ficarra, MLC, Parliamentary Secretary to the Premier of New South Wales;

(ii) the Hon. Amanda Fazio, MLC, Opposition Whip in the Legislative Council;

(iii) Mrs Leslie Williams, MP, member for Port Macquarie;

(iv) Mrs Roza Sage, MP, member for Blue Mountains; and

(v) Dr Mehreen Faruqi, member of the Legislative Council.

(2) That this House:

(a) congratulates and commends VIEW for its outstanding work in the community supporting disadvantaged children over the past 54 years;

(b) acknowledges and commends VIEW National Vice President Ms Lyn Gerstenberg; VIEW National Vice President Ms Sue Field, who acted as MC at the event; the Smith Family Chief Executive Officer, Dr Lisa O'Brien; and VIEW National Manager, Maryanne Maher for their organisation of the event; and

(c) acknowledges the contribution of keynote speakers the Hon. Shelley Hancock, MP; the Hon. Pru Goward, MP; the Hon. Victor Dominello, MP; Dr Lisa O'Brien; and Mr Trent Hunter.

ST MARY MACKILLOP REINTERMENT 100TH ANNIVERSARY

Motion by the Hon. GREG DONNELLY agreed to:

(1) That this House notes:

(a) on 28 January 2014 the Sisters of St Joseph conducted a special vigil prayer service in North Sydney to mark the 100th anniversary of the reinterment of Mary MacKillop from Gore Hill Cemetery to the Memorial Chapel named in her honour;

(b) Mary MacKillop established the Congregation of the Sisters of St Joseph in March 1866, she died in August 1909 and was canonised as a saint of the Catholic Church on 17 October 2010;

(c) Mary MacKillop and the other women who joined the congregation established a number of schools for poor children; and

(d) other work undertaken by the Sisters of St Joseph has included providing accommodation for destitute women, running an orphanage and building housing for the poor.

(2) That this House further notes:

(a) Sr Anne Derwin, RSJ, Congregational Leader of the Sisters of St Joseph officiated at the service;

(b) guests at the service included Her Excellency Professor the Hon. Marie Bashir, Governor of New South Wales; Sir Nicholas Shehadie; Most Rev. Terry Brady, Auxiliary Bishop of Sydney; Lady Mary Downer and Mrs Zenia Hone, both descendants of Joanna Barr-Smith who was a close friend of Mary MacKillop; Senator Deborah O'Neill; the Hon. Greg Smith and Mrs Smith; the Hon. Greg Donnelly; Professor Greg Craven, Vice Chancellor, Australian Catholic University and Mrs Craven; Professor Marea Nicholson, Associate Vice-Chancellor, Australian Catholic University; and Sr Annette Cuncliffe, MSC, President of Catholic Religious Australia; and

(c) also in attendance were a number of nuns, friends and benefactors.

(3) That this House acknowledges and congratulates the Sisters of St Joseph on organising the special vigil prayer service and thanks them for their ongoing work in communities across New South Wales and elsewhere in Australia;

DIVERSE AUSTRALASIAN WOMEN'S NETWORK

Motion by the Hon. MARIE FICARRA agreed to:

(1) That this House notes that:

(a) on Friday 7 March 2014 the Diverse Australasian Women's Network [DAWN] held a celebration in honour of International Women's Day at Doltone House;

(b) DAWN, the first group of its kind in Australia, is a network aimed towards Australian Asian women who are professionals and entrepreneurs in their field;

(c) DAWN is a space where Australian Asian women can gather to seek and provide mentorship, and where they can educate and inform themselves on issues that are important to them;

(d) DAWN creates a platform where women can share their personal and professional journeys in a culturally supportive environment;

(e) most members of DAWN grew up in south-west Sydney, and have either refugee or migrant backgrounds;

(f) speakers at the event included:

(i) the Hon. Marie Ficarra, MLC, Parliamentary Secretary to the Premier;

(ii) Ms Marina Go, Chief Executive Officer of Private Media (Crikey and Women's Agenda);

(iii) Dr Angeline Low, Childfund Australia;

(iv) Ms Lisa Cartwright, Executive Manager, Business Service and Sales, Commonwealth Bank of Australia;

(v) Ms Wendy El-Khoury of Wedded Wonderland; and

(g) sponsor of the event was the New South Wales Trustee and Guardian.

(2) That this House:

(a) congratulates and commends DAWN for its efforts to provide mentorship and inclusion in a socially diverse environment to professional and entrepreneurial Australian Asian women; and

(b) acknowledges and commends the management committee of DAWN for its outstanding work, which includes Councillor Dai Le, founder and chair; Ms Katrina Le, treasurer; Ms Jeanne Chan, honorary secretary; Ms Melinda Boutkasaka, social media and public relations officer; and committee members Ms Tiana Tran, Ms Serena Huynh, Ms Connie Nguyen, Ms Maggie Yie-Quach and Ms Sue Lee-Lim.

TRIBUTE TO WENDY HUGHES

Motion by the Hon. JAN BARHAM agreed to:

(1) That this House notes that:

(a) Wendy Hughes was born on 29 July 1952 in Melbourne;

(b) she had early training in classical ballet but became an actress after moving to Sydney and studying at the National Institute of Dramatic Art, graduating in 1970;

(c) she had early roles in television series such as *Homicide* from 1967, *Power Without Glory*, *Matlock Police*, *Lucinda Brayford* and the television saga *Snowy River* and more lately in her extended role in *State Coroner*; her most recent appearance was in *Miss Fisher's Murder Mysteries*;

(d) Wendy also worked in Los Angeles for a number of years including in *Star Trek* and had an extended role in *Homicide: Life on the Street* (1993);

(e) Wendy Hughes was a theatre actress of great standing, appearing for all the major theatre companies in Australia, often for the Melbourne Theatre Company; she was notable in Edward Albee's *The Goat* and excelled in classics such as *Sweet Bird of Youth* in 2002 and *Who's Afraid of Virginia Woolf*; she played Mrs Robinson in *The Graduate*, the lead role in *Honour* in 2010 and most recently appeared in *Pygmalion* in 2012 for the Sydney Theatre Company;

(f) she became well regarded for her work in the renaissance of the Australian film industry with roles in films such as *Petersen*, *My Brilliant Career*, *Newsfront* and the long-running internationally successful *Lonely Hearts*, working both here and abroad;

(g) Wendy Hughes also became an independent film producer and writer;

(h) Wendy was a very talented performer and was nominated six times for Australian Film Institute awards, with her most notable success as winner of the Australian Film Institute award for best actress in 1983 for her leading role in the film *Careful, He Might Hear You*; and

(i) she passed away on 8 March 2014 aged 61.

(2) That this House acknowledges her outstanding contribution to the arts and extends its condolences to her two children, her siblings, and many friends and admirers.

BLUE MOUNTAINS CANCER HELP INC.

Motion by the Hon. MARIE FICARRA agreed to:

(1) That this House notes that:

(a) the Blue Mountains Cancer Help Inc. [BMCH] is a local charitable organisation supporting people affected by cancer in the Blue Mountains, Nepean and Hawkesbury areas;

(b) BMCH Inc. is unique in New South Wales in that it is the only community-based organisation offering subsidised therapies;

(c) BMHC Inc. provides support to people diagnosed with cancer, families and carers of people diagnosed with cancer; offers support in the provision of evidence-based complementary therapies that can relieve and alleviate side effects of treatments including oncology massage, lymphatic drainage, reflexology, reiki, acupuncture, individual and family counselling, art therapy, the Living Well with Cancer program and regular support groups, and BMCH Inc. works with other cancer-related groups within three local government areas;

(d) In 2012-13, 2,916 total therapies, including groups and initial client assessments, were provided, which can be broken down into:

(i) 43 per cent for massage;

(ii) 16 per cent for lymphatics management;

(iii) 15 per cent for groups;

(iv) 9 per cent for reflexology;

(v) 6 per cent for acupuncture;

(vi) 3 per cent assessments;

(vii) 2 per cent for reiki;

(viii) 2 per cent for bowen;

(ix) 2 per cent for counselling; and

(x) 2 per cent relating to other therapies.

(e) a research project is currently being undertaken to evaluate the model of care provided to BMCH Inc. clients through the Nepean-Blue Mountains Medicare Local, the University of Western Sydney and the local health district, which will be completed in June 2014.

(2) That this House:

(a) acknowledges the Blue Mountains Health Trust, set up by Mary and Harry Hammon and Maurice Cooper, OAM, who were also major contributors to the setup of BMCH Inc in 2005; and

(b) acknowledges and commends the BMCH Inc. board for its outstanding service to the community, including Robyn Yates; Bob Reid, OAM; Christine Killinger; Annette Barron; Bob Yates; Kerry Fryer and Kevin Stapleton.

AUSTRALIAN HUMAN RIGHTS COMMISSION "EQUAL BEFORE THE LAW" REPORT

Motion by the Hon. JAN BARHAM agreed to:

(1) That this House notes the Australian Human Rights Commission's release in February 2014 of the report "Equal Before the Law: Towards Disability Justice Strategies".

(2) That this House acknowledges Disability Discrimination Commissioner Graeme Innes's opening remarks from the report in which he states, "Whether a person with disability is the victim of a crime, accused of a crime or a witness, they are at increased risk of being disrespected and disbelieved and of not enjoying equality before the law."

(3) That this House notes that in 2013 the Australian Human Rights Commission conducted a wide-ranging consultation process to identify how people with disabilities deal with barriers to equality before the law, meeting with people with disabilities and their advocates, support services in the community and in government, and people in the police and courts, and in the custody and release system.

(4) That this House particularly notes that the consultation process revealed:

(a) the inability to access effective justice compounds disadvantages experienced by people with disabilities;

(b) many people with disabilities are left without protection and at risk of ongoing violence;

(c) people with disabilities experience a relatively high risk of being jailed and are then likely to have repeated contact with the criminal justice system;

(d) many offenders with disability have themselves been victims of violence and this had not been responded to appropriately, contributing to a cycle of offending;

(e) there is widespread difficulty identifying disability and responding to it appropriately;

(f) necessary supports and adjustments are not provided because the need is not recognised;

(g) when a person's disability is identified, necessary modifications and supports are frequently not provided;

(h) people with disabilities are not being heard because of perceptions they are unreliable, not credible or incapable of being witnesses;

(i) erroneous assessments are being made about the legal competence of people with disabilities;

(j) styles of communication and questioning techniques used by police, lawyers, courts and custodial officers can confuse a person with disability;

(k) appropriate diversionary measures are underutilised, not available or not effective due to lack of appropriate supports and services; and

(l) people with disabilities are less likely to get bail and more likely to breach bail because they have not understood the bail conditions.

(5) That this House acknowledges that the commission has formed the view that, "each jurisdiction in Australia should develop an holistic, overarching response to these issues through a Disability Justice Strategy."

(6) That this House further notes that:

(a) the report recommends that a Disability Justice Strategy should focus on the following outcomes:

(i) safety of people with disabilities and freedom from violence;

(ii) effective access to justice for people with disabilities;

(iii) non-discrimination;

(iv) respect for inherent dignity and individual autonomy including the freedom to make one's own decisions;

(v) full and effective participation and inclusion in the community; and

(b) a Disability Justice Strategy should have a core set of principles and include fundamental actions that address:

(i) appropriate communications—communication is essential to personal autonomy and decision-making, and securing effective and appropriate communication as a right should be the cornerstone of any Disability Justice Strategy;

(ii) early intervention and diversion—early intervention and wherever possible diversion into appropriate programs can both enhance the lives of people with disabilities and support the interests of justice;

(iii) increased service capacity—increased service capacity and support should be resourced appropriately;

(iv) effective training—effective training should address the rights of people with disabilities and prevention of and appropriate responses to violence and abuse, including gender-based violence;

(v) enhanced accountability and monitoring—people with disabilities, including children with disabilities, are consulted and actively involved as equal partners in the development, implementation and monitoring of policies, programs and legislation to improve access to justice; and

(vi) better policies and frameworks—specific measures to address the intersection of disability and gender should be adopted in legislation, policies and programs to achieve appropriate understanding and responses by service providers.

(7) That this House congratulates Graeme Innes and his team at the Australian Human Rights Commission on the extensive and important work that is reflected in this report.

PETITIONS

National Broadband Network at Bungendore

Petition calling on the Government to request the Federal Government to ensure that households in Bungendore are not left on the wrong side of the digital divide by insisting on full implementation of the Labor Government's National Broadband Network, received from the **Hon. Steve Whan**.

BUSINESS OF THE HOUSE

Postponement of Business

Business of the House Notice of Motion No. 1 postponed on motion by the Hon. Luke Foley and set down as an order of the day for a future day.

Business of the House Notice of Motion No. 2 postponed on motion by Dr John Kaye and set down as an order of the day for a future day.

BUSINESS OF THE HOUSE

Suspension of Standing and Sessional Orders: Order of Business

Motion by the Hon. Adam Searle agreed to:

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 1717 outside the Order of Precedence, relating to an order for papers regarding documents from the office of the former Minister for Finance and Services, and Minister for the Illawarra, be called on forthwith.

Order of Business

Motion by the Hon. Adam Searle agreed to:

That Private Members' Business item No. 1717 outside the Order of Precedence be called on forthwith.

FORMER MINISTER FOR FINANCE AND SERVICES DOCUMENTS

Production of Documents: Order

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [11.19 a.m.]: I seek leave to amend Private Members' Business item No. 1717 outside the Order of Precedence as follows:

(1) Omit "within 21 days" and insert instead "within 28 days"

(2) Omit paragraph (a) and insert instead:

(a) all documents retrieved from the office of the former Minister for Finance and Services, and Minister for the Illawarra, the Hon. Greg Pearce, MLC, on or after 1 August 2013 that are contained in 75 boxes that do not contain Cabinet information, office administration or personal files of the former Minister;

Leave granted.

Accordingly, I move:

That, under Standing Order 52, there be laid upon the table of the House within 28 days of the date of passing of this resolution the following documents created since 1 April 2011 in the possession, custody or control of the Premier or the Department of Premier and Cabinet:

(a) all documents retrieved from the office of the former Minister for Finance and Services, and Minister for the Illawarra, the Hon. Greg Pearce, MLC, on or after 1 August 2013 that are contained in 75 boxes that do not contain Cabinet information, office administration or personal files of the former Minister;

(b) all documents relating to the application made by the Hon. Walt Secord, MLC, on 8 August 2013 under the Government Information (Public Access) Act 2009 seeking access to the government information retrieved from the office of the former Minister for Finance and Services, and Minister for the Illawarra, the Hon. Greg Pearce, MLC, on or after 1 August 2013; and

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

The Hon. DUNCAN GAY (Minister for Roads and Ports) [11.20 a.m.]: I thank the Deputy Leader of the Opposition for the amendment to remove personal notes. In normal circumstances during this administration and the previous administration when a Minister ceases to be a Minister the files are seized and destroyed. We are a government of credibility. When the Hon. Greg Pearce ceased to be a Minister a request for information was made under the Government Information (Public Access) Act [GIPA] and because the request was in place we did not destroy the material that would normally have been destroyed. Ever the opportunists, believing there was no credibility in their request under the Government Information (Public Access) Act and having the numbers in this House, Opposition members have taken the opportunity to make a request under Standing Order 52. Only a couple of weeks ago the Opposition transport spokesperson came into the House and said, "We got 400 boxes full of rubbish."

The Hon. Lynda Voltz: That's not what she said.

The Hon. DUNCAN GAY: *Hansard* will show that is what she said and yet she has made another Standing Order 52 request this morning.

The Hon. Penny Sharpe: Point of order: My point of order is relevance. The Minister is not speaking to the motion, which is about this call for papers and not past calls.

The ASSISTANT-PRESIDENT (Reverend the Hon. Fred Nile): Order! The Minister will return to the leave of the motion.

The Hon. Penny Sharpe: He is canvassing the decision of the House too.

The Hon. DUNCAN GAY: I was not canvassing a decision of this House. If members opposite want to keep making these statements, I have to be in a position to correct the record. The statement was made. I am talking about the consistent and continuing call for papers. Each day another request is made under Standing Order 52. We oppose this request. While we appreciate the appropriate amendment, we note that a total of 93 boxes were retrieved from the office of the Hon. Greg Pearce. Of these, 18 boxes do not contain government information within the meaning of the Government Information (Public Access) Act. That means that 75 boxes appear to contain government information.

When they determined the number of resources required to process the 75 boxes in response to the Government Information (Public Access) Act application, which will be the same for the Standing Order 52 request, staff from the Department of Premier and Cabinet had to carry out the following steps: one, select a box from the 46 categorised as departmental briefs and meeting notes; two, review all the documents in the box, counting the number of documents and pages; three, determine the context and content of each document; and four, make a preliminary estimate in respect of each document as to whether it would be necessary to consult with another department or branch of government or a third party pursuant to section 54 of the Act.

Based on this exercise, the number of documents contained in the box was 318. Of these, 168 were assessed as being likely to require consultation with a third party. The approximate number of individual pages in the box was 2,880. Of these, 1,461 were assessed as being likely to require consultation with third parties. This means that from the 75 boxes there are approximately 25,040 pages that contain government information and approximately 13,440 that would require consultation with a third party. Why am I telling members this? Because it is about time that we process the cost involved. The Department of Premier and Cabinet conservatively estimates that processing this application would take 4,194 hours and 40 minutes, which equates to 599 days at seven hours a day. The standard cross-departmental cost of that is $30 an hour. If we do simple maths on this Standing Order 52 request the cost comes to $125,790.

Through a politically opportunistic circumstance of having the numbers in this House, the Opposition is fast and loose with the resources of this State and the time of bureaucrats. It will take $125,790 to process this request and they are bringing in two a day at the moment. When we tell them that they are asking for information that is not needed they are likely to come into this House and say, "We got 400 boxes of rubbish." It will costs the State hundreds of thousands of dollars and the time of bureaucrats who could be working for better trains, roads, hospitals and police and fixing the Opposition's legacy of neglect. We appreciate the amendment but we oppose the motion before the House.

Mr DAVID SHOEBRIDGE [11.27 a.m.]: On behalf of The Greens I speak in debate on the Standing Order 52 request for documents. The Greens note the amendments that, as I understand, have been negotiated

with the Government to narrow this call. Without those amendments this motion could have looked very much like a personal vendetta against an individual, and that would not have the support of The Greens in any call for papers. I understand there are issues of broader policy and public administration, particularly related to paragraph (b) of the motion. We require the Hon. Adam Searle to clarify on record the purpose of paragraph (b) so that the House and the public can understand the intent of this call for papers. Absent that kind of clear explanation on the record from the Hon. Adam Searle, there are difficulties with the motion as drafted. I look forward to a clarification on the record, and if that indicates a need for public access to documents that shine a light on what is informed government policy and government decisions The Greens will support the motion. However, we require that clarification on the record from the Hon. Adam Searle.

The Hon. PAUL GREEN [11.29 a.m.]: I concur with Mr Shoebridge; it is not very clear why these papers are requested. The Christian Democratic Party has always been very mindful of the resources that are taken up to answer such calls for papers, and the need for the information to be made available should be clarified. We are mindful that there are times when parties go fishing for information and there are times when there are accountability issues. We are certainly not of the view now that there is a valid argument for this call for papers. Therefore, we will not be supporting the motion.

The Hon. GREG PEARCE [11.30 a.m.]: I put on the record my position with regard to this matter. Whilst I appreciate that the Government has made a decision to oppose this motion, personally I have no objection to any of the material relating to my time as a Minister being made public—subject to the normal rules of confidentiality that apply to Cabinet documents and so on. Most members of this House will know that I was one of the most vocal promoters of any public policy that I wanted to engage in, and I am very proud of the record that I had.

There is a small segment of the press that engages in defamation, misrepresentation and lies and if this is some stunt to feed that part of the press I will be very disappointed. I do not think many members of this House engage in those stunts, but there is at least one. The material will show that I was a very busy, reforming Minister and I spent a great deal of time engaging with constituents and interested parties, as did all of my staff. On the day of my termination as a Minister I was in Shellharbour. As Minister for the Illawarra I spent a considerable amount of time with the constituents in the Illawarra. After I received the call from the Premier I did not return to my office and I have never been back since.

I have been told that the Department of Premier and Cabinet and security forces moved into my office within a few minutes—a bit faster than the Russians into Crimea—and my staff were very poorly treated. But in the period that the staff were allowed to tidy up their offices, everything they did was under the direct supervision of the Department of Premier and Cabinet staff and security and was done in accordance with longstanding rules as to what happens when a Minister ceases to be a Minister. I am assured by other members that the same Gestapo tactics also applied to Ministers in the former Government.

Like all Ministers, my office was subjected to a series of requests under the Government Information (Public Access) [GIPA] Act 2009. My office freely and completely responded to all of those requests during the period when I was a Minister and the Government completed the answer to the outstanding request under the Government Information (Public Access) Act 2009 after I had left. Those requests under the Government Information (Public Access) Act 2009 covered everything from travel to meetings with lobbyists and taxi fares. What they did not cover, of course, were the very long and thankless hours that my staff worked in the office and the abusive telephone calls and all the other things that ministerial staff of all persuasions have to put up with.

I have not had an opportunity publicly to say how grateful I am to my staff for the effort they made. This sort of defamatory attack on them is uncalled for, unprofessional and completely unwarranted. The only other thing I should add, other than being very proud of the work we did, is that yesterday we talked about key performance indicators. If this matter goes forward I hope that the people in the Labor Party who are responsible for preselections apply this as a key performance indicator to Walt Secord, because if he wants to continue with this sort of defamatory, misleading and lying behaviour he should be measured against it.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [11.35 a.m.], by leave: I assure members of this House that this Standing Order 52 request is not in any way intended to be a personal attack on or a denigration of the former Minister, the Hon. Greg Pearce. I would be the first person to acknowledge that the Hon. Greg Pearce was, indeed, a very active Minister—in fact, one of the most active and successful Ministers in this administration. This side of the House did not support any of the reform measures he pursued—we think they were all misconceived and wrong—but we did acknowledge that he was very ideologically and otherwise driven to deliver for his administration.

Mr David Shoebridge: He did much too much too young.

The Hon. ADAM SEARLE: He did much too much. As I said, we did not support those reforms. We acknowledge that political office often involves long hours, hard work and few thanks. But this is not an attack on the Hon. Greg Pearce or his former office; this is a legitimate inquiry for information. The information that is sought, at least in part, is because we know that some of the materials subject to the call for papers relate to law reform proposals from third parties that were made to the Minister and his office and we think that the access and reading of those documents will shed some light on the decision-making processes of this administration and on the reform measures that it pursued and those it did not. I cannot put it any more highly than that. It is the information that is being sought, not any personal detail or any other angle.

Mr David Shoebridge: Explain paragraph (b) of the motion as well.

The Hon. ADAM SEARLE: Paragraph (b) is a usual inquiry about any documents that are generated as a result of a request.

Mr David Shoebridge: Relating to the application.

The Hon. ADAM SEARLE: Which related to the application.

Dr John Kaye: No, it does not; it relates to a separate application.

The Hon. ADAM SEARLE: It does not relate to this application, it relates to the application under the Government Information (Public Access) Act 2009 that is made, and that is relevant because the Opposition feels that the Government has used stalling tactics in relation to processing that application. That application has been refused. The government agency concerned has refused to even process the application. I will come to that because the Hon. Duncan Gay has put onto the record certain logistical materials. The person who is the source of those materials has no personal knowledge of these matters and those materials are offered up second and third hand. Apart from the fact that this information was provided to her by unnamed departmental officers—

The ASSISTANT-PRESIDENT (Reverend the Hon. Fred Nile): Order! The member will address his comments through the Chair.

The Hon. ADAM SEARLE: I apologise. Apart from the fact that this information is provided second and third hand by unnamed departmental officers, the source of that information and the assertions made by the Hon. Duncan Gay are unverifiable and untestable. That is why paragraph (b) is included in the motion. As to the precise concern raised by Mr David Shoebridge—

The Hon. Duncan Gay: My comments were not on paragraph (b); they were on the cost of processing an order under Standing Order 52.

The Hon. ADAM SEARLE: I understand that. The information that the Minister—

The Hon. Duncan Gay: I am happy to talk on paragraph (b) if you would like me to do that. But I did not talk to that paragraph.

The Hon. ADAM SEARLE: The information which the Minister relied upon—

The Hon. Lynda Voltz: Point of order: Mr Assistant-President, as you have noted, all comments should be directed through the Chair. It is very difficult for the member to respond to issues raised if other members continually interject.

The ASSISTANT-PRESIDENT (Reverend the Hon. Fred Nile): Order! The Deputy Leader of the Opposition may proceed.

The Hon. ADAM SEARLE: I am not entirely sure what the query is in relation to paragraph (b). Paragraph (b) relates to documents generated in response to the Government Information (Public Access) Act application, which we say was unreasonably frustrated, hence where we are today. But in relation to the substantive query that was raised earlier regarding concerns about the underlying purpose of this resolution, paragraph (a) seeks access to the policy documents which are caught up in the call for papers. Paragraph (b)

relates to other documents which, we apprehend, may have been generated within the Government as part of frustrating that Government Information (Public Access) Act process. The information that the Minister has relied upon—the great cost and impact of processing the information—is information that is asserted but which is not able to be verified or tested; and we say it is an exaggeration, because there is no way of knowing whether the one box which the Minister referred to is an exemplar box and whether the processing impacts that the Government apprehends in fact will flow in that way, because—

The Hon. Duncan Gay: Well, it was a public servant that chose one at random.

The Hon. ADAM SEARLE: I understand that. But there is no way of verifying that it is an exemplar box.

The Hon. Duncan Gay: You cannot put misdeeds into the head of a public servant.

The Hon. ADAM SEARLE: I am not suggesting anything. I am just saying the information—

The Hon. Duncan Gay: Well, you are suggesting.

The Hon. ADAM SEARLE: —is not able to be verified.

Dr JOHN KAYE [11.41 a.m.], by leave: We maintain some concerns about paragraph (b). We understand paragraph (a), and we particularly acknowledge the contribution of the Hon. Greg Pearce. The reasons for it were well explained by the Deputy Leader of the Opposition. We do not see a strong argument behind paragraph (b). On the other hand, I do understand that there is frustration when government departments seek to unreasonably delay and unreasonably create barriers against Government Information (Public Access) Act applications. One of our concerns is with the words "relating to". I therefore move:

That the question be amended by omitting in paragraph (b) the words "relating to" and inserting instead "generated as a result of".

Mr David Shoebridge: Not to the subject of the Government Information (Public Access) Act application.

Dr JOHN KAYE: It is not to the subject of the Government Information (Public Access) Act, but to the process. So the intent is to capture the process of the Government Information (Public Access) Act application rather than the subject of the application.

The Hon. TREVOR KHAN [11.42 a.m.], by leave: I will assist the House on some matters that have already been raised with regard to the allegation of some form of lengthy delay in the processing of the Government Information (Public Access) Act application, which seems to have been quite justifiably a matter of concern. I am advised that on 7 August 2013 the Hon. Walt Secord applied to the Department of Premier and Cabinet for access to all records stored or contained in bins seized and/or retrieved from the office of former Minister Pearce on or after 1 August 2013, and to information detailing the number of bins requested by and provided to former Minister Pearce on 1 August 2013, and to the number of bins seized and retrieved. On 4 September 2013—that is, approximately a month later—the Deputy General Counsel of the Department of Premier and Cabinet wrote to the Hon. Walt Secord confirming the number of bins and indicating in connection with one, that is, all records stored et cetera, that it would require an unreasonable and substantial diversion of resources to process the application, and requesting the Hon. Walt Secord to narrow the scope of his application. We have already heard of the number of bins involved.

On 17 October the Department of Premier and Cabinet gave further reasons as to why this was a substantial diversion of resources, and confirmed the scope of the application should be narrowed. Members on both sides of this House would understand that this is the normal process that is gone through to try, in a sense, to narrow down what a member is seeking in any Government Information (Public Access) Act application; otherwise, as is so often the case, they are worded in such broad terms that one ends up with quite frightening outcomes. On18 October—the day after the Department of Premier and Cabinet had sought the narrowing of the scope of the application—the Hon. Walt Secord disagreed with the reasons for denying access and claimed that the Department of Premier and Cabinet was hiding behind this reason for denying access. Again, I simply refer all members to the amount of material that seems to be acknowledged has been seized.

The Hon. Duncan Gay: And, finally, the narrowing of the scope.

The Hon. TREVOR KHAN: Yes. Then on 21 October—so, again, in quite rapid order—despite attempts at narrowing the scope, the Deputy General Counsel, who is known to both sides of this House, wrote to the Hon. Walt Secord again confirming that the Department of Premier and Cabinet was refusing to deal with part one of the application, that is, all the records stored et cetera, as it would require an unreasonable and substantial diversion of the agency's resources. In essence, what we have had from the word go is the Hon. Walt Secord simply seeking a dump of huge amounts of material and adopting a position that is non-negotiable with regard to narrowing the scope of the application. There is nothing in the nature of conspiracy. This was about the sheer bulk of material that was available. With the matter now in the hands of the Hon. Walt Secord, the member waited until 10 December to file with the Civil and Administrative Tribunal of NSW an appeal against the Department of Premier and Cabinet's decision.

The Hon. Walt Secord: The appropriate authority.

The Hon. TREVOR KHAN: Then, of course, the matter takes its usual course because the member has filed an appeal. In essence, what we had from the Hon. Walt Secord was an application to just give him everything under the sun. The Department of Premier and Cabinet sought to engage—as it always does, as all departments do—in a process to get to the nub of what those opposite really wanted, and the member just was not interested in that process. Let us face it: He was interested in the publicity gained from doing this and smearing somebody's name.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [11.48 a.m.], by leave, in reply: First, I have no difficulties with the further amendment proposed by Dr John Kaye. We on this side of the House are happy to make that adjustment. In relation to the matters adverted to by the Hon. Trevor Khan, while the Department of Premier and Cabinet asserted that processing would result in an unreasonable diversion of resources, at no point were any particulars given as to how or why that was the case.

The Hon. Duncan Gay: The matter is unresolved. It comes up on 11 April. You have jumped the gun.

The Hon. ADAM SEARLE: I do not agree, because what is at issue is not the delay per se; it is the refusal of the agency to even deal with the application. There was an assertion that it would constitute an unreasonable diversion of resources, but no particulars were given until February this year as to how or why the processing would result in an unreasonable diversion of resources. A global assertion was made without any information provided to the applicant that that was the case. Now that certain information is—

The Hon. Duncan Gay: You have got a hearing scheduled for 11 April. It is currently unresolved.

The Hon. ADAM SEARLE: I acknowledge that interjection because the hearing is about the Government's assertion that at this stage there can be no narrowing of the scope of any application. The Government and very senior government lawyers are asserting that the matter cannot proceed on any narrow basis at this point in time. In fact, the Government and government agencies that have carriage of this matter are causing these delays, including—

The Hon. Duncan Gay: No, that is their view of the hearing. You are pre-empting the hearing.

The Hon. ADAM SEARLE: I understand—

The Hon. Lynda Voltz: Point of order—

The Hon. Duncan Gay: You are a lawyer: you should allow hearings to happen.

The Hon. Lynda Voltz: It is impossible for the Deputy Leader of the Opposition to make his contribution when the Minister for Roads and Ports continues to talk over the top of him in every contribution he makes.

The ASSISTANT-PRESIDENT (Reverend the Hon. Fred Nile): Order! The Deputy Leader of the Opposition should be heard in silence.

The Hon. ADAM SEARLE: Very briefly, the government agency responsible was very late in the day in providing any basis for refusing to process. Even now such information that has been provided is second and third hand and is not able to able to be verified or tested because it is not within the personal knowledge of the

person making the assertion. The contribution of the Hon. Trevor Khan was accurate as far as it went but we say it was incomplete because it failed to acknowledge the Government's unreasonable approach by simply making a global assertion without providing any details. There is case law which suggests that when government agencies make such claims they should provide proper particulars to any applicant so the applicant can get an insight as to why the government agency is having a difficulty.

Mr David Shoebridge: That is a matter you could explore in any case.

The Hon. ADAM SEARLE: No, it cannot be explored adequately because the person making the assertions does not have any firsthand knowledge of the information—another smokescreen. It is not her fault but she is relying on information she was given second and third hand. In any case, I think I have addressed those matters as far as they can be at this point in time.

Question—That the amendment of Dr John Kaye be agreed to—put and resolved in the affirmative.

Amendment of Dr John Kaye agreed to.

Motion as amended agreed to.

BUSINESS OF THE HOUSE

Suspension of Standing and Sessional Orders: Order of Business

Motion by Reverend the Hon. Fred Nile agreed to:

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 1684 outside the Order of Precedence, relating to the Crimes Amendment (Provocation) Bill 2014, be called on forthwith.

Order of Business

Motion by Reverend the Hon. Fred Nile agreed to:

That Private Members' Business item No. 1684 outside the Order of Precedence be called on forthwith.

CRIMES AMENDMENT (PROVOCATION) BILL 2014

Second Reading

Debate resumed from 5 March 2014.

The Hon. TREVOR KHAN [11.56 a.m.]: The object of the Crimes Amendment (Provocation) Bill 2014 is to reformulate the law of provocation in order to restrict its operation. Under section 23 of the Crimes Act 1900, provocation is a partial defence to a charge of murder which will result in the accused being acquitted of murder and convicted of manslaughter instead. This bill repeals section 23 of the Crimes Act 1900 and replaces it with a section that provides a more limited partial defence of extreme provocation. The existing section makes the partial defence available if the accused loses self-control because of the words or other conduct of the deceased and that conduct could have caused an ordinary person in the position of the accused to have lost self-control to the extent of intending to kill or inflict grievous bodily harm on the deceased.

The substituted section provides that an accused acts in response to extreme provocation only if the provocative conduct of the deceased was a serious indictable offence, that is, an offence punishable by imprisonment for life or for five years or more; caused the accused to lose self-control, that is, a subjective test; and could have caused an ordinary person to lose self-control to the extent of intending to kill or inflict grievous bodily harm on the deceased, that is, an objective test. The substituted section specifically excludes certain conduct from being provocative conduct, namely, non-violent sexual advances and conduct incited by the accused in order to provide an excuse to use violence against the deceased. It also excludes evidence of self-induced intoxication from being taken into account in determining whether the accused acted in response to extreme provocation. As with the existing section, the substituted section provides that the killing of the deceased need not occur immediately after the provocative conduct.

I will put these significant reforms in some context. Those of us who are on the Select Committee on the Partial Defence of Provocation will be aware that some important events framed the law in this area and they are worth noting. In 1982 amendments were made to section 23 of the Crimes Act. That is the last time that amendments were made. It is therefore some 32 years since this section of the Crimes Act was reviewed by this Chamber. The 1982 amendments were preceded by a 1981 report by the New South Wales Task Force on Domestic Violence, which was established in the wake of a number of high-profile cases involving women killing their partners after enduring years of domestic violence and subsequently being convicted of murder, which at the time attracted a mandatory life sentence.

The report of the NSW Taskforce on Domestic Violence recognised the inadequacy of homicide defences in their application to women who kill intimate partners. In 1982 the Wran Government subsequently acted to amend the Crimes Act in several ways. First, the definition of "provocation" was broadened to remove the requirement for a sudden response to provocative conduct and thereby account for cumulative provocation over time. Secondly, the amending Act removed the mandatory life term that applied to murder convictions. In addition, the 1982 amendments also reversed the onus of proof from the defendant for establishing the defence of provocation and placed it on the prosecution. Although not explicit in the pre-1982 statutory formulations, the position in New South Wales up until that time was that the onus of establishing provocation was with the defence.

As I have indicated, the law of provocation has not been amended since the 1982 formulations, which were designed to give effect to the widespread community demand for a modification of the law of homicide, particularly the law affecting what may be called crimes of domestic violence, including reforming the law relating to provocation. The next matter of some substance occurred in 1995 when then Attorney General, Jeff Shaw, QC, established a working party into the homosexual advance defence in response to developments that were occurring at that stage. The working party was established following the case at first instance of Malcolm Green, who had killed his friend Donald Gillies. The murder had been particularly violent, with the accused Green striking Mr Gillies at least 30 times and then stabbing him in the face at least 10 times. The defence put forward by Mr Green was that, in essence, Donald Gillies had made a non-violent sexual advance that justified the subsequent brutal attack upon him.

The working party's report was delayed because *Regina v Green* was working its way through the various courts. In 1997 the High Court finally dealt with *Regina v Green*, a decision by a narrow majority that allowed Green to rely upon provocation in the form of non-violent sexual advance. In 1998 the working party handed down its report, which recommended, amongst other things, that the homosexual advance defence be abolished. Regrettably, for reasons that remain unclear, the Government of the day ignored this recommendation and the homosexual advance defence has been available to other accused since that time. That created a signal, one might say an implicit indicator, that the law accepted that a non-violent sexual advance can justify the killing of another human being. I turn now to 2009 and more specifically to the murder of Manpreet Kaur, which was committed on 29 December 2009. I will not relate all that occurred, but I will read from some of the sentencing remarks of His Honour Chief Justice McClellan, who stated:

> It is plain that on the previous day [that is the day prior to the murder] the offender had formed the view that his marriage was likely to come to an end and that he needed to take some steps to protect himself or otherwise he may be without a place to live and, without any money, he would lose his entitlement to remain in Australia. I accept the offender's evidence that the events of the last 48 hours of the deceased's life [that is his wife's life] heightened the offender's concern about his position. Ultimately, being told that his wife had never loved him and was going to leave him, accompanied by the offensive remarks of the deceased brother-in-law was the trigger for the offender losing his self-control.
>
> The acts by which the offender killed his wife were violent. It could only be described as a ferocious attack. The evidence from the autopsy, which I accept, was that he first strangled her (although that may not have been the cause of her death) and then cut her throat at least eight times ... At least two of the cuts were deep and would have led to a fatal loss of blood.

Indeed, the cuts did cause a fatal loss of blood and Manpreet Kaur died on the floor of her home. The circumstances surrounding her death were shocking and were known to some in this Chamber shortly after the event. Therefore the trial was, in a sense, eagerly anticipated. The trial did not take place until May and June 2012, and sentencing took place on 7 June 2012. Members may remember the community outrage that followed the decision of the jury to acquit Mr Chamanjot Singh of murder and instead substitute a verdict of guilty of manslaughter on the basis of provocation. That decision signalled that there was, in some way, justification for men to kill their wives when they are told they are no longer going to sleep in the same bed. One cannot imagine a worse signal to send to our community; the end of a relationship in some way justifies a brutal murder such as this.

If only one murder had occurred over several years one would be capable of putting this aside and saying, "Well, it's just one of those things." Unfortunately, we know from the work of the committee that

verdicts such as this have been handed down time and again over the decades. Time and time again men have used excuses such as their wife wished to leave them, their wife was having an affair or their wife really did not find them satisfying in bed to kill their wives. It is an indictment on our society that we have allowed that to occur. The motion moved by the Hon. Helen Westwood on 14 June 2012 was an opportunity for this House to review the law in this area. It should not be thought that the decision of this House to deal with this matter somehow arose in the seven days between the sentencing and the resolution of the House.

Many members of this House were alive to the problems of provocation both with regard to the killing of domestic partners and to the homosexual defence to which I referred. Some community members agitated about this for years. Sadly, we have been deaf and negligent in our duty in dealing with them. I congratulate the Hon. Helen Westwood on moving her important motion. This is one of the crowning moments of our time in this House. This is a substantial and significant change. The way in which committee members have worked together, ignoring political affiliations and ignoring any preconceptions as to how the issue should be dealt with, is demonstrative of our capacity to work together towards the common good.

The committee did well. It handed down something worthwhile in that report and it made compromises to put the Government in a position where it could not ignore the report. I know it is easy for some to say that through compromise the committee arrived at an incorrect decision, but they are wrong: It was compromise that worked. It was compromise that encouraged the Government to listen to backbench members of this place. The committee will achieve a significant change in an area of the law that has not seen a change for 32 years. I am sure it will be a matter of debate in this House that the bill is different to the committee's recommendation. When the bill reaches the Committee stage I will deal with those issues.

The committee adopted a model based on the United Kingdom Law Reform Commission model. The committee minutes show that the committee looked at other models and other options. The secretariat road-tested each of those models to ascertain its impact. The committee proceeded in an intelligent and thoughtful way. The committee chose the United Kingdom model, which included the loss of self-control, with some modifications. The United Kingdom model had one aspect that the committee chose to delete and that was a precondition that a considered act of revenge was excluded conduct. The exclusion of that aspect changed the model and that is why the Government has proceeded another way.

Without the exclusion of a considered act of revenge the bill opens up the possibility that people who react to horrific conduct by the deceased, not out of passion but out of a considered act of revenge, will be excluded. I will give members one example of a heinous crime that was not a sexual crime. In the early 1960s a President of the United States was driving along in a car and a man in the book depository named Lee Harvey Oswald shot him and killed him—blew his head off. That act caused considerable angst in the American community and a few days later it led to Jack Ruby entering the basement of the police station and shooting Lee Harvey Oswald dead.

If a poll had been taken at that time as to whether the conduct of Jack Ruby was justifiable he would have won office in the United States for murdering Lee Harvey Oswald. If we were to use the United Kingdom law reform model without excluding a considered act of revenge then somebody like Jack Ruby could rely on the defence of provocation. The act by Jack Ruby was a determination to kill based on the conduct of Lee Harvey Oswald: Killing the President was provocative and grossly out of the ordinary. In adopting the model the committee reflected on the exclusion of a considered act of revenge and, for reasons that the committee cannot go into, it excluded that element and thereby made it an ineffective model. I place that on the record because there will be amendments to the bill.

The Government's position was not adopted because it wants to do something other than what was recommended. The Government road-tested the model in the same way in which the committee road-tested it and found a big hole in the model. Through extensive research and in a considered way the Government has sought to produce a model that achieves what the committee intended, but in a slightly different form. There is no mystery or desire to be perverse. The Government has done the right thing and it has come up with a pretty good answer.

I have thanked all members of the committee for their participation, but I specifically thank Reverend the Hon. Fred Nile for everything he did to control the committee and to steer it to a particularly good result. For the Hon. Helen Westwood it is a crowning glory, and the same can be said for Reverend the Hon. Fred Nile. This is a significant moment and substantial law reform. It may not be the crowning glory for Reverend the Hon. Fred Nile, but it is one for the mantelpiece. I thank the determined efforts of the Premier in backing this

process and for lending the assistance of his office. Significant coordination was required and provided to achieve this outcome and I am grateful for that, as, I am sure, are all members of this House. I will conclude my remarks in the Committee stage of the bill.

Mr SCOT MacDONALD [12.15 p.m.]: The Hon. Trevor Khan will be a hard act to follow. The member has outlined the journey that the committee took. The inquiry began with polarised committee members and an attitude of "go back to your trenches and bias". The inquiry started with passionate committee members looking forward to the abolition of the partial defence of provocation. As the previous speaker has noted, it was a journey. The chair of the committee was considered and measured. Committee members went through the difficult process of hearing evidence from family members who had seen their closest loved ones killed in absolutely brutal circumstances—there are no other words for it. I refer members to the report of the Select Committee on the Partial Defence of Provocation if they wish to read further details of those crimes.

As the committee heard evidence it became increasingly clear that the will of some members of the committee reflected community concerns about sentences for brutal crimes that had provoked community outrage and considerable media coverage. The sentences for those crimes had upset the sensibility of family, friends, representatives and the community. What became increasingly clear to the committee and resulted—through the efforts of the Hon. Trevor Khan—in committee staff presenting various interstate and overseas models to the committee, was the risk of abolishment. It highlighted the unintended consequence of abolition of the partial defence of provocation manslaughter, which is that self-defence laws would nevertheless lead to prosecution and possible conviction for murder. Based on the evidence the committee heard, and I will not recite or recall all of it, a conviction for murder will lead to a longer sentence. Those figures are available in the report. We were led by the Law Reform Commission.

The possibility of four to six years extra incarceration probably has some appeal. Certainly in some of the examples the committee was confronted with, a longer sentence had some appeal. The consequences would be felt particularly in what this report and others refer to as domestic abuse—the battered wife syndrome. I firmly believe there is evidence of provocation. In the absence of self-defence a finding of not guilty of murder but guilty of manslaughter would affect females generally; however there were examples of males. We had examples of females in very bloody circumstances, suffering from mental, physical and financial abuse. In the absence of self-defence or provocation offenders would face a murder trial that inevitably would result in a considerably longer sentence. From what I read and from what I heard that was not appropriate.

As the Hon. Trevor Khan said, the committee concluded that the bill required the inclusion of extreme provocation—that is a good place to be. There is very much a place in our society to recognise provocation. The committee took evidence about its historical roots and the male framework of reacting to those sorts of stressors, but I think that was a furphy. It may have been the case in times gone by. We have evolved as a society and this legislation is a perfect example of evolution and legislation reflecting society's views. Extreme provocation is needed. The bill also excludes a range of behaviours. The Hon. Trevor Khan referred to some of those behaviours, including non-violent sexual advance. I will not go through them again. New section 23 (5) states:

> (5) For the purpose of determining whether an act causing death was in response to extreme provocation, evidence of self-induced intoxication of the accused (within the meaning of Part 11A) cannot be taken into account.

New subsection (7) states:

> (7) … the onus is on the prosecution to prove beyond reasonable doubt that the act causing death was not in response to extreme provocation.

The Government has adopted almost in its entirety the committee's recommendations. I understand that happens rarely, which says quite a lot. I understand that people have concerns and there may be amendments to the bill. I appreciate these types of offences cause very difficult emotional responses. When people are close to the circumstances of such killings they want our justice system to impose the absolute maximum that it can. Surely we have a justice system that has the flexibility to recognise these unique circumstances, to apply the plea discount and then the discount of moving from murder, and to accept the partial defence of provocation and find the offender guilty of murder. It is not easy and it does not happen simply. As the report found, many of those pleas are rejected: The jury does not accept the manslaughter plea and finds the offender guilty of murder.

It is not a get-out-of-jail-free card by any circumstances. I hope that is not the reaction of people who brush over this difficult part of the law. The committee did the absolute best job it possibly could under the guidance of the chair and committee staff. Evidence was taken from interstate, from people who have been close

to it, from the Director of Public Prosecutions and from all the legal associations. No-one has got exactly what they wanted out of this. The partial defence remains, as it must remain, but it has very heavy qualifications on it now. I repeat: The bill needs extreme provocation, and that provocation must be a serious indictable offence, that is an offence punishable by imprisonment for life or for five years or more.

The defence of provocation then has to pass the loss of self-control tests, which are complex but not insurmountable. The committee heard evidence that both the judiciary and the jury system can cope with some of those difficult tests, but they are a good bar to inappropriate use of this defence. I urge this House to support the bill. It is an appropriate place to be in the evolution of our society and our community. It protects the people who need protection, particularly those involved in domestic violence situations and unwanted sexual advances. It raises the bar to extreme provocation. I commend the bill to the House.

The Hon. DAVID CLARKE (Parliamentary Secretary) [12.25 p.m.]: The select committee established to inquire into the partial defence of provocation recommended limiting its availability by, first, requiring that the provocative conduct be gross; that the accused feel a justifiable sense of being seriously wronged; and that unless the circumstances were of a most extreme and exceptional character it could not be raised in a specified list of situations commonly arising in domestic relationships. These included changing the relationship, infidelity, taunts about sexual inadequacy and conflict over parenting arrangements.

The select committee also recommended that the partial defence be excluded in cases of non-violent sexual advance. The bill adopts the select committee's policy intent, but also takes into account input from experts in the field. It resolved the problems with provocation by requiring that the deceased's conduct amounts to a serious indictable offence and in addition is so extreme that it not only caused the accused to lose self-control but could cause an ordinary person to lose self-control. In this way the circumstances that the select committee described as requiring circumstances of a most extreme and exceptional character before they could be considered will not alone amount to extreme provocation.

While it is unlikely that any non-violent sexual advance would ever pass these thresholds, the bill also makes clear that they alone can never amount to extreme provocation. The bill represents a targeted response. Retaining a loss of self-control as a requirement ensures that the partial defence is not expanded to include acts such as revenge killings. The bill also avoids the artificiality of limiting the application of the partial defence by excluding the nominated behaviours. Instead, it requires that the provocative conduct amounts to a criminal offence. They will involve an individual exercising their right to personal autonomy and will not fall within the terms of the bill. The test is also brought more closely into line with community standards by the removal of the words "in the position of the accused". This means that while the jury will consider whether that particular accused lost self-control, they will then consider whether the conduct was so extreme that an ordinary person could have lost control so far as to form an intent to kill or cause really serious injury.

The use of exclusions ran the risk of inadvertently disadvantaging vulnerable persons—for example, victims of long-term domestic violence who finally lose control and kill in response to conflict over, say, parenting arrangements. In that situation it would be impossible to ask the jury to consider whether the partial defence was made out if they had to ignore the behaviour which had caused the accused to lose control. In order to raise the defence the accused would need to satisfy the court that the circumstances were "extreme and exceptional". It would be expected that a great deal of case law would eventually develop in the area of what constituted "extreme and exceptional circumstances". However, in the meantime the situation would be uncertain.

The Government shares the select committee's concern that the partial defence remain available to victims of domestic violence. The proposed test will ensure that they can raise the partial defence. Domestic violence, particularly long-term abuse, often involves serious indictable offences such as the range of assaults in the Crimes Act. Even where abuse is not physical but psychological it may amount to the serious indictable offence of stalking or intimidation under section 13 of the Crimes (Domestic and Personal Violence) Act. These offences are committed where the perpetrator's conduct is intended to cause the victim to fear physical or mental harm to themselves or another person with whom they have a domestic relationship. In making out the offence, it is the intent of the perpetrator, rather than whether he or she actually generated fear in the victim, which is the focus. These offences cover a broad range of behaviours and invite the introduction of evidence of past violent conduct, particularly if it involves a domestic violence offence.

A second and important feature of the bill is the continued recognition in proposed section 23 (4) that the provocative conduct relied upon need not necessarily have occurred immediately before the act causing

death. In regard to the exclusion of non-violent sexual advances, there was intense criticism of the use of provocation in relation to killings alleged to be in response to such situations following the High Court 1997 decision in *Green v The Queen*. This use of the partial defence is sometimes referred to as the "homosexual advance defence" and it has remained of concern. After receiving numerous submissions and hearing evidence on this issue the select committee recommended that it be made clear that such conduct could never amount to extreme provocation. The term "non-violent sexual advance" is not a legal term and is not defined in the bill. In his dissenting judgement in the High Court case of Green, Justice Kirby, as he then was, used the term "non-violent sexual advance" and described this as gentle and non-aggressive although persistent sexual advance. As Justice Kirby pointed out:

> If every woman who was the subject of a "gentle", "non-aggressive" although persistent sexual advance could respond with brutal violence rising to an intention to kill or inflict grievous bodily harm on the male importuning her, and then claim provocation after a homicide, the law of provocation would be sorely tested and undesirably extended.

I respectfully agree with those comments. It will be a matter for the jury whether the conduct complained of amounts to no more than a non-violent sexual advance, even if it also amounts to a serious indictable offence, such as an indecent assault. While it is difficult to imagine any non-violent sexual advance passing the other thresholds in the proposed test, they are specifically excluded for abundant clarity. The provision is there to clearly state the Government's and select committee's intention to exclude a person who kills in response to a non-violent sexual advance from the protection afforded by the defence. I wholeheartedly commend the bill to the House.

The Hon. Dr PETER PHELPS [12.34 p.m.]: I have very grave concerns about the Crimes Amendment (Provocation) Bill 2014 and will state my position at the start. I believe that the partial defence of provocation should be eliminated in its entirety. Section 23 should be removed from the Crimes Act. Before detailing my concerns with this bill, it is worthwhile to look at the history of the partial defence of provocation. The defence originates in a time when the penalty for murder was death; there was no spectrum sentencing then. It is part of centuries-old common law. It is mitigation in recognition of the imperfectability of mankind, of our proclivity towards violent action in the heat of anger or frustration.

However, unlike self-defence, provocation has always been only a partial defence. It says we will not forgive you your actions entirely but to some extent we understand why you did what you did in the circumstances. Judges and juries looked into their souls and asked themselves: "What would I have done in that circumstance?" and thought that the sentence—namely, the extinguishment of a person's life—was disproportionate to the crime committed. But, given that another's life has been taken, the requirement for a successful defence had to meet the test that the judge in *Moffa v The Queen* described as "violently provocative in nature" where sharp words or actions in the immediate temporal and physical proximity to the killing, which rendered that person insensible, prompted them to kill the offending party.

Ironically, given the thrust of the argument today, the defence was often used in male-on-male violence—an offence to one's honour or dignity, an allegation or defamation which so infuriated the killer that they lost all reasonable self-control. The law survived through the abolition of the death penalty and its replacement with mandatory life sentences. The partial defence survived through the abolition of mandatory life sentences and their replacement with spectrum sentencing. Like so much of what we have dealt with in the recent past and will deal with in the future, the bill before us today is bad law made with good intention. There is a common thread running through the proliferation of bad law changes coming before this Parliament: the failure of the judiciary to apply sentences in manslaughter cases commensurate with public expectations of the appropriate punishment for the crime committed.

Inadequate sentencing of manslaughter cases for unprovoked attacks in the street was the justification for the one-punch laws. Inadequate sentencing of a case resulting in the death of an unborn child was the justification for Zoe's Law. Now we have this bill, which purports to correct two further examples of inadequate sentencing in manslaughter cases. The first is the case of a man who killed his partner in circumstances very similar to those in *Moffa v The Queen*. The second involves the inadequate sentencing of killers in a spate of manslaughter cases involving the deaths of gay men who had allegedly done nothing more than make non-violent homosexual advances. What has the Government done in the face of these problems? We jump straight to the legislative option. I suggest, however, that there was and still is a better way to deal with these perceived injustices. It is my strong view that the Premier should have written to Chief Justice Bathurst a public, open letter for debate and action.

The Premier should have informed Chief Justice Bathurst that the public is unhappy with the current sentencing arrangements. The Premier should have asked him to personally intervene in sentencing guidelines

promulgated with a view to substantially increasing penalties in manslaughter and violent grievous bodily harm cases. He should have reminded Chief Justice Bathurst that the will of the people, expressed through voting at parliamentary elections, is for tougher penalties, and he should have noted that the courts exist to apply those community expectations. It is foreseeable that the Chief Justice may have agreed, in which case this legislative agenda we are going through would have been completely unnecessary. The Chief Justice may also have disagreed, in which case we would at least have been justified in taking legislative action across a range of grievances. But we have not done so. Instead, this Parliament has sought to legislate at first instance.

I am sure that this debate will be an emotional one, just as the testimony before the committee was emotional and as, no doubt, debate on the Zoe's Law legislation and other debates of this nature will be. I am equally sure that my contribution today will be wilfully misrepresented by certain agenda pushers as an antipathy towards battered wives and gay men or a lack of compassion and empathy for their suffering. My point is this: Emotion is no substitute for logic, and feelings make bad law. While the intent of the bill is well-meaning, the outcome that it delivers is terrible.

If the aphorism about the road to hell being paved with good intentions needed demonstration, one need merely look at the legislative program of this Parliament in relation to manslaughter laws to see its truth. There is much to be said for the criticism of provocation as a partial defence that it is a gendered defence, at least in the modern era. While the defence is used by both men and women it has more often been used by men, and it is worthwhile noting in passing that men have used it with lower rates of success than women. The proposed reformulation does not eliminate this gendered defence; it simply reinforces a change to which gender it advantages.

The man who flies into a rage at being mocked for his sexual inadequacy by his wife, who then proceeds to list her marital infidelities, and kills that wife in the heat of the moment will no longer be able to claim provocation despite being quite clearly, in the ordinary meaning of the word, provoked. But the wife who one night calmly leaves the marital bed, selects the largest carving knife and stabs her husband to death while he is sleeping can claim the defence of provocation if it can be shown that she was a victim of domestic abuse—even if that abuse had taken place hours, days, weeks, months or years before.

This is not to justify in any way the actions of the husband in either instance. But let us be clear about what this law creates. The law creates a palimpsest. We have materially changed the intent of the common law defence of provocation and have completely reversed, rather than eliminated, the gender bias of the defence. That is the exact opposite to what the Law Reform Commission recommended in 1997. I urge members who have not already done so to read the Law Reform Commission report before they speak in this debate. I quote from page 78 of the report at 2.146:

> While the Commission acknowledges that the requirement of a loss of self-control may continue to preclude some women from gaining access to the defence of provocation, we do not consider that this is an issue which can be addressed unless the defence of provocation is changed beyond recognition. The primary feature of, and rationale for, the defence of provocation is loss of self-control. In our view, the nature of the defence should not be altered to the extent that loss of self-control ceases to be an element.

It is that loss of self-control that lies at the heart of the defence of provocation and which is sadly lacking in substantial portions of its proposed reformulation. It is like legislating that night shall henceforth be day or that black shall be white. The Law Reform Commission and I fundamentally disagree on the proposition about whether the defence of provocation should be retained. The commission says it should and, as I said earlier, I say that it should be abolished in its entirety. However, I appreciate the commission's arguments; they are logical and rational, within a broader context of the imperfectability of mankind, and seek to make allowances for irrational behaviour.

Let me make it clear: I do not dismiss the commission's arguments for retention of a provocation defence along the lines of Moffa or the Law Reform Commission's formulation. But it is my strong view that the need for, or even the desirability of, a partial defence of provocation has long since passed. The most obvious reason to abolish this defence is the existence of discretionary sentencing in murder cases. The ability of a judge to give a sentence proportionate to the offence has completely removed the need to downgrade an offence to manslaughter to allow for the just sentencing of offenders. In this respect I quote a statement by Chief Justice Wood in his submission to the parliamentary committee. He said:

> … the simplest way of doing it is to remove provocation entirely and leave it simply as a sentencing factor, and it would then apply to all offences. Bearing in mind the only reason provocation ever existed was that murder once attracted capital punishment and then later mandatory life, that is really its primary justification.

The primary justification has gone. What concerns me so much about the proposed change before us is that much of the comment about the reformulation seems to be not so much about sentencing options—quite clearly, there is a range of sentencing options—but about removing the stigma of offenders being charged with murder rather than being charged with manslaughter. If you kill someone with malice and aforethought, irrespective of the personal circumstances in which you find yourself or irrespective of any non-proximate violence directed at you by the victim, to any reasonable person that is murder.

I am not at all moved by the implicit notion behind these changes that we should rely on euphemism—that we should linguistically bowdlerise what has taken place—simply to assuage the feelings of a killer that he or she is not really a murderer and it is all quite understandable really. Because what is it that is being proposed? We do not grant the right to kill people for past violence, even to the sober consideration of the Supreme Court, and we do not grant the right to kill people as a prophylactic measure against expected future violence.

The fundamental point of any civil society is that the initiation of physical aggression against another person is the gravest crime imaginable and that it is the chief duty of the state to prevent and/or punish those who commit it. For that reason the monopoly of force is granted to the state, because the alternative is anarchical vigilantism. You do not have the right to kill somebody, except in self-defence. You do not have the right to kill somebody because of what they did in the past. You do not have the right to kill somebody based on what you think they might do to you in the future, even if that expectation is entirely rational. To bring into effect a law which mitigates the crime of killing on any such basis is the height of state-sanctioned vigilantism.

It has been raised with me that the incidence of reduced sentencing to manslaughter is also a factor in the consideration of changes to the law. But if this were the case, surely the more appropriate response would be to recommend a change to the sentencing guidelines so as to reduce sentences where murder was the response to a pattern of non-proximate domestic violence. My preference would be to eliminate provocation and to expand the statutory enactment of diminished responsibility, which is contained in section 23A of the Crimes Act.

The Hon. Helen Westwood: We looked at self-defence.

The Hon. Dr PETER PHELPS: Not self-defence but substantial impairment to include such issues as post-traumatic stress disorder occasioned by domestic violence. To me, that would be a more sensible change to make. It would be more sensible to expand substantial impairment to include what is clearly a situation of a reasonable expectation as to the likely effect of prolonged stress occasioned by violence rather than have provocation as a defence that has been completely wiped of its true meaning and turned into something else. That strikes me as a far more reasonable way of doing things. This bill is, for the best of intentions, bad law.

As I said, I understand the desire of the Law Reform Commission in 1997 to retain the defence, but it has outlived its usefulness. Not the least of its bad aspects is that it sets a bad example; it offers a justification for bad behaviour. If a gay man makes a pass at you, the appropriate response may be outrage, disgust, amusement or even flattery. It is not to kill him. If your wife mocks your sexual prowess and regales you with her affairs, the appropriate response may be to ignore her, to reconcile, to tell her your infidelities, or to divorce her. It is not to kill her. And if your partner is violent toward you, the appropriate response is to go to the police, have them charged, take out an apprehended domestic violence order and leave them forever. It is not to kill them.

I note recent articles in the Sunday papers talking about the provocation defence. In one instance noted in the papers the woman who was the subject of domestic violence took the option of leaving. Another who was the subject of domestic violence was attacked, and then used some kitchen implement to beat off the attacker. In neither case is it a provocation related matter. In the first instance the woman has taken the right option of reporting the matter to the police and leaving the state to handle it; and in the second instance the woman is clearly covered by self-defence.

It seems that in the broader community there is a misunderstanding of what these proposed applications of the new reformulated provocation are all about. Frankly, the model to which we should aspire is the rational, clinical, logical individual. I recognise that humanity falls far short of this; that we are all burdened with imperfections. More importantly, the current sentencing regime also recognises this. It allows for a spectrum of sentences, based on the facts of each case—even in murder cases. In all instances, provocation can be a mitigating factor in the sentence which is to be applied.

This bill, no doubt, will pass today. But I do not support it; I cannot support it. I could understand if the Attorney General wanted to defer to the common law defence. I could understand if he wanted the reformulated

defence set out in the 1997 Law Reform Commission report. I could especially understand if provocation was abolished entirely as a defence. If we are now expected to conform to the sobriety and constancy of an ideal, let that ideal apply to all people. The changes sought to be made by this bill turn an anachronism into a bad law. It replaces an old, gendered defence with a new, even more gendered defence. It completely and utterly reverses the recommendations of the 1997 Law Reform Commission report. It makes the law manifestly worse. It is a corruption of every notion of provocation previously addressed in the courts and the statute law. It is a manifestation of this obsession to legislate our way out of soft judicial sentencing rather than attack the core of the problem, which is soft judicial sentencing.

This is a terrible bill. The bill represents the worst of all possible outcomes for the administration of justice in this State. I am ashamed that my Government has allowed it to be brought forward. And I think Government members also are ashamed because I note it is not coming forward as a Government bill but, rather, as a private member's bill. Moreover, the Government has not allowed for any amendment which would have eliminated the partial defence of provocation in its entirety. This bill is a bad bill. I do not believe it is appropriate. This should have been a wonderful opportunity for the State to have abolished the partial defence in its entirety. I cannot support the bill.

Mr DAVID SHOEBRIDGE [12.53 p.m.]: On behalf of The Greens I speak to the Crimes Amendment (Provocation) Bill 2014. In essence, this bill repeals the existing section 23 of the Crimes Act, which defines the partial defence of provocation, and introduces a new section 23, which limits the defence to what is said to be extreme provocation. Everyone in this Chamber has been listening carefully to the contributions to this debate. In fact, I acknowledge the breadth of the contributions and, as a general rule, the careful consideration that members have given to their comments on this important piece of law reform. I respectfully and completely disagree with the contribution made by the Hon. Dr Peter Phelps. I note that at its beginning that contribution utterly mischaracterised this legislative amendment. As I understand the nub of the member's concerns, it is that the partial defence of provocation is too broad and allows too much leeway for juries or trial judges in judge alone matters to downgrade a murder charge to a manslaughter charge. I think that is not an unfair characterisation of that contribution.

The member fails to understand that this legislative amendment to section 23 of the Crimes Act greatly narrows the scope for any defendant to argue the partial defence of provocation. Far from opening up terrible vistas of increased access to provocation and more lenient sentences, this bill unambiguously narrows the access of an accused to the partial defence of provocation; and it narrows the access significantly. This bill provides that a person can argue that they acted in response to extreme provocation only if they respond to conduct of the deceased which: (a) constituted a serious indictable offence; (b) caused the accused to lose control; and (c) could have caused an ordinary person to lose control to the extent of killing or inflicting grievous bodily harm.

Subsection (3) of the proposed new section 23 specifically excludes non-violent sexual advances, or cases where the accused incited the conduct in order to provide an excuse to use violence against the deceased. Subsection (4) provides that the conduct of the deceased may constitute extreme provocation even if the conduct did not occur immediately before the act causing death. I pause there to note that that is the existing law in relation to the partial defence of provocation. Subsection (7) provides that the onus is on the prosecution to prove beyond reasonable doubt that the act causing death was not in response to extreme provocation where the partial defence is raised by the accused. I note that, again, that is the existing law. If a partial defence is proven then the jury, if it would otherwise have found the accused guilty of murder, is to acquit on the charge of murder and instead find the accused guilty of manslaughter. It is not, as some have sought to characterise this, a get-out-of-jail free card. A killing is a killing, is a killing.

Unless a defendant can argue self-defence in response to a charge of killing—which is separate from the partial defence of provocation—the partial defence of provocation, if successfully pleaded, still has the accused found guilty of an unlawful killing; but it is correctly characterised in the eyes of the law and the community as manslaughter rather than murder. I had the privilege to sit on the joint select committee that considered the partial defence of provocation. For the record, I note the chair of that committee has brought this bill to the House. I note as well the contributions of all of the members of that committee, some of whom spoke earlier in this debate, such as Mr Scot MacDonald and the Hon. Trevor Khan, in what I thought was an excellent example of the committee process of this House working.

Reverend the Hon. Fred Nile: And the Hon. David Clarke.

Mr DAVID SHOEBRIDGE: Yes, and the contribution of the Hon. David Clarke. Indeed the contribution of the Hon. David Clarke I think caught the nub of what the committee was grappling with—a very

difficult area of the law. Whereas we wanted to greatly restrict access to a defence of provocation, jealous men who kill their partners should never have access to the law of provocation. That was the unanimous view of the committee. We wanted to work to a recommendation that absolutely provided that.

The unanimous view of the committee was that men who were insulted by a non-violent sexual approach of another man should never have access to the partial defence of provocation. The second thread with which the committee grappled, in the face of many submissions raising different solutions to the problem, was how to ensure that women who had been the subject of prolonged or significant domestic violence had some protection under the law. One of the protections was the partial defence of provocation, which is a necessary safety valve provided in law if women have killed their partner in response to prolonged or serious domestic violence.

A number of submissions referred to what happened in New Zealand after the partial defence of provocation was entirely removed. A series of women are languishing in New Zealand jails for often 15 or 20 years for unjustifiably killing their partners, but the broader community would understand that they did so as a result of appalling domestic violence and intolerable conditions. Whilst we do not justify the killing we do not accept that it is murder. We accept it as manslaughter for which the penalty should not be the same as cold blooded murder. That was the tension with which the committee grappled and that tension is still found in this bill.

[*Deputy-President (The Hon. Paul Green) left the chair at 1.00 p.m. The House resumed at 2.30 p.m.*]

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

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

QUESTIONS WITHOUT NOTICE

PORT OF NEWCASTLE LAND SALE

The Hon. LUKE FOLEY: I direct a question to the Leader of the Government, in his capacity as Minister representing the Minister for Planning and Infrastructure. Will the Minister guarantee that there will be no change to current environmental and planning controls applying to the land subject for sale at Port Newcastle?

The Hon. MICHAEL GALLACHER: As the member has asked of me, I will refer the question to the Minister for Planning and Infrastructure for a response.

MOREE POLICE STATION

The Hon. MELINDA PAVEY: My question is directed to the Minister for Police and Emergency Services. Will the Minister provide the House with the latest information on Moree police station?

The Hon. MICHAEL GALLACHER: I thank the honourable member for her question, which demonstrates a continued and genuine interest in policing, particularly in regional New South Wales. I am sure that applies to all members on this side of the House. This financial year the Government has allocated more than $146 million to capital projects in the NSW Police portfolio. Of that, $47 million is exclusively for new, upgraded or refurbished police station projects, projects such as the new Moree police station. On 14 March 2014 I had the honour to join Commissioner Andrew Scipione to officially open the Moree police station.

With an investment of almost $18 million, the police station is the new headquarters of the Barwon Local Area Command and accommodates up to 70 staff. Construction commenced in the middle of 2012, with the police station going live operationally in mid last year. As I have said many times before, the hardworking men and women of the NSW Police Force do an outstanding job protecting the communities they serve. Nothing shows the Government's commitment to supporting our police better than this state-of-the-art facility. This police station delivers the modern custom-built facility that local officers have been waiting for and it is one that they most definitely deserve.

The Government's investment in police capital projects is not just about bricks and mortar. The capital program also includes investment in other vital police infrastructure. The 2013-2014 budget has allocated

funding to replace the aging PolAir 5 helicopter; $1.5 million for prisoner transport vehicles; $5.5 million to replace the mobile data terminal; and $17 million for the hazardous material management program. The hazardous material management program is part of the $103 million of funding to upgrade police properties and housing to address a number issues inherited from the previous Government.

As all members of the House would be aware, the O'Farrell-Stoner Government is committed to ensuring the men and women of the NSW Police Force have access to the resources they need to do their job—just like those that have been delivered in Moree. On behalf of the Government I extend our thanks to the Barwon Local Area Commander, Superintendent Gelina Talbot, and all of her officers for the wonderful work they do for the community they serve.

The Welcome to Country was outstanding; it really underscores the importance of partnership between community and the police, particularly in areas like Moree, but not limited to the Barwon Local Area Command. To see community participation in the opening ceremony presentation was phenomenal. As community leaders said, they want the Barwon police station to be a place of sanctuary for young Aboriginal and non-Aboriginal members of the community. They want them to feel welcome in the police station, to be able to walk in and talk to police about issues affecting them or to walk in and say "G'day".

TAXI DRIVER ENTITLEMENTS

The Hon. ADAM SEARLE: My question is directed to the Minister for Roads and Ports in his own capacity, or in his capacity representing the Minister for Transport. Will the Minister inform the House how many taxi operators have been prosecuted for underpayment or failing to provide proper entitlements to taxi drivers such as holiday pay, sick leave and other entitlements?

The Hon. DUNCAN GAY: I thank the honourable member for his question. He quite correctly puts it to me and my colleague the Minister for Transport. As members know, it is one team one dream on this side of the House. It is fantastic. Although we both have responsibility for taxis, it is my understanding that this particular matter is the responsibility of the Minister for Transport. I will take the question on notice and pass it on to my colleague for a detailed answer.

MILLERS POINT PUBLIC HOUSING

The Hon. JAN BARHAM: My question is directed to the Minister for Ageing, and Minister for Disability Services, representing the Minister for Family and Community Services. Will the Minister advise the House why the sell-off of nearly 300 public housing properties at The Rocks and Millers Point was announced less than two weeks after my questions on notice about resident consultation were left unanswered? Will the Minister advise the House why the sell-off was announced less than one week after representatives of Housing NSW and the Land and Housing Corporation appeared at the inquiry into social, public and affordable housing? Will the Minister advise the House why the Government's sudden announcement, which will have a huge impact on the lives of those communities, demonstrates a fundamental lack of openness, transparency and respect for those residents?

The Hon. JOHN AJAKA: I thank the honourable member for her question. At the outset I indicate that I do not agree with the latter parts of the member's question. The O'Farrell-Stoner Government is committed to a sustainable public housing system. That includes making sure public housing resources are being distributed fairly across New South Wales so that as many people as possible can be helped. This morning the Minister for Family and Community Services announced that the New South Wales Government will sell its public housing properties in Millers Point, Gloucester Street, and the Sirius building in The Rocks due to the high cost of maintenance, the significant investment required to improve properties to an acceptable standard and high potential resale value.

The Government did not take this decision lightly, but it is the right decision in the interests of a sustainable and fair social housing system. This system currently has more than 57,000 families on the waiting list. The long waiting list is due to the failure of those opposite when they were in Government for 16 years. Those opposite failed the people of New South Wales for 16 years. The proceeds from the sale will be reinvested directly into the public housing system. That is the fundamental point. Maintenance on properties in Millers Point costs more than four times the average for public housing dwellings in New South Wales. In the past two years nearly $7 million has been spent maintaining this small number of properties. Subsidies to

tenants in the last year reached almost $9 million, with individual tenants receiving subsidies as high as $44,000 per annum. Let us compare that to other places. This compares to the subsidy of $8,000 per year in Campbelltown, $7,000 per year in Gosford and $11,000 in Wollongong.

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

The Hon. JOHN AJAKA: For every subsidised tenancy in Millers Point the Government could assist three to five tenants elsewhere, which means that three to five tenants on the waiting list are missing out on housing because the Government is subsidising these properties.

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

The Hon. JOHN AJAKA: When the former Labor Government began selling off public housing in Millers Point in 2008 it let other properties fall into disrepair. There was failure on its part for 16 ears. The former Labor Government left us with repair bills in the hundreds of thousands of dollars to restore some of these terrace houses to heritage standards.

The PRESIDENT: Order! The Hon. Sophie Cotsis has other occasions during proceedings of the House when she can raise this issue. The honourable member should not shout at the Minister for the duration of his answer. Other members, including the Hon. Peter Primrose, the Hon. Penny Sharpe and the Hon. Walt Secord should bear that in mind as well. The Minister has the call.

The Hon. JOHN AJAKA: The community expects us to invest in a sustainable social housing system that supports disadvantaged people across the entire State.

The Hon. JAN BARHAM: I ask a supplementary question. Will the Minister elucidate on his answer in relation to the third part of my question?

The Hon. JOHN AJAKA: I thank the member for the opportunity to continue. The Government's ability to assist more people on the waiting list is severely limited if it sinks millions of dollars into a small number of properties. I recognise that some of these tenants have lived in public housing in Millers Point for decades and that moving to a new location may be difficult. Today the Minister has announced that a team of more than 40 Housing NSW staff is already on the ground talking to and assisting these tenants. Over the next three months a specialist relocation team will work with each and every tenant to understand their needs, and work with them and their families through this relocation. It is a relocation; no-one is telling these tenants that they will not have housing into the future. It is a prioritising of the proper approach by the Government. These staff are senior client services staff who have been selected for the role. Initially each tenant will be visited to undertake a housing needs assessment.

The Hon. Sophie Cotsis: You are throwing them on the street.

The Hon. JOHN AJAKA: The Hon. Sophie Cotsis should be ashamed of herself, and the record of her government. I say shame on her. This assessment involves understanding the individual needs of each member of the household and discussing their preferences for relocation. Any special needs will be identified in detail, including any medical needs, mental health issues, disabilities and other complex needs. The same officer will work with the tenant throughout the process of relocation. All reasonable costs of moving, including reconnecting utilities, will be covered by the Government. [*Time expired.*]

ROAD AND RAIL FREIGHT

Mr SCOT MacDONALD: My question without notice is addressed to the Minister for Roads and Ports. Will the Minister update the House on continued efforts to enhance road and rail freight productivity in New South Wales?

The Hon. DUNCAN GAY: I thank the honourable member for his question. He asks some of the best questions in this place.

The Hon. Walt Secord: Key productivity indicators.

The Hon. DUNCAN GAY: I will talk about that in a moment. I would not have thought the Hon. Walt Secord would have brought that one up again. This morning I had the pleasure of delivering the opening address to the Australian Logistics Council Forum 2014. Under Labor, freight was considered a dirty word, something that did not generate The Green preference votes in the cafes of inner Sydney. Today freight is at the forefront of the New South Wales economy. It is an industry worth $58 billion each year to the State economy and employs about 500,000 people. In less than three years we have laid down some strong foundations to improve freight efficiency in this great State. For example, for the first time in the State's history we have a freight and ports strategy. Coming into office I was astonished by the lack of long-term integrated planning in New South Wales, not to mention the absence of baseline data needed to assess projects properly.

The Hon. Steve Whan: We were actually building things.

The Hon. DUNCAN GAY: From the losers lounge I hear the voice "We were actually building things", like the Rozelle Metro—$500 million and nothing built. When this Government came into power the money had been spent on brochures. The Labor Government had no idea how the freight moved around this city, whether it went by train, bus, truck or pantechnicon, or whether it went in white vans, and how much freight was carried. Members opposite did not have that basic information. If the city is to be planned and understood, that information has to be known first. The Labor Government did not have it; in fact none of the Labor States had it.

New South Wales is the only State in the country to have established a dedicated Bureau of Freight Statistics, a research unit that sits within the Freight and Regional Development Division of Transport for NSW. Do I have to listen to this rubbish from those sitting on the losers' lounge? I am delivering good stuff for this State and all they can do is whinge like a whole lot of cockeys on the biscuit tin. We are basing investment decisions and strategies on hard evidence, a lot of which has been generated by close engagement with industry, including the NSW Freight Advisory Council, which comprises industry leaders such as Ron Finemore from Finemore Transport and Maurice James from Qube Logistics.

The Hon. Robert Brown: A good bloke.

The Hon. DUNCAN GAY: They are all good blokes. Other industry leaders on the advisory council include John Mullen from Asciano, Nicolaj Noes from Maersk, Lance Hickridge from Aurizo and David Moult from Centennial Coal. Those on the other side would not have a clue who these people are because they are hardworking people who employ people and get the State running. That is why we are talking to them and listening to them. [*Time expired.*]

RUSA DEER CULLING PROGRAM

The Hon. ROBERT BORSAK: My question without notice is directed to the Minister for Disability Services, representing the Minister for the Environment. Has the management of the Royal National Park suspended the Rusa deer culling program indefinitely because of an incident recently at Era Beach where residents were woken up by so-called professional shooters who were not only shooting between cabins but also had not filed the necessary notification protocols? Were these so-called professionals accompanied by qualified rangers and what action has the department taken in relation to this incident?

The Hon. JOHN AJAKA: I am informed that an additional $40 million has been allocated to maintain national parks, to enhance education and to improve access.

The Hon. Steve Whan: Relevance.

The Hon. JOHN AJAKA: How does the Hon. Steve Whan know? I have not finished the sentence. He would have no idea. Would the Hon. Steve Whan like to finish? I have plenty of time. I am happy to sit here and let him keep going.

The Hon. Steve Whan: Would you like me to give the answer for you?

The Hon. JOHN AJAKA: The Hon. Steve Whan would not have a clue how to give an answer. He was woeful when he was a Minister. I have read some of his speeches in *Hansard.* They are a joke. This Government has provided an additional $62.5 million over five years to increase hazard-reduction activities in national parks and to employ an additional 94 trained firefighters. This enabled the National Parks and Wildlife Service to treat almost 280,000 hectares in 1,370 separate—

The Hon. Steve Whan: Point of order: With all due respect to the Minister, the question was specifically about the culling of deer in the Royal National Park. While the issue of hazard reduction in parks is very important, it is not relevant to the question.

The PRESIDENT: Order! The honourable member is quite right: The Minister is not being generally relevant. If the Minister does not have information to give to the House that is generally relevant then he should refer the question to the responsible Minister.

The Hon. JOHN AJAKA: I will refer the question to the Minister.

MILLERS POINT PUBLIC HOUSING

The Hon. SOPHIE COTSIS: My question is directed to the Minister for Ageing and Minister for Disability Services. What assessment has been completed by the Minister's department of the impact on people with disabilities and seniors living in the 293 properties that the Government is selling at Millers Point?

The Hon. JOHN AJAKA: I thank the honourable member for a wonderful dorothy dixer. What a great opportunity she has given me to talk about how out of touch Labor is in working with families across this State.

The Hon. Amanda Fazio: Point of order: My point of order is relevance. The Minister is not answering the question asked. Mr President, I ask you to direct the Minister to do so.

The PRESIDENT: Order! The member took a frivolous point of order. If she wastes the time of the House any further she will be called to order.

The Hon. JOHN AJAKA: As I said, this is a great opportunity to talk about how the O'Farrell Government, a conservative government, is making social housing fairer; something that members opposite failed to do in the 16 years they were in government.

The Hon. Sophie Cotsis: Point of order: My point of order is relevance. My question was: What assessment did the Minister's department make of the impact on seniors and people with disabilities?

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

The Hon. JOHN AJAKA: This is a great opportunity to remind the House that it was members opposite who began selling off properties in Millers Point without a plan for the future. First, it is important that I read a press release.

The Hon. Greg Donnelly: Whose press release?

The Hon. JOHN AJAKA: I will come to that. The press release says:

> We inherited these grand old homes in the 1980's but many need a significant amount of work to make them safe to live in and frankly are too expensive for the Government to continue to maintain.

Who said that? I know members might think that it was me or the Hon. Pru Goward, but they would be wrong. It was then Labor Minister for Housing David Borger. One would think that the shadow Housing minister would have a clue about what a former Minister for Housing said, but she has no idea. She should do her homework.

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

The Hon. JOHN AJAKA: I do not want to get too fired up, but I will read from a different press release, which states, "All the properties are located in a stunning part of the city, and I expect there to be plenty of interest when the first home hits the market early next year." Which Minister said that?

The PRESIDENT: Order! Members will refrain from interjecting. I want to hear the answer.

The Hon. Penny Sharpe: Point of order: My point of order is relevance. This question was specifically to do with what the Minister's department has done in relation to assessing the needs of people with disabilities impacted by the sell-off of these properties. He has not come even close to that.

The PRESIDENT: Order! I have the gist of the member's point of order. There is no point of order.

The Hon. JOHN AJAKA: I hope I am asked a supplementary question. Who said that? It was the former Minister for Housing Matt Brown. [*Time expired.*]

Mr David Shoebridge: I move:

That under Standing Order 56 the document from which the Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra was quoting during his answer to a question from the Hon. Sophie Cotsis relating to social housing at Millers Point be laid upon the table of the House.

The PRESIDENT: Order! Under Standing Order 56 a document relating to public affairs quoted by a Minister may be ordered to be laid on the table, unless the Minister states that the document is of a confidential nature or should more properly be obtained by order. Minister, is it a confidential document or should it be more properly obtained by order?

The Hon. JOHN AJAKA: I decline to table it as these are notes prepared for me on a confidential basis.

Motion negatived.

Document not tabled.

The PRESIDENT: Order! The matter is closed.

NSW SENIORS CARD PROGRAM

The Hon. MARIE FICARRA: My question is directed to the Minister for Ageing and Minister for Disability Services. Will the Minister update the House on what the New South Wales Government is doing in relation to the New South Wales Seniors Card program?

The Hon. JOHN AJAKA: I thank the member for her question. The number of seniors is set to double by 2050, making them the fastest-growing population group in New South Wales. This presents opportunities to change the way the Government delivers important services to this important group of people. Since being elected, this Government has signed up more than 200,000 new members to the Seniors Card program, which entitles members to discounts of between 5 and 40 per cent at 3,500 outlets at any time. The growing number of healthy—

The Hon. Steve Whan: Are they still young Nats?

The Hon. JOHN AJAKA: It is a shame members opposite are not interested in hearing this.

The PRESIDENT: Order! The Minister will not respond to interjections. I will deal with members who interject.

The Hon. JOHN AJAKA: The growing number of healthy, active seniors is a powerful economic force, and the New South Wales Government has a vision for a healthy, vibrant, active ageing population. Older people are a wonderful source of knowledge and expertise. They can assist the social and economic development of New South Wales and provide significant opportunities for business, with consequent increases in demand for new products and services. In response to these challenges the New South Wales Government is expanding the NSW Seniors Card program by adding web and mobile access and functionality to the program. The Seniors Card program has more than 1.2 million members. The program promotes community participation and encourages economic activity by linking seniors with local businesses that offer them discounts and providing information on local community events and government services.

To make it easier for seniors to access the card and to make better use of the benefits, I recently launched the Seniors Card mobile app. The app helps seniors by making it easier to find discounts no matter where they are in Sydney or across New South Wales. The Seniors Card app offers discounts at more than 3,500 businesses across New South Wales to people using smartphones or mobile devices. The new app provides seniors with a wealth of discounts at their fingertips. Using real-time location data, the initiative is aiming at help seniors seek out discounts and special offers that are available from retailers, tradespeople and

other service providers. This will enable seniors to access savings on the go and make it easier for them to save money and for businesses to connect with customers. In addition, as more seniors start to use and become more comfortable with smartphones, a Seniors Card app will provide another practical avenue for them to engage with new technology.

NATIONAL LAND TRANSPORT NETWORK

The Hon. ROBERT BROWN: Coincidentally, my question follows on from a question asked earlier by Mr Scot MacDonald. My question without notice is directed to the Minister for Roads and Ports. Has the Minister received any correspondence from the Federal Minister for Infrastructure asking New South Wales to identify projects that should be included on the national land transport network, which has not been updated since 2009? What projects has New South Wales nominated for funding under that scheme, whereby the Federal Government has committed to spending about $35 billion on such projects to boost productivity?

The Hon. DUNCAN GAY: My understanding is that the premise of the question is: Have we received a letter? To the best of my knowledge, we have not received such a letter, but I am certainly willing to check. We have had discussions with the Federal Minister for Infrastructure, the Deputy Prime Minister and the leader of the grand old Nationals in Canberra, Warren Truss—and what a good job he is doing. Trussy is one of the best. You can trust in Truss. It would come as no shock that when the former Federal Government was in power I tried to get the Princes Highway included in the national land transport network. A lot of work is happening on the Princes Highway and it is all being done using New South Wales money—nothing came from the Federal Labor Party; we had no help. We have had a conversation, but I will check and come back to the member with the details because it is an area that we need to fix up.

The Hon. Steve Whan: What do you call the Bega bypass?

The Hon. DUNCAN GAY: I call it the Bega bypass.

TAXI DRIVER ENTITLEMENTS

The Hon. PENNY SHARPE: My question is directed to the Minister for Roads and Ports. Given the Independent Pricing and Regulatory Tribunal's report in 2012 found that taxi drivers earn as little as $7.55 an hour, what actions has the Government taken to address the exploitation of drivers?

The Hon. DUNCAN GAY: It is indeed a great day when finally we get a question from the shadow Minister for Transport on transport issues. I do not know where she has been for so long. She has been living in the shadow of the Minister for Transport.

The Hon. Steve Whan: Point of order: The Minister is debating the question by debating whether the shadow Minister for Transport has asked questions previously. I ask you to draw him back to answering the question.

The PRESIDENT: Order! The Hon. Steve Whan is probably right, but I am sure the Minister was about to address the substance of the matter.

The Hon. DUNCAN GAY: It was just an opening gargle; I was warming up. The Hon. Steve Whan's advice and your advice, Mr President, was good advice. As the Hon. Penny Sharpe knows, that is a question for my colleague the great Minister for Transport, the Hon. Gladys Berejiklian. I will refer the matter to her.

PUBLIC TRANSPORT INFRINGEMENT NOTICES

The Hon. DAVID CLARKE: My question is directed to the Minister for Police and Emergency Services. Will the Minister update the House on Operation Javelin IV, the new joint operation between the Police Transport Command and Transport for NSW targeting fare evasion and other offences on the public transport network?

The Hon. MICHAEL GALLACHER: It is good to be asked a question about transport by someone who, unlike the shadow Minister, has a genuine interest in it. This is about good news. The Police Transport Command was established in May 2012 to manage security on public transport infrastructure in New South Wales. Since its inception, command officers have made 4,220 arrests, laid 7,935 charges and issued more than

81,000 infringement notices. The Police Transport Command continually strives to increase safety on public transport infrastructure so that commuters who pay to travel can arrive at their destination safely and without incident. It is not about revenue raising, which the Hon. Walt Secord says it is. With the Hon. Walt Secord it is not about the positive effects, it is not about making our trains safe, it is not about ensuring that there is a fair go for those who pay their fares; it is all about scaremongering.

Whilst the majority of public transport users pay their way, fare evasion remains a significant issue. Fare evasion costs millions of dollars that could be better spent on extra services and new infrastructure that could make our public transport network more efficient for commuters. The NSW Police Force and Transport for NSW are working together in a coordinated response to target those doing the wrong thing on our public transport network—people like the Hon. Penny Sharpe, who keeps doing the wrong thing by not telling the truth about what is happening on our public transport system.

The Hon. Amanda Fazio: Point of order: The Minister has made imputations against the Hon. Penny Sharpe that are unparliamentary. He should withdraw them.

The PRESIDENT: Order! The remarks were not unparliamentary, but they certainly were reflections on the member. I caution the Minister not to make reflections on a member.

The Hon. MICHAEL GALLACHER: I will withdraw the remarks in that context. But the fact is that great things are happening on our public transport system and the shadow Minister is not telling the public about them. [*Time expired.*]

COAL SEAM GAS

The Hon. JEREMY BUCKINGHAM: My question without notice is directed to the Minister for Police and Emergency Services. When the Minister met with the Commissioner of Police and local police officers in Moree recently did he discuss the issue of sheep farmers being arrested while protesting against coal seam gas operations? Did local police request additional resources to deal with protesters and to facilitate Santos' drilling for gas near Narrabri?

The Hon. MICHAEL GALLACHER: I had no discussion relating to sheep farmers. There were discussions about many other things, such as the great work being done by police in making our community safe out there—

The Hon. Jeremy Buckingham: Point of order: My point of order goes to relevance. The question specifically related to police requesting extra resources to deal with coal seam gas operations.

The PRESIDENT: Order! The Minister was being directly relevant to the question he was asked.

The Hon. MICHAEL GALLACHER: I was asked about sheep farmers. There was no mention of sheep farmers at any stage whilst I was in Moree.

PARRAMATTA BUS INTERCHANGE

The Hon. GREG DONNELLY: My question without notice is directed to the Minister for Roads and Ports, representing the Minister for Transport. What action has Transport for NSW taken to fix serious overcrowding of buses at the Parramatta bus interchange?

The Hon. DUNCAN GAY: The question is obviously of a technical nature, so I will refer it to my colleague the Minister for Transport for an answer.

The Hon. GREG DONNELLY: I ask the Minister a supplementary question. Will the Minister elucidate his answer with respect to outlining the specific timetable that will be implemented to address the overcrowding on buses at the Parramatta bus interchange?

The Hon. Dr Peter Phelps: Point of order: That is a new question.

The PRESIDENT: Order! The question is out of order.

ROADS AND MARITIME SERVICES KEY PERFORMANCE INDICATORS

The Hon. JENNIFER GARDINER: My question without notice is directed to the Minister for Roads and Ports. Will the Minister update the House on the key performance indicators [KPIs] that have been given to him by the Premier?

The Hon. DUNCAN GAY: I thank the member for the question. I was hoping to get one like it from a member opposite. When we were elected—just on three years ago—the Premier gave me a set of KPIs to help get this State going again after years of Labor inertia. Now, I know that members opposite have little or no idea what a KPI is. Yesterday the Hon. Walt Secord struggled with the concept. In fact, so foreign was the idea he could not even say the words. So for the benefit of that member and the other members opposite, a KPI is a key performance indicator. This is a strange concept for members opposite. The only performance they ever gave while in government was for the media—and even that was substandard. But now that there is a grown-up government running the State, key performance indicators are an important measuring tool.

The Hon. Amanda Fazio: Grown-up? You mean aged.

The Hon. DUNCAN GAY: Well, there are some tools that take more measuring than others. Top of the list of my key performance indicators was to start construction of one of Sydney's missing road links before the next election. WestConnex is now well on the way to construction starting. So tick. On Sunday the Premier, the Prime Minister and I announced we had reached an agreement with Transurban and the shareholders of the M7 to deliver NorthConnex. So double tick. The Premier gave me a key performance indicator to open up the employment lands in Western Sydney, and last year we opened Erskine Park Link Road, linking Lenore Avenue with Old Wallgrove Road. So another tick. The Premier gave me a key performance indicator to fix regional and rural roads. This year we have invested a record $3.9 billion on regional roads—58 per cent more than Labor spent per annum. So another tick. Another key performance indicator was to widen the M5 West after Labor failed to do it. The widening of the motorway is progressing well and on track to open later this year. Another tick.

There is more. I was asked to make our schools safer, so we have fast-tracked the installation of flashing lights at every school by the end of next year. Tick. Another of my key performance indicators was to highlight when Walt's World made more preposterous claims such as more people were killed on the roads in January than for the whole of 2013. There are a whole lot of ticks there—an 897 per cent increase in ticks. I was given the task of seeing off shadow roads Ministers. There is a double tick there already—and we have not finished yet. Another key performance indicator was to out serve the conga line of roads Ministers in the previous Government. I have served longer in this portfolio than the last six Ministers of the previous Government. So tick, tick, tick, tick. Sadly, the only tick those opposite got was a parasite.

NEWCASTLE LIGHT RAIL PROJECT

Dr MEHREEN FARUQI: My question without notice is directed to the Minister for Roads and Ports, representing the Minister for Transport. Once the Opal card is rolled out in the Hunter, will commuters travelling to the Newcastle city centre have to pay an additional fare when transferring from the truncated rail terminus at Wickham onto the proposed light rail?

The Hon. DUNCAN GAY: I thank the member for her question. In a way—as close as The Greens can get—I think it is a pat on the back for the Hon. Gladys Berejiklian, who has delivered an Opal card, something that was not able to be done by the previous Government. It is interesting that this question was asked by The Greens, who supposedly champion light rail, because Dr Mehreen Faruqi's idea, instead of WestConnex, was to build a light rail track up the middle of Parramatta Road. Of course, we would not remove any of the cars, taxis, buses or trucks; we would just build the wretched thing right up the middle of Parramatta Road. I do not know how that would function without removing anything. I do not know how people would walk out into the middle of the road, or how they would get their freight and things on to or off a tram. Anyway, that was the member's solution, which indicated to me that she may be a bit of a fan of light rail.

Yet this question from The Greens is an indication that at every opportunity they get they are against our side of politics. If we are trying to do something, they are looking for ways in which it will not work. They are back to the good old days when they had that cosy arrangement in Tasmania—before the people of that State changed the government and threw The Greens out. We have an Opal card that does work. We do not have light rail there yet. I will refer this question to my colleague the Hon. Gladys Berejiklian for an answer on the technical details.

PARRAMATTA BUS INTERCHANGE

The Hon. ERNEST WONG: My question without notice is directed to the Minister for Roads and Ports, representing the Minister for Transport. What is the Government doing to address the inadequate facilities for bus drivers at Parramatta bus interchange, which includes an unlocked portaloo tied to a post?

The Hon. DUNCAN GAY: I thank the member for his question and the detail contained in it.

The Hon. Dr Peter Phelps: It is operational.

The Hon. DUNCAN GAY: It may be operational, but it may be something that the police Minister could not answer. It is an important question and, if it is correct, that situation certainly needs to be examined. But 26 years in this place have taught me that the Labor Party is very rarely correct. But if it is correct, it is a matter that needs attention. I will refer the question to my colleague the Minister for Transport.

KIDZWISH FOUNDATION

The Hon. CHARLIE LYNN: My question is addressed to the Minister for Ageing and Minister for Disability Services. Will the Minister update the House on the recent funding provided to the KidzWish Foundation?

The Hon. JOHN AJAKA: The New South Wales Government is committed to supporting children with disability and their families from as early in a child's life as possible. Evidence shows that to achieve the best possible outcomes for children with additional needs, intervention and support should be provided early in the child's life. I am pleased to advise the House that on 7 March 2014 I was joined by Gareth Ward, the member for Kiama, to announce funding of $174,000 to the KidzWish Foundation to expand the KidzSpeak Program.

The Hon. Greg Donnelly: A one-term wonder.

The Hon. JOHN AJAKA: You could not be more wrong. The KidzSpeak Program is a mobile speech therapy service for preschools within the Illawarra. This program takes speech therapy services to children. The program will be delivered entirely in preschools and childcare centres for children aged five years and under. The program will assist children, childcare workers and parents to ensure the benefits are seen for generations to come. Programs such as KidzSpeak are a result of the reform that is taking place in the disability sector, where ingenuity and creativity are rewarded. It shows how funding can be invested in more innovative ways to support people with disability and their families. This funding demonstrates that by encouraging the non-government sector this Government is returning quality services to the people of the Illawarra. The focus on the zero-to-eight age group recognises that this life stage is a critical one and that by providing the right support and programs, at the right time, in the right places, we can improve the life path for children and their families.

The New South Wales Government's Strengthening Supports for Children and Families zero-to-eight years strategy aims to support children with disability and their families in mainstream environments rather than accessing the majority of their supports in specialist settings. This is why programs such as KidzSpeak are so important. The strategy for children aged zero to eight years is increasingly focused on provision of specialist support within mainstream settings; moving away from placement of children in segregated, disability-specific centres; options for families to receive support in a place and at a time which is easier for them to access; innovative service provision based on family needs and research; supporting families and children at the transitions to school; and supports to improve participation in local communities, reducing isolation and the formation of informal support networks.

The Government is proud to support KidzWish by delivering funding for the KidzSpeak program to support children with disability and their families. This is a change for the long term that will expand service options for children with disability, their families and carers to enable greater choice, flexibility and control. The Government continues to provide strong levels of investment in early intervention with Ready Together. This initiative will ensure that children with disability and their families receive appropriate support and key life transition, such as the introduction to childcare and preschool. Ready Together is helping families and service providers to prepare for the statewide implementation of the National Disability Insurance Scheme. The National Disability Insurance Scheme will give people with disability and their families more flexibility, choice and control in how they and their children are supported. The Government is committed to continuing reforms and continuing supports because every child deserves the best possible start in life.

NATIVE VEGETATION LEGISLATION

The Hon. PAUL GREEN: My question is directed to the Minister for Roads and Ports, representing the Deputy Premier. Given that in 2013 the Deputy Premier announced a future overhaul of the Native Vegetation Act 2003 and a remake of Native Vegetation Regulations which would include the introduction of self-assessable activities, at what stage is the native vegetation review? When will it be reported in Parliament? Is it true that the proposed self-assessable activities will be sterilised if the Act remains unamended? When will the Government give tick this one off?

The Hon. DUNCAN GAY: I look forward to ticking this one off. Who knows what the Labor Party and The Greens would do with any regulation. My understanding from those involved, which includes members of the House—for example, the Hon. Rick Colless has great credibility in this area and has been doing a lot of work—

The Hon. Walt Secord: There must be two Rick Collesses.

The Hon. DUNCAN GAY: There is only one Rick Colless, but there are two doctors of dirt. The Hon. Rick Colless is only one of them: he is an agronomist—but I cannot say anything about the other one. The Hon. Rick Colless has done great work, as has Troy Grant, the Minister for Western New South Wales, the Minister for Primary Industries and the Minister for the Environment. A lot work has been done in this area and, frankly, we wish the review had been completed sooner. It is near, but the matter was not as easy as we had hoped. The Hon. Rick Colless, who cares about the area and its people, has been there. It is not a coastal holiday destination, so I suspect most members on the Labor Party front bench have never been there. Once they are on the trough they go to holiday destinations every time they leave Sydney. The members I mentioned earlier go out there, they know what is happening across the State and they are doing good work for the people who live there. I have heard a lot of ageist comments, but some of us have not dyed our hair like others of a certain age.

OUTLAW MOTORCYCLE GANGS AND COMBAT SPORT

The Hon. LYNDA VOLTZ: My question is directed to the Minister for Police and Emergency Services. Now that the Minister has been made aware of the internal departmental report highlighting police concerns regarding bikie gang involvement in combat sport, has he spoken to the Minister for Sport and Recreation regarding mandatory national criminal records checks? If not, why not?

The Hon. MICHAEL GALLACHER: This is a very detailed question about what I am aware of. Given that, I will take it on notice and check what I am aware of.

FIRE AND RESCUE NSW VICTORIA DEPLOYMENT

The Hon. NIALL BLAIR: My question is addressed to the Minister for Police and Emergency Services. Will the Minister inform the House about the recent deployment of Fire and Rescue NSW to assist its colleagues in Victoria?

The Hon. MICHAEL GALLACHER: I just happen to have an answer to that question. Since February Victorian fire crews have been dealing with major bushfires, some of which continue to burn in remote areas of the State. Added to this, a major fire was burning in the Hazelwood open-cut coalmine near Morwell. The thick smoke posed a potential health hazard and caused the evacuation of some residents. The power station next door was also under threat from the fire. With this serious situation on his hands, the Victorian Fire Services Commissioner, Craig Lapsley, contacted the Fire and Rescue NSW Commissioner, Greg Mullins, and requested his help. On 18 February Commissioner Mullins joined an expert panel in Victoria to review the firefighting efforts at the Hazelwood coalmine. The next day, at the request of Victorian authorities, Commissioner Mullins organised an initial deployment of 60 firefighters—30 on day shift and 30 on night shift—and 10 Fire and Rescue NSW fire trucks, including two specialist ladder units.

Fire trucks from Baulkham Hills, Bondi, Dee Why, Kogarah, Miranda, Mount Druitt, Randwick, Revesby, Rydalmere and Willoughby set off and travelled overnight, and reserve fleet fire engines replaced them at local fire stations. Fire and Rescue NSW crews began their deployment the following morning at Frankston, Patterson River, Dandenong, Morwell, Traralgon, Bendigo, Shepparton, Ballarat City, Geelong City and Corio while their Victorian counterparts were at the coalmine fire front. Fire and Rescue NSW also sent a specialist fire engine and crew to pump large volumes of foam on to the Hazelwood coalmine fire. Four specialist HAZMAT firefighters were also deployed to assist in air monitoring operations.

Already more than 780 Fire and Rescue NSW firefighters have assisted their Victorian counterparts, both at fire stations and at the coalmine fire. I can assure members that Fire and Rescue NSW maintains appropriate fire and emergency services coverage in New South Wales—the firefighters sent to Victoria are off duty and are serving on a rotational basis. Although the mine fire is now somewhat under control firefighters are expected to be on the ground until at least the end of the month. The deployment has provided vital assistance to the Victorian firefighters and has given our firefighters a unique learning experience as they work alongside their interstate counterparts. Significantly, it is the first time Fire and Rescue NSW has deployed firefighters interstate to backfill fire stations on a 24/7 basis. And, importantly, we are now able to repay the debt of the vital assistance our Victorian colleagues provided us in October last year, when bushfires raged in the Blue Mountains, Southern Highlands and on the Central Coast.

While backfilling in Victoria, Fire and Rescue NSW crews have responded to a range of incidents. Tragically, last Sunday the Fire and Rescue NSW Strike Team attached to Patterson River responded to a house fire that was unfortunately well alight when they arrived. Following a secondary search, sadly a fatality was discovered. I thank the people of Victoria, particularly the Victorian Country Fire Authority, for welcoming the Fire and Rescue NSW crews into their towns. But, most importantly, I thank our firefighters for their preparedness to assist their interstate colleagues in their time of need.

CANNABIS USE FOR MEDICINAL PURPOSES

Dr JOHN KAYE: My question is directed to the Minister for Police and Emergency Services, representing the Minister for Health. What steps has the Government taken to implement recommendation 1 of the upper House inquiry into the use of cannabis for medicinal purposes, which was accepted by the Government in its response to the inquiry received by the Clerks on 15 November 2013? Will the Minister indicate whether the Minister for Health has written to her Federal colleague? If so, was a response received?

The Hon. MICHAEL GALLACHER: I will refer the question to the Minister for Health. This is an important issue to Dr John Kaye. I will seek a response from the Minister in relation to the question, particularly about communication with her Federal counterparts.

PUBLIC SECTOR ENGINEERS

The Hon. WALT SECORD: My question without notice is directed to the Minister for Roads and Ports. Why is the State Government seeking to abolish the professional engineers award, and has there been any modelling on its impact on Roads and Maritime Services advice regarding the State's roads, bridges and other infrastructure?

The Hon. DUNCAN GAY: It is one thing to turn up; it is another thing to participate in question time. When the Hon. Walt Secord turned up yesterday he should have noticed that The Greens had beaten him in asking this question.

The Hon. Walt Secord: You didn't answer it.

The Hon. DUNCAN GAY: I did answer it and I answered it comprehensively—a big tick for me for answering it yesterday and another cross for the Hon. Walt Secord for not paying attention. What sort of key performance indicators does Robbo set for the lazy Hon. Walt Secord?

The Hon. Lynda Voltz: Point of order: My first point of order is that the Minister is debating the question. My second point of order relates to relevance. The question yesterday was ruled out of order so the Minister could not have answered it. As to relevance, the question clearly relates to awards.

The PRESIDENT: Order! When answering questions Ministers must not debate the question and must be generally relevant. The Minister was in order.

The Hon. DUNCAN GAY: I was in fact asked two questions.

The Hon. Amanda Fazio: Point of order: My point of order is that comments made by the Minister during his answer amount to imputations against the Hon. Walt Secord. That is not in accordance with the standing orders and the comments should be withdrawn.

The PRESIDENT: Order! I heard no imputations. Under the standing orders if there had been an imputation it would be disorderly, but not necessarily grounds for withdrawal. The Minister has the call.

The Hon. DUNCAN GAY: I know everyone in the Labor Party believes he is lazy.

The PRESIDENT: Order! The Minister should not trifle with the chair.

The Hon. DUNCAN GAY: My apologies, Mr President. Two questions were asked yesterday. The first one was ruled out of order. The second question, which had been rephrased, was answered comprehensively. As the member was obviously asleep and cannot read *Hansard* I will repeat my answer. Roads and Maritime Services has a long history of supporting the development of professional engineers, including affiliations with Engineers Australia and sponsorship of a number of external postgraduate qualifications programs. Roads and Maritime Services is looking to consolidate, simplify and modernise various industrial instruments that govern the conditions of employment of its award-based salary employees.

The agency has met with Professionals Australia a number of times to discuss the consolidation of salaried awards to avoid duplication and ensure more efficient delivery. The common award maintains existing conditions and pay scale for Roads and Maritime Services professional engineers. Those specific clauses relating only to engineers are to be included in a separate part of the common award. The conditions and rates of pay of professional engineers will not change under the new award. The Hon. Walt Secord should stay awake and he will not embarrass himself. He should listen to what is happening in the Parliament and he will represent the engineers a lot better than he has done already.

The Hon. WALT SECORD: I ask a supplementary question. Will the Minister elucidate his answer in regard to the number of engineers who have left Roads and Maritime Services since it indicated it was abolishing the award?

The PRESIDENT: Order! When supplementary questions are being asked they should seek to elucidate an aspect of an answer that has already been given. They should not seek to take the supplementary question in a new direction that canvasses a subject area that has not been already addressed directly. The supplementary question is out of order.

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

Questions without notice concluded.

THE HON. AMANDA FAZIO

Personal Explanation

The Hon. AMANDA FAZIO, by leave: I wish to make a personal explanation. On two occasions in question time today references were made to the fact that I colour my hair. I advise members of the House that like many other members, both male and female, I colour my hair because I choose to do so. I do not do it for any of the other reasons that may have been implied in the comments made by the Minister for Roads and Ports.

The Hon. Duncan Gay: Glass jaw, I think.

The Hon. AMANDA FAZIO: Thick head.

The Hon. Duncan Gay: Point of order: The Hon. Amanda Fazio has used unparliamentary language. I ask her to withdraw the remark and apologise.

The PRESIDENT: Order! I call the Hon. Charlie Lynn to order for the first time.

The Hon. Lynda Voltz: Point of order: The standing orders about points of order relate to debate. The member had taken her seat and there was no debate before the House. I fail to see how the Minister can take a point of order against a member who was not at the podium and when no debate was taking place.

The PRESIDENT: Order! I have previously ruled that points of order can be taken about interjections and that it is not necessary for a member to have the call for me to regard a matter as unparliamentary. It is

certainly difficult for the chair to police remarks across the table between members—it takes the chair into very difficult territory. However, the remark was loud and was clearly unparliamentary. I ask the member to withdraw it.

The Hon. AMANDA FAZIO: I withdraw my remark. I also wish to advise members that I did not use a term that could be regarded as a profanity, in case their hearing is not very good. If any member wishes to find out what I said—I do not want to place it on the record again—they may see me after.

The PRESIDENT: Order! I appreciate what the member has said and if that is the case, I appreciate nevertheless her withdrawing for the sake of orderly debate in the Chamber. I did attempt to seek advice as to what was said.

TRAVEL AGENTS REPEAL BILL 2013

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

Motion by the Hon. Michael Gallacher agreed to:

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

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

CRIMES AMENDMENT (INTOXICATION) BILL 2014

Second Reading

Debate resumed from 18 March 2014.

The Hon. MARIE FICARRA (Parliamentary Secretary) [3.41 p.m.]: As members are aware, offences attracting a mandatory minimum sentence will also include a two-year increase to the maximum penalty when the offence is committed in public by an intoxicated offender. The new laws create additional aggravated personal violence offences with higher maximum penalties and mandatory minimum sentences for the most serious of these offences. Maximum penalties are increased by two years compared to the equivalent non-aggravated offence. The mandatory minimum offences send out a clear message to those who engage in drug-related and/or alcohol-related violence that these actions will no longer be tolerated by their fellow citizens.

All members realise that there is no single or simple solution for the problems that we have witnessed to date, but the Government is hopeful that these reforms will make substantial changes to confront drug- and alcohol-fuelled violence in our streets. Such legislation will be subject to the usual review processes to ensure its effectiveness. A mandatory minimum sentence of eight years for perpetrators of drug- and alcohol-fuelled one-punch attacks that result in a victim's death will ensure that perpetrators of these violent crimes face serious consequences in line with the loss of life that they have caused.

It reflects a broader community view that the sentences handed down for a number of offences in recent years have been too light and out of step with community expectations. The more serious offenders will receive a sentence that is above the mandatory minimum sentence, which will be determined by the judge. Consistent with the provisions of the Act, the requirement to impose a mandatory minimum sentence for the murder of police officers will not apply to a child under 18 years of age at the time of the offence or to a person with a significant cognitive impairment at the time of the offence. The Premier has stated in the other place:

> The aggravated offence for one-punch assaults where an offender is intoxicated by alcohol or drugs will be reinforced by empowering police to conduct drug and alcohol testing if an offender has committed a violent assault and is suspected of being under the influence of drugs or alcohol.

I will now turn to the new lockout laws that came into effect on 24 February 2014. The laws cover all licensed venues within a newly defined central business district precinct that includes Kings Cross, Cockle Bay, the Rocks and Haymarket. These changes include: the creation of the new central business district entertainment precinct; 1.30 a.m. lockouts enforced at hotels, registered clubs, nightclubs and karaoke bars across the Sydney

central business district entertainment and Kings Cross precincts; 3.00 a.m. cease service of alcohol in those venues across the Sydney central business district entertainment and Kings Cross precincts; introduction of temporary banning orders for troublemakers in the central business district entertainment precinct; a freeze on new liquor licences and approvals for existing licences across the new central business district entertainment precinct; and a ban on takeaway alcohol sales after 10.00 p.m. across New South Wales.

The changes also include: increasing the maximum sentence to 25 years for illegal supply and possession of steroids, up from two years; increased on-the-spot fines to $1,100 for continued intoxicated and disorderly behaviour and disobeying a police move-on order, which is an increase of more than five times; and a new community awareness and media campaign to address the culture of binge drinking and associated drug- and alcohol-related violence. In their contribution to the second reading debate many members have asked: what is the Government doing about education? The Government knows that we cannot just enforce stricter and higher penalties without education and so the new community awareness and media campaign will be a centre point of the way in which it moves forward.

The measures include: free buses running every 10 minutes from Kings Cross to the central business district to connect with existing NightRide services on Friday and Saturday nights; the removal of voluntary intoxication by drug and alcohol as a mitigating factor when courts determine sentences; increasing maximum penalties by two years where drugs and/or alcohol are aggravating factors for violent crimes, including assault causing grievous body harm, reckless bodily harm assault against police, affray and sexual assault; enabling police to impose an immediate central business district precinct ban of up to 48 hours for troublemakers; introducing a periodic risk-based licensing scheme with higher fees imposed for venues and outlets that have later trading hours, poor compliance histories or are in high-risk locations; and introducing a precinct-wide freeze on liquor licences for new pubs and clubs.

Alongside these measures a key part of the Government's response to tackling alcohol-related harm is ensuring that there are effective services in place to respond to the needs of individuals seeking drug and alcohol treatment. I reiterate that the Government is responding to community concerns about alcohol-related violent incidents with a tough and comprehensive package of measures to make our streets safer. As we know, prevention is the best cure. It is hoped that increasing public awareness through extensive media campaigns and tougher sentences will make people think before they act. This is a move in the right direction to effect positive change in the drinking culture and the way in which some people behave in public. The new laws apply to serious personal violence offences that occur in public while the offender is intoxicated. In conjunction with the new lockout laws they will be an effective tool to combat recent surges of violence on our streets.

The Government has made important commitments to both maintain and strengthen the program of evidence-based drug and alcohol treatments provided through NSW Health including: $10 million over four years from 2011-12 to boost the capacity of the non-government organisation sector to deliver drug and alcohol services and enable a further 5,000 people to access help; $5.7 million per annum from 2013-14 to implement the involuntary drug and alcohol treatment program; and $3.4 million per annum from 2012-13 to enhance the opioid treatment program. In addition, key strategies to reduce alcohol-related assaults include promoting personal responsibility by trialling Sobering Up Centres in the Kings Cross precinct, Coogee and Wollongong and strengthening police move-on powers. I congratulate the Minister for Police and Emergency Services on his leadership in these fine endeavours. The Minister was strong in opposition and is even stronger now in government. The community of New South Wales thanks him.

Key strategies to reduce alcohol-related assaults also include: introducing a new offence of intoxicated and disorderly; implementing a three strikes disciplinary scheme targeting irresponsible venues, which is the toughest licensing law in Australia and can lead to the loss of licence for life; and subjecting violent venues to strict licence conditions including lockouts, bans on shots, and glass and alcohol time-out periods. Additional key strategies include: cracking down on irresponsible liquor promotions by licensed venues; introducing a photo identification card to be used by graduates of mandatory responsible service of alcohol and responsible conduct of gambling courses for staff at licensed venues—we are the first State in Australia to do so; and introducing an interactive internet-based alcohol education resource for senior secondary school students.

I congratulate the Minister for Tourism, Major Events, Hospitality and Racing, Minister for the Arts, and Minister for the Hunter, the Hon. George Souris, on his leadership and commend him for working in conjunction with the Hon. Michael Gallacher and the Premier to ensure that this is a good beginning. We know it is not the end. We will continue to monitor where problems arise and where legislation and regulations can be tightened. It is timely that these measures be introduced. They send a strong message that the people of New

South Wales condemn alcohol- and drug-fuelled violence. Our reforms will have deep significance for the community and will provide some solace to victims of alcohol-fuelled violence and their families. I commend the bill to the House.

The Hon. PAUL GREEN [3.51 p.m.]: On behalf of the Christian Democratic Party I speak to the Crimes Amendment (Intoxication) Bill 2014. The bill creates a number of offences in relation to aggravated assault while intoxicated. Under this legislation if an adult offender is intoxicated in public by alcohol, a narcotic drug or any other intoxicating substance in conjunction with alcohol or narcotic drugs their minimum sentence will be increased by two years if they commit one of the following offences: reckless grievous bodily harm or wounding; assault occasioning actual bodily harm; assault and other actions against police officers; or affray.

The bill alters the minimum sentences of imprisonment and minimum non-parole periods to be imposed by the courts on a person who is found guilty of serious aggravated intoxication offences. The offence of reckless grievous bodily harm when intoxicated in public and in company will attract a sentence of five years; reckless grievous bodily harm when intoxicated in public will attract a sentence of four years; and reckless wounding when intoxicated in public and in company will attract a sentence of four years. The offence of reckless wounding when intoxicated in public will receive three years imprisonment; wounding or causing grievous bodily harm to police officers when intoxicated in public will receive five years imprisonment; and the offence of wounding or causing grievous bodily harm to police officers during public disorder when intoxicated in public will receive five years.

This bill clarifies the assaults to which the offence of assault causing death when intoxicated applies. The bill makes a significant amendment to the legislation to authorise a police officer to require breath tests or analysis or require the provision of a blood or urine sample after arresting an offender for any aggravated intoxication offence to confirm or disprove that the offender was intoxicated by extenuating provisions that were not recently enacted in relation to assaults causing death when intoxicated. It does so by two means. One is by authorising a police officer to require the provision of a blood or urine sample within 12 hours instead of four hours after the alleged offence. The second is by making it an offence to consume or take alcohol or a narcotic drug within 12 hours after assaulting a person in order to alter the presence or concentration of an intoxicating substance in the person's breath, blood or urine and thereby avoid prosecution for an aggravated intoxication offence.

In 2010-11 alcohol and other drugs were considered a contributing factor in 287,000 assaults. I can assure members that in the Shoalhaven alcohol- and drug-related violence was one of the main issues in peak tourism time. At that time our population can grow to 320,000. When I was mayor of the Shoalhaven we had a fantastic relationship with the local police, including Kyle Stewart and Wayne "Starlo" Starling. Wayne was a great champion of putting Christmas back into Sanctuary Point. He beefed up the police numbers in the area and made sure that families could attend Christmas events and feel safe and celebrate together singing carols and enjoying other entertainment. He is a great man.

Another hero is Assistant Commissioner of Police Mark Murdoch. He took the time to travel to the South Coast and knock on my door. We discussed ideas about how to reclaim our community on significant days such as New Year's Day, Boxing Day and the Australia Day long weekend. He told me that the police wanted to work with us to make a plan to reclaim public holidays so that families and aged people could celebrate without being affected by people doing the wrong thing with alcohol. He was a real champ. Not only did he visit and discuss those things with me but he also backed that up with an increased police presence when it was needed. Police numbers in our area were deliberately increased on occasions such as New Year's Eve because we knew such events could be hotspots for trouble.

The council came on board and worked in partnership with the police. We were able to endorse our public spaces as alcohol-free areas—they are not areas for free alcohol but areas free of alcohol. In partnership with the police, the council was able to reclaim our public reserves. They have now become areas in which the community is able to celebrate some of its best times. The success of community events is not measured just by statistics, although I am sure the police keep statistics. As mayor I knew that the best indication of community satisfaction was when I walked down the street and people said to me, for example, "Hey, we had the best time the other night at the fireworks." After the most recent New Year's Eve fireworks people commented that because of the police presence they felt safe, kids were able to run around and everyone had a great night while celebrating a significant event.

One of the biggest furphies about the new measures that have been introduced was that mums and dads who liked a chardonnay or red wine with their barbeque were going to be charged and given a certificate. To their credit, the police have worked with discretion and ensured that the wider community does not pay the price for the alcohol-related violence and vandalism in the area. I champion Superintendent Joe Cassar and Superintendent Wayne Murray. During my mayoral term the police were strategic in ensuring that the community was able to embrace festive family activities in a way in which they felt safe. The council also worked with police on other initiatives to ensure that we could increase police numbers when needed, such as by providing accommodation for the extra police officers sent to the area for special events. The scenario in the Shoalhaven is not perfect; we certainly need more police and a strategic police station at the crossroads in Vincentia. Those measures are important to ensure that the community remains feeling safe.

One thing that the area is not proud of is the growing number of domestic violence incidents. Until we take this on and make the perpetrators totally accountable for their violent actions, on most occasions against women, and it is compulsory for them to get some education before they reoffend, we will continue to see the breakdown of relationships, particularly marriages. As we know, a by-product of these actions is legislation, including amendments to the child protection legislation, which will soon be debated in this Parliament. These amendments stem from the rising number of broken family relationships, often as a direct result of alcohol and drug abuse.

We can try to rule this out by sending a clear message about these actions and showing that we understand that people who are sober have their wits about them but they are not the same when they are drunk or under the influence of drugs. Often such people commit a crime that can put them in a very difficult spot. We want to make it very clear that drinking in moderation is the best way to go, but if people end up drunk or out of control then there may be direct consequences. That is what this law is about. A lot of parents will sadly have to spend the next Christmas without their children as a direct result of the unaccountable actions of a few who feel they have the right to take life while intoxicated to the point where they did not make rational decisions, and that is really sad. If we can help parents to find some comfort through the Government's actions to reduce the number of incidents arising from intoxication then that is what we should do on our watch.

The Hon. ERNEST WONG [4.01 p.m.]: I contribute to the debate on the Crimes Amendment (Intoxication) Bill 2014. This is the second bill the Government has introduced this year to create new offences with increased maximum penalties and mandatory minimum sentences. The first of these introduced a new offence of assault causing death, commonly known as "one-punch homicide", with a maximum penalty of 25 years imprisonment and a mandatory minimum of eight years imprisonment. That bill passed with Labor's support, despite our serious concerns regarding mandatory sentencing,

This new bill corrects a number of problems which have emerged in relation to the Government's new "one-punch homicide" law while creating new offences with mandatory minimum sentences and increasing maximum penalties for a number of other existing offences. This bill and its subject matter have already been the subject of much debate, both inside this Parliament and in the media. I will confine my remarks to two issues. Firstly, we once again are debating critical and important legislation that is being rushed through without a thorough consideration of all aspects. This is legislation creating new criminal code offences, legislation to which serious and life-changing punishments will apply. There is much expert and public debate about the approach we are taking, and whether it will achieve the aim that is claimed. Surely, this legislation requires proper review by this House.

Yes, I understand the public demand for action in the face of appalling acts of violence. Indeed, I would absolutely support the urgency of these bills if I were convinced that they alone could stop attacks by intoxicated people. But let us be realistic: Without appropriate increases in licence monitoring, police presence and after-hours transportation support, these bills can at best provide a limited and questionable deterrence factor. An irony of these bills is that they seek to create a special class of criminal intent based on the perpetrator being intoxicated. In doing so, they overlook the reality that a person who is intoxicated is the person least likely to act rationally and be cognisant of recent changes to law.

This principle is well recognised in other sectors of law. For example, it underpins protections afforded to liquor retailers when intoxicated persons injure themselves as a result of their intoxication. On this matter, I refer to High Court Justice Callinan, truly a conservative's conservative, who addressed the increased risk profile that is incurred whenever alcohol is consumed. In his judgement of *Cole v South Tweed Heads Rugby League Football Club Limited*, his honour noted:

> The risk begins when the first drink is taken and progressively increases with each further one.

Everyone knows at the outset that if the consumption continues, a stage will be reached at which judgement will be impaired and even ultimately destroyed entirely for at least a period. This highlights the unlikelihood that a thug with a skinful will stop to consider the actions of this House. It also highlights why the Government's actions should be focused on practical measures in transport, licensing and policing. I would also support the urgency of these bills if there were not already numerous criminal sanctions for those who commit violence on others when drunk or sober.

The fact is that our law already provides substantial prison terms under our existing assault and homicide categories for those who commit violence. My second concern is the mandatory sentencing nature of these bills. Labor remains opposed in principle to mandatory sentences. The evidence on mandatory sentencing, from jurisdictions all over the world, is that it has little or no deterrent effect on hardened criminals while inevitably snaring genuine exceptions, the "right people in the wrong place". When we remove discretion from judges, we remove their ability to consider any mitigating factors of the individual or their prospects for recovery.

The Hon. Dr Peter Phelps: What about maximum penalties? Do you agree with those?

The Hon. ERNEST WONG: Maximum penalties are fine as long as—

The Hon. Dr Peter Phelps: So it is alright for the State to impose maximum penalties but not minimum penalties?

The Hon. ERNEST WONG: No, we are talking about leaving maximum imprisonment in the hands of judges. A widely discussed example compares two offenders. First, a member of the Young Liberals drinking in a bar defends his friend from taunts by a yob. The yob gets punched, bangs his head on the way down and dies, resulting in eight years mandatory prison time for the Young Liberal. Meanwhile, a bikie, with a criminal history, does the same thing to a rival gangster while completely sober and there is no sentence of eight years for the Hells Angel. I think that decent parents everywhere, parents who are appalled by recent violence, would still be gravely concerned by this comparison, but for all the headlines they make this is the cost of mandatory sentences. Genuinely decent people making one mistake can be caught by them and a judge has no power to recognise their circumstances.

Labor will therefore move amendments to this bill to adopt the Victorian Government's approach to dealing with violent crime by creating a single gross-violence offence. Therefore, while Labor supports steps to curb drunken violence, we believe the Victorian gross-violence offence is a better solution for New South Wales. My colleagues have already canvassed this matter, so I will defer to their remarks. In summary, Labor supports stronger laws to address drunken violence, but we need to get these laws right to ensure that the burden of punishment falls hardest on those who warrant it. Getting that balance right is a proper role for this House of review, and I commend Labor's amendments to it.

The Hon. ROBERT BORSAK [4.07 p.m.]: On behalf of the Shooters and Fishers Party I make a brief contribution to the debate on the Crimes Amendment (Intoxication) Bill 2014. First, I echo the sentiments of the Leader of the Opposition and other members in the other place who say that alcohol-fuelled violence is a scourge on our society. No-one wants to see lives senselessly destroyed, whether people are in an intoxicated state or otherwise. The Shooters and Fishers Party had concerns about the Government's bill and voiced those concerns publicly. I have even greater concerns about this legislation because of an incident that I found out about at the weekend involving a member of my family.

This family member has a degree in education, a master's degree, and is currently doing a PhD. He is married, a Roman Catholic, and a father of two children, who works in management for the New South Wales Government. He is an Australian of Lebanese and Irish-American descent. Recently he was stopped in the city, spreadeagled against the wall by police officers of the Dog Squad whilst they searched him, verbally harassed him and abused him in an apparent effort to provoke a reaction from him. Thankfully, this family member did not succumb to this sort of provocation, because he could quite easily have won the trifecta—abusive language, resist arrest and assault police officer—and gone straight to jail.

I ask myself: Why did this happen? The only reasonable conclusion that I can come to is that the police stopped this family member for nothing more than his appearance and their need to meet a quota of arrests or fines. He was in company with a fellow work colleague, carrying a backpack, neatly dressed and sober, on his way home from a business function. His colleague, who is of Caucasian appearance, was not similarly harassed,

whereas my family member is of Middle Eastern appearance and was harassed. If there was any doubt in my mind about the dangers of bringing in these extra powers for police, where police evidence carries greater weight, combined with automatic mandatory minimum sentences, incidents like this confirm to me that there is too much scope for abuse by a minority of police.

We are getting to the point where a person is presumed guilty until proven innocent. Had this hardworking, professional and family man reacted he may well have been hauled off to jail for affray or for assaulting police. I wonder how many other similar cases are out there. This sort of incident has not happened to me, a six-foot, once blonde-haired, blue- eyed Caucasian, and I do not believe it ever would. This incident has brought home to me the experience of others in society when some police are in a position to abuse their powers, and I for one do not want to see those powers extended to the point where the police are also judge and jury, administering mandatory minimum sentences.

As a result of our party's public stance, the Opposition, which had similar concerns, has drawn up amendments which may or may not be acceptable to the Government. I believe that everyone, including the Government, would be pleased to see this bill amended appropriately, which will hopefully avoid any unintended consequences. Common sense should prevail, which is the way bills should be dealt with, not by kneejerk reactions to media campaigns. Various media reports indicate that many of the proposals that were first flagged by the Premier earlier this year have now disappeared without a trace. In having the legislation redrafted, as has been suggested by members in the other place, I hope that the Government has realised that its initial proposals would have been completely impractical and unworkable.

There is no question that people throughout this State expect adequate sentencing for people who recklessly or intentionally destroy other people's lives, and we as legislators have a duty to deliver on that expectation. The Shooters and Fishers Party is on the record opposing the additional measures that the Government was proposing. Our party will consider the amendments flagged by the Opposition during the Committee stage. Hopefully they have been framed in such a way that they will have majority support in this Chamber.

Reverend the Hon. FRED NILE [4.12 p.m.]: I am very pleased to support the Crimes Amendment (Intoxication) Bill 2014. This bill implements the Government's commitment to introduce mandatory minimum sentences for people who commit serious acts of violence while intoxicated in public. The bill amends the Crimes Act 1900 to create new aggravated personal violence offences, the most serious of which carry mandatory minimum sentences. I congratulate the Government, especially the Premier, on its courage in pursuing this legislation in spite of criticism from the Council for Civil Liberties, the legal fraternity and the Opposition. I note that in his second reading speech the Premier said:

> The Government responded to community concern and it believes it is necessary to introduce these measures to combat the recent spate of serious drug- and alcohol-fuelled attacks on our streets. We are determined to send a strong message to those who engage in drug- and alcohol-fuelled violence: If you get drunk or take drugs and seriously assault someone in public, you will go to jail.

The purpose of this legislation is to make the streets of Sydney and other large metropolitan and regional cities, such as Newcastle and Wollongong, safe places where people can go out and enjoy socialising without the fear of being involved in violent fights or violent attacks. I note that this is the second stage of the Government's plan to respond to the increased alcohol-fuelled violence and that the first stage has proceeded with the support of all members of the House. I am disappointed that this bill does not appear to be getting the same support and I question why that is so when it is proceeding as the second stage of the whole campaign.

In a recent Senate inquiry into alcohol the Senators all agreed that it is our number one social problem. We need to bring in strong legislation to deal with the breakdown of behaviour that is happening on our streets. I am disappointed that the Australian Labor Party and, it appears, the Shooters and Fishers Party have reservations about this bill and that the Opposition will introduce amendments which seem to undermine the whole purpose of this legislation. The bill creates various aggravated violence offences for an adult offender who is intoxicated in public by alcohol or a narcotic drug and increases by two years the maximum penalty for the particular aggravated offence.

For example, the current maximum penalty for reckless grievous bodily harm in company is 14 years and it will be increased to 16 years; and the current maximum penalty for reckless grievous bodily harm will be increased from l0 years to 12 years. Perhaps the most controversial aspect of the legislation is that it will bring in mandatory minimum sentences for aggravated offences. But the sentences are very moderate when one

considers the offence itself. For example, reckless grievous bodily harm in company in a gang situation with others will carry a mandatory minimum sentence of five years; reckless grievous bodily harm, four years, reckless wounding in company, four years; reckless wounding, three years; and assaulting a police officer—reckless grievous bodily harm or wounding—five years.

I have had two sons in the Police Force and I believe many people would agree with me that five years is a very moderate sentence for assaulting a police officer. In the past week or so there have been increasing reports of police officers being assaulted and injured, particularly female police officers. There seems to have been a loss of respect for the police when they are carrying out their lawful duty of protecting our society. Whereas in the past people would have been very reluctant and fearful to assault a police officer, now there seems to be no barrier for some people as to who they attack.

Reckless grievous bodily harm or wounding during a public disorder will carry a mandatory minimum sentence of five years. I believe that these mandatory minimum sentences for aggravated offences should be passed by this House. We have the ability to monitor the effect of the legislation. The Hon. Robert Borsak spoke about police officers acting in a very discriminatory way towards one of his family members. I believe that represents a very, very small minority of police officers in this State and that what happened would be an exception to the rule. This should not affect our attitude to legislation dealing with all the different situations that can occur in society.

The bill also amends the recently created offence of assault causing death when intoxicated, to clarify the scope of the offence and to make consequential changes that reflect features of other proposed aggravated intoxicated offences created by this bill. It also makes consequential amendments to the Law Enforcement (Powers and Responsibilities) Act 2002 to facilitate testing a person for the presence of drugs or alcohol in relation to an arrest for an aggravated intoxication offence. As I have said on a number of occasions, it is most important to increase the ability of the police to detect drugs on individuals. I know that we have some drug testing vans or buses, but I believe those are not sufficient to cover serious situations where this drug testing is needed. The public place to which the intoxication offences will apply will be defined as those that are in or in the vicinity of any premises or land open to the public, licensed venues, restricted premises such as brothels, bikie headquarters and so on. The bill also gives a definition of intoxication and states:

> For the purposes of an aggravated intoxication offence, a person is intoxicated if:
>
> (a) the person's speech, balance, co-ordination or behaviour is noticeably affected as the result of the consumption or taking of alcohol or a narcotic drug (or any other intoxicating substance in conjunction with alcohol or a narcotic drug), or
>
> (b) there was present in the person's breath or blood the prescribed concentration of alcohol (that is, 0.15 or above).

These definitions of public intoxication will also apply to the new offence of unlawful assault causing death—the one-punch legislation that this House has already dealt with. The issue of sentencing for sexual assault will be considered once the New South Wales Government has received the report of the parliamentary inquiry examining the issue of child sexual abuse sentences. I am pleased to be a member of that inquiry. The inquiry is investigating the current level of sentencing for child sexual abuse matters, why the penalties are so low, and where a child has been sexually assaulted and abused what can be done to ensure the perpetrator feels the full weight of the law. I look forward to the report of that inquiry in due course.

I note also that some of the women's services have questioned the potential impact of mandatory sentencing in relation to domestic and sexual assaults. Their particular concern is that victims and witnesses may become more reluctant to provide evidence where mandatory sentencing applies. However, this bill does not impose mandatory sentences for sexual assault. It applies only to serious personal violence offences that occur in public while the offender is intoxicated; it does not overlap that domestic circumstance. That may require legislative change in the future, but that domestic situation is not covered by this legislation. The Christian Democratic Party is pleased to support the bill before the House.

The Hon. HELEN WESTWOOD [4.23 p.m.]: The Opposition will not be supporting the Crimes Amendment (Intoxication) Bill 2014 Bill in its current form. To improve the bill, Labor has proposed some very necessary amendments. These amendments, which are broadly based on the Victorian model, address intoxicated violence in public places by proposing a single "gross violence" offence. The Victorian legislation was enacted in response to an informed report by the Sentencing Council. This included experts such as prosecutors, police officers, academics and representatives of victims of crime. Unfortunately, the New South Wales Government's response to the same issue was not treated with the same rigour.

As a legislator in this State I believe the bill and its predecessor should be held up as a prime example of how not to enact legislation. This bill amends the 30 January Crimes and Other Legislation Amendment (Assault and Intoxication) Bill 2014. I consider that bill to be the Road Runner bill. It was ill-conceived, formed as a kneejerk reaction to media criticism and thrown together ad hoc, without any of the necessary rigour and without any regard for its impact or its consequences. As a result, here we are today a mere few weeks later with another amendment and, I suspect, with many more to come. I do not believe that mandatory sentencing works as a deterrent, especially not in crimes of violence. I am not alone in that belief. Mandatory minimum sentences for fatal one-punch assaults have been criticised by members of the New South Wales legal establishment, who also say such deterrents do not work and will disadvantage vulnerable groups. The President of the New South Wales Bar Association, Mr Phillip Boulten, SC, said in *ABC News Online* on Thursday 23 Jan 2014:

> The measures will not deter offenders from violence.
>
> There's no evidence at all that mandatory sentencing ever decreases the amount of crime that is committed and it has the ability to act unfairly on vulnerable and disadvantaged groups.

He went on to say:

> It isn't effective, it's not a deterrent, it just leads to more people being locked up for no good purpose.

That view is shared by former Director of Public Prosecutions Nicholas Cowdery, who said:

> Such sentences are a "recipe for injustice".
>
> The idea that just increasing penalties for offences is somehow going to deter people from committing them is naive and not supported by research and a lot of work that's been done in that area.

He said further.

> You do not increase the deterrent effect of an offence simply by increasing the penalty.
>
> The whole idea of a mandatory minimum sentence is a recipe for injustice.
>
> We have experimented with them in New South Wales in the 1860s; they didn't work then, they're not going to work now.
>
> And judges do not like to be instruments of injustice—there will be a very serious backlash against that.

We should be framing our legislation on evidence-based data after very careful consideration and scrutiny. A plethora of evidence and studies could have been referenced. Indeed, the Legislative Council Standing Committee on Social Issues issued a report in December 2013 titled "Strategies to reduce alcohol abuse among young people in New South Wales". I was a member of that committee. However, I see very few of the recommendations picked up from that report or other studies being placed in legislation to address the issue of alcohol-fuelled violence. Our committee, which was chaired by the Hon. Niall Blair, noted:

> A culture of drinking to get drunk manifests itself in harmful drinking behaviours including preloading, 'binge drinking', predilections for shots and ready-to-drink beverages. The Committee expresses concern that these harmful drinking behaviours contribute to alcohol-related violence, risk taking behaviour and unsafe and unwanted sexual activity. The Committee notes the increasing trend of preloading, and believes that this issue requires further research. Hence the Committee recommends that the NSW Government establish an inter-agency committee to coordinate research into the issue of preloading, and publish a discussion paper which identifies the most effective policy responses to help reduce its occurrence and impact.

The issue of preloading needs to be actioned. It was raised a number of times during the committee's inquiry and at a number of its hearings, both here in Sydney and in regional areas. Community members expressed concerns about preloading and how that leads to alcohol-fuelled violence. Mr Peter Remfrey, Secretary of the Police Association of NSW, referred in the report to research by Deakin University which estimated an even higher level of preloading. Some of the statistics about preloading are very interesting. There is some work out of Deakin University in which people were saying they drank between 11 and as many as 25 standard drinks before they went out to drink even more. He said that Deakin University suggested that:

> Restrictions in trading hours would help to tackle the problem of 'preloading' by encouraging people to go out earlier. One of the things that they discovered as a side issue was that when they reduced the opening hours or the lock outs were brought forward one of the effects was that young people went out earlier. That had the flow-on effect of reducing the preloading. They are still going out and having a good time but they are doing it a bit earlier now. Whereas at the moment if they can get in at any time, they preload, they go out at midnight and then they have all the problems.

That matter was raised with the committee time and time again. The price of alcohol was also raised during the committee's deliberations and also in a March 2014 United Kingdom Drug and Alcohol Review entitled "Which Alcohol Control Strategies Do Young People Think Are Effective?" The United Kingdom review noted:

> A systemic review of alcohol control policies revealed that several strategies appear to be effective: regulating the marketing, availability and service of alcohol; regulating advertising; enforcing minimum purchase age; and raising prices.

I cite these reports and studies to highlight the vast amount of contemporary information that could have been sourced to inform legislation to deal with these issues. I refer to the work of the Standing Committee on Social Issues on strategies to reduce alcohol abuse among young people in New South Wales. The committee heard a number of times about the effectiveness of the Newcastle approach. My colleague the Hon. Greg Donnelly and I submitted a dissenting statement and additional recommendations because we believed the recommendations were not strong enough, which has been proven to be absolutely correct. Late last year the Leader of the Opposition, Mr John Robertson, released Labor's Drink Smart, Home Safe policy, which was developed to address alcohol-related crime.

I believe this policy is ready to be implemented anywhere across New South Wales. Its details are very much in line with the issues that were raised with the Standing Committee on Social Issues inquiry on strategies to reduce alcohol abuse among young people in New South Wales. They are to commit to an 18-month Newcastle-style trial, treat Friday and Saturday nights as major events, establish a new independent liquor regulator, introduce risk-based licencing fees, introduce controlled purchase operations, target licensees selling alcohol to minors and mandate the collection and reporting of alcohol sales. Our policy draws on the many issues that have been exposed in reports and studies that require further intervention and action. In short, our policy was developed after consultation with experts in the field and is evidence based. Unfortunately, I cannot say the same for this bill or for its predecessor.

I turn to aspects of the bill that cause me greatest concern. The bill introduces mandatory minimum sentences that seem to be premised on a principle that violent crimes of assault committed under the influence of alcohol and in public are far more grievous than violent crimes of assault committed sober and in private. I question the message that that sends to the community about violence. Violence causes great harm to its victims and to the community generally. I fail to see how a violent act by a sober perpetrator is any less of a crime or does any less harm than a violent act committed by an intoxicated perpetrator. Perhaps my greatest concern is what the regime of sentencing established by this bill is saying about domestic violence. I point out that the majority of incidents of domestic violence occur on residential premises in private.

I think the very dangerous message we are sending to the community is that crimes committed in public are more grievous than crimes of assault and violence committed in private. It is worth noting that a significant proportion of domestic violence assaults are alcohol related. The bill misses those very important points. I am also concerned about the slippery slope that mandatory sentencing will lead to which, to be honest, is what this bill is about: It is about introducing mandatory sentences for some crimes of violence. A number of contributors to the debate have already suggested that mandatory sentencing should be introduced for other crimes. Reverend the Hon. Fred Nile and the Hon. Paul Green both mentioned child sexual assault. A number of members talked about domestic violence.

I am concerned that if we go down this path of mandatory sentencing then it will be a slippery slope and that more and more crime will attract a mandated sentence. What will that lead to? We know that it is not a deterrent. It will lead to an increase in our prison population. Already in New South Wales there has been a growth in our prison population amongst the most vulnerable groups in our community—people of Aboriginal and Torres Strait Islander background; people with intellectual disabilities, particularly those with a borderline intellectual disability; people with mental illness, including those with addictions; and, of course, women. I am gravely concerned that if we go down this path of mandatory sentencing we will see a continued growth in those vulnerable groups in New South Wales prisons.

This is timely, because this morning a presentation was given by Alzheimer's Australia NSW about dementia in prisons and our ageing population. I was alarmed by the fact that prisoners in Australia are showing signs of ageing at a faster rate than those in the community due to longer incarceration periods, mandatory sentencing and older first offenders. We will see a greater growth in the ageing of our prison population in New South Wales. The discussion paper entitled "Dementia in Prison" published by Alzheimer's Australia shows that the growth in prison population between the years 2000 and 2012 for those aged between 50 and 54 was 74 per cent, between 55 and 59 years it was 97 per cent, between 60 to 64 years it was 102 per cent and over the age of 65 years it was 166 per cent.

We now have people in our prisons who require aged care, which says something about the type of society that New South Wales has become. The way we treat those who are incarcerated is a measure of a civilised society. Right now I do not think that New South Wales is measuring up very well. For all those reasons I am concerned about this bill. I urge members to support the amendments foreshadowed by the Opposition, which go some way to addressing mandatory sentencing. It is imperative that we support them to ensure that New South Wales does not go down the slippery slope of mandatory sentencing and thus further the injustice that is happening within this State at the moment, particularly the growth in our prison population.

Mandatory sentencing will not be a deterrent. It is important to actually say that alcohol-fuelled violence is abhorrent and we must address that violence, but mandatory sentencing is not the way to do it. Mandatory sentencing will not deter people who consume alcohol to excess or take illicit drugs and then commit acts of violence. Education is needed and together with other measures such as opening hours and pricing. These are not necessarily matters the State can deal with, but we should talk to our Federal counterparts about advertising and pricing. The issue is about access to alcohol: its availability, including the hours in which we can obtain and consume alcohol, and its affordability. Alcohol has never been cheaper than it is today and the Standing Committee on Social Issues inquiry into alcohol abuse among young people heard considerable evidence about that. I recommend that the Government work with the Opposition towards achieving the best outcomes for the State in addressing alcohol-fuelled violence, but I reiterate that mandatory sentencing is not the way to do it.

The Hon. MICHAEL GALLACHER (Minister for Police and Emergency Services, Minister for the Central Coast, and Vice-President of the Executive Council) [4.41 p.m.], in reply: I thank all honourable members for their contributions to the debate on this very important legislation. I will make a couple of observations about some contributions that disappointed me. Yesterday the Hon. Amanda Fazio made an allegation or reference to the effect that the family of police officers would be dealt with differently to the way in which Aboriginal people would be dealt with. That offensive to members of the NSW Police Force, who work their guts out building and fostering relationships with Aboriginal communities not only in the metropolitan area but also around the State. It is disgraceful for her to take a cheap shot at police in the context of this legislation.

In his contribution this afternoon the Hon. Robert Borsak made what I regard as very serious allegations about police conduct. I would have thought that once something is in writing it would constitute a complaint. The Deputy Leader of the Opposition would be far better versed in these legal matters than I, but once something is put into the *Hansard* record, I would have thought that in itself would constitute a complaint. The allegations relating to a family member were quite serious. I paraphrase the Hon. Robert Borsak, who said that in effect the person was stopped, spreadeagled and searched by a member of the Dog Squad because the person was of a Middle Eastern appearance and because his offsider, his mate, had a backpack. If that is the case, it is a matter that should have been referred immediately to the NSW Police Force for investigation. I would have thought that tomorrow, once *Hansard* is printed, that in itself could well constitute a complaint and should be forwarded immediately to the NSW Police Force for investigation. It is very serious.

The Hon. Adam Searle: I'm sure you will.

The Hon. MICHAEL GALLACHER: The honourable member is quite right; I most certainly will. Both members seem to have missed the point in trying to simplify what the Government is seeking as to the types of offences to be addressed. These are not common assaults or low-level assaults; I think the Hon. Robert Borsak used the expression "the trifecta". The types of offences being captured—in essence, the mandatory sentence component of it—are very serious assaults. If people are looking for an example, they need look no further than the assault in 2009 on Sergeant Sam Barlow, who was viciously bricked—they are the only words I can use to describe her attack. Her skull was fractured by a heroin addict.

In the context of grievous bodily harm, and leaving aside the surrounding circumstances, we are talking about life-threatening offences. It is quite sad that some members have not looked at what the Government seeks to address in the mandatory sentence component. The Hon. Robert Borsak has missed the point directly, as has the Hon. Amanda Fazio by inference with her reference to police families being dealt with differently to members of the Aboriginal community. Indeed, the expression of the Hon. Robert Borsak that police would be the judge and jury could not be further from the truth. Police are simply part of the prosecution team; they present evidence to the court. These are very serious matters and they will be determined, first, by the Director of Public Prosecutions and, secondly, by independent courts.

To suggest that somehow there will be a manipulation of the legislation that deals with the most serious assaults before one transgresses into murder or manslaughter by police, or that the police themselves will be the judge and jury of these matters is a complete misrepresentation of the intent of this legislation. I ask members to consider seriously the intent of the legislation and to not allow their judgement to be swayed by the unfounded anecdotes that have been put forward in the debate. I commend the bill to the House and ask all members to give it their support.

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

The House divided.

Ayes, 33

Mr Ajaka	Mr Green	Mr Secord
Mr Blair	Mr Khan	Ms Sharpe
Mr Borsak	Mr Lynn	Mr Veitch
Mr Brown	Mr MacDonald	Ms Voltz
Mr Clarke	Mrs Maclaren-Jones	Ms Westwood
Ms Cotsis	Mr Mason-Cox	Mr Whan
Ms Cusack	Mr Moselmane	Mr Wong
Mr Donnelly	Reverend Nile	
Ms Fazio	Mrs Pavey	
Ms Ficarra	Mr Pearce	*Tellers,*
Mr Gallacher	Mr Primrose	Mr Colless
Miss Gardiner	Mr Searle	Dr Phelps

Noes, 5

Ms Barham
Mr Buckingham
Dr Faruqi
Tellers,
Dr Kaye
Mr Shoebridge

Question resolved in the affirmative.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 and 2 agreed to.

Mr DAVID SHOEBRIDGE [4.55 p.m.], by leave: I move The Greens amendments Nos 1 and 2 on sheet C2014-019 in globo:

No. 1 Page 3, schedule 1 [1], lines 2 and 3. Omit all words on those lines.

No. 2 Page 3, schedule 1 [2] (proposed section 8A (2)), lines 15-22. Omit all words on those lines.

These amendments together, if successful, will remove the new definition of intoxication that this bill proposes to insert in section 8A of the Crimes Act. It seeks to insert the new definition for not only the one-punch law that was enacted as new section 55A of the Crimes Act but also for each of the new provisions that are proposed to be inserted as a result of this amending bill. In my contribution on the second reading debate I stated why The Greens are opposed to this proposed new definition of intoxication.

As it currently stands, the definition of intoxication under the Crimes Act will, if we go through a circular process, arrive at the conclusion that a judge is to form the view that a person is intoxicated if that person is intoxicated by reason of the consumption of drugs or alcohol. There is a good deal of case law about

how the judge is to form that view. The judge can, in those circumstances, obtain evidence from people who have known training and skills in identifying whether a person is intoxicated. A witness who has undertaken a responsible service of alcohol course may occasionally, if that person can prove he is her qualifications, be accepted to give evidence before a judge.

The witness must satisfy the judge that he or she has done the responsible service of alcohol training course and has a certain degree of training and knowledge in this regard. Based on that skill, training and experience the person may then give evidence that he or she believes the person was intoxicated due to, for example, slurred speech, dropped drinks or the consumption of five or six schooners of beer. Real caution is applied under the current law to the evidence of a police officer or member of the community who comes forward and says, "They looked to be pissed to me." There is a long history of concern in the courts about that kind of layperson's opinion on what can often be a very technical and difficult issue. There are circumstances where lay evidence or evidence from police can be so compelling it can be admitted to prove the question of intoxication, if it is relevant.

Often it is not relevant. Very rarely is it relevant to offences under the Crimes Act in this State. There are circumstances where a police officer's evidence can be admitted to prove intoxication. It is constrained by a well-developed body of case law dealing with the proof of expert and technical issues ensuring that people are not effectively verballed by third parties or police officers or people who, even if they believe there may be intoxication, do not have a proper basis to give that evidence before a court. Their evidence, even if accepted, should not be persuasive in forming the view that a person was intoxicated. What does this bill propose to do? It ignores all of the learning, sweeps aside all of the case law and longstanding theory about what should be persuasive evidence to prove intoxication and seeks simply to say that for the purposes of an aggravated intoxication offence a person is intoxicated if:

> (a) an offender is intoxicated if the offender's speech, balance, co-ordination or behaviour is noticeably affected as the result of the consumption or taking of alcohol or a narcotic drug (or of any other intoxicating substance in conjunction with alcohol or a narcotic drug), or if the offender has 0.15 or more grams of alcohol in the offender's breath or blood.

The bill provides that that definition of intoxicated will apply to the one-punch laws and the other proposed mandatory sentences. Upon effectively a casual observation a person could face a mandatory sentence of three, four, five or eight years in jail. That kind of proactive approach to the admission of lay evidence, without any constraints, risks substantial injustice in the criminal justice system. That approach can lead to the prosecution proving intoxication on the basis of what may be a casual observation or a partial observation late at night in a poorly lit area in circumstances where the person's speech or gait may be explained by tiredness or other environmental factors. The thought that a person's speech, gait, coordination or behaviour will be sufficient to prove intoxication and therefore see the person face a mandatory sentence is a recipe for injustice in our courts.

A person may not have taken their medication, may have taken too much of their medication or may have taken the prescribed quantity of their medication and a small quantity of alcohol. In any of those circumstances, their speech, gait, balance, coordination and behaviour may appear as intoxication to a layperson. The person may be extremely tired on the street late at night. Their speech may be slightly slurred and their balance, coordination and behaviour may be not dissimilar to that of an intoxicated person. To allow the admission of that evidence without the constraints that apply under the current case law is a recipe for substantial injustice.

We know that other reforms this Government has pushed through this House have given enormous discretionary powers to police. An example is the consorting laws. Those laws were put before this House because it was said that police needed new discretionary powers to break up bikie gangs. The whole argument about the consorting laws was, "Don't you worry. Trust the police. They won't misuse these powers; they will use them to break up bikie gangs." The House was told time and again not to worry about it. When The Greens raised concerns that the consorting law provisions would be used to disproportionally and unfairly target Aboriginal community members and other marginal community members we were told we were scaremongering.

Just before Christmas last year the Ombudsman released a discussion paper on the consorting laws. In parts of regional and rural New South Wales 85 per cent of the directions under the new consorting laws have been issued against Aboriginal community members; not one of them was a bikie gang member. Across the State, 40 per cent of the directions under the new consorting laws have been issued against Aboriginal community members, not bikie gang members. Handing these kinds of broad, discretionary powers to the police and saying people should not worry because we can expect the police to exercise their discretion and use their

powers in a way that protects vulnerable members of the community has been a proven failure. We should not be putting these new laws in place and giving extraordinary powers to the police to give evidence to prove intoxication when it will lead to consequences as dramatic and drastic as those proposed in this bill. I commend the amendments to the Committee.

The Hon. MICHAEL GALLACHER (Minister for Police and Emergency Services, Minister for the Central Coast, and Vice-President of the Executive Council) [5.05 p.m.]: The Government will oppose these amendments. The quote from The Greens that encapsulated the argument and informed the approach I would take was when we heard—and we have not heard the word for a long time—that people would be verballed by police. We have not heard that expression for a long time because so many advances have been made in the quality of evidence that is now accepted by the courts. I think most people in this House have now moved beyond verballing in terms of its primacy as evidence. I suspect that as a representative of The Greens the member will today make a public plea to all people being interviewed under this legislation to avoid being, as he says, verballed by police. The Greens will make a plea to all of those people to participate in an electronic record of interview because that will provide the evidence the courts require to be able to avoid the suggestions being put forward.

The Hon. Dr Peter Phelps: And demanding Alcotests.

The Hon. MICHAEL GALLACHER: And demanding tests. Science has provided many opportunities to put in place those safeguards against manipulation of evidence. Therefore I would expect The Greens to make a public plea to people who may be interviewed under this proposed legislation to participate immediately in an electronic record of interview to be able to satisfy that they were not intoxicated. The Evidence Act is clear about opinion evidence. It spells out that opinion evidence cannot be given by people other than experts. To suggest that police are somehow laypeople giving expert evidence is a long bow indeed. They give evidence about observations but it is not just limited to that, of course. Without a doubt, now that The Greens are concerned about the potential for it I am glad they will be endorsing the use of electronic records of interview for suspected persons. That should put that to bed once and for all.

Mr David Shoebridge: No right to silence.

The Hon. MICHAEL GALLACHER: Here we go, the raw nerve; it is always qualified. This amendment proposes that the definition of intoxication currently contained in the Crimes Act should be used for the purposes of the new aggravated offences contained in the bill. The definition of intoxication that is currently contained in the Crimes Act was put there for an entirely different purpose. It is used by an accused person as evidence that he or she was so intoxicated that he or she was not capable of performing with a specific intent and may therefore be acquitted of the offence charged. That involves a higher level of intoxication than is appropriate for the purposes of the offences contained in the bill.

This bill creates new aggravated offences committed when a person is found to be intoxicated in public. It is not necessary or even appropriate that the accused should be so intoxicated that they are unable to form an intent to do the things they did. Rather, it is sufficient for the prosecution to establish that the accused was intoxicated to the extent that he or she was noticeably affected by alcohol or drugs. That is why the Government's bill establishes a new definition of intoxication, one that has been developed specifically for the new offences contained in this bill. The definition is based on a similar definition in the Liquor Act used for the responsible service of alcohol. It involves terms with which the police, licensed premises and their patrons are all familiar. The Greens amendments should be opposed.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [5.09 p.m.]: The Opposition will not be supporting The Greens amendments. As well as taking out the problematic area contained in proposed subsection 8A (2) (a), the evidence that Mr Shoebridge spoke to, they also take out subsection (b), which deals with the scientific measurement of the presence or concentration of alcohol in the person's breath or blood. That goes too far. It is not necessary and it would not be responsible in the context of the legislation overall.

Mr DAVID SHOEBRIDGE [5.10 p.m.]: I note the contributions of both the Minister and the Deputy Leader of the Opposition. This amendment, if successful, would retain the existing definition in the last round of mandatory sentencing laws to include the 0.15 test. That is not a reason for not supporting the amendment; it is a misunderstanding of the way these laws operate. The real issue is opening the door very wide to the kind of lay evidence used: How the person's speech, balance, coordination or behaviour is noticeably affected by the consumption or taking of alcohol. There is almost no doubt that there will be efforts to get an array of lay

evidence before the courts about all of those factors. Once that lay evidence is before the courts it could see the removal of the right to a trial with judicial discretion in sentencing and people banged away for a mandatory minimum of five years. I commend the amendment to the Committee.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [5.11 p.m.]: In the legislation, as it is currently worded, there is a conclusive presumption of intoxication where the concentration of alcohol is 0.15. I note that unless there is the capacity for measuring a person's concentration of alcohol, as the current bill provides, there may be some inconsistencies between the original legislation and the amendment bill now before the Committee in such a way as to impair the ability to measure scientifically the presence of alcohol. Perhaps our understanding of the effect of the current bill and existing legislation is imperfect, but for the avoidance of doubt we will not support these amendments.

Mr DAVID SHOEBRIDGE [5.12 p.m.]: To deal with that further non sequitur to The Greens amendment, it only removes page 3, schedule 1, lines 2 to 3, the omission of the definition of intoxication inserted as a result of the last round of amendments. It then removes lines 15 to 22, the new provisions for proving intoxication. It leaves entirely provisions proposed to be inserted by this bill about how evidence may be given for the presence and concentration of any alcohol or narcotic drug, the changes to law enforcement powers and the matters raised by the Deputy Leader of the Opposition. It is unfortunate that Labor does not appear to understand the limited nature of this amendment and how it would operate to provide greater justice, should these laws pass—and I hope they never do.

The Hon. Dr PETER PHELPS [5.14 p.m.]: It has been remarkable to listen to Mr Shoebridge. I will relate an incident that occurred on 20 February this year. I was driving home from the Hills District after having attended a Federal Electoral Conference meeting—always a fun event. It was about 1.30 a.m. when I was approaching a roundabout near Canberra Airport. There was a police car coming the other way and I assumed it was coming through, so I maintained my speed but found at the last minute it made a right-hand turn in front of me. I hit the anchors and did not proceed to the intersection but—

The Hon. Lynda Voltz: It wouldn't have indicated of course, Phelpsy.

The Hon. Dr PETER PHELPS: The indicator could not be seen because there was a large floral arrangement in the middle of the roundabout. I kept driving and the next thing I saw were the rollers in my rear-vision mirror. I pulled over and, as one would expect at 1.30 a.m., I was not looking my spriteliest. My clothes were slightly dishevelled and I had a healthy five o'clock shadow. I have to admit I was rather sleepy, which is not good when you are driving but I had the choice of staying in the Hills District or going home and I decided to go home. The police officer spoke to me and obviously was of the opinion that I had been drinking and so asked a number of pointed questions about how much alcohol I had consumed that evening. Fortunately, I had consumed no alcohol because I had been in the Hills District and I believe alcohol is not allowed there. After a few questions I suggested the officer get out the alcometer and I would blow into it. He promptly did this and I blew a reading of 0.00 at which point he let me go on my way.

I would suggest, in lieu of the hysterics from The Greens, that if people feel aggrieved and they have been unfairly maligned as being under the influence of alcohol it is well within their rights to ask for a proper Alcotest when they are at the police station. I am sure police officers would be delighted to administer the test, because it makes their job easier if they have an objective standard of proof and do not have to go through ridiculous cross-examination by defence lawyers like Mr Shoebridge who are trying to impugn their credibility. They can say that the person, at the time of their arrest or immediately thereafter, had a blood-alcohol reading of whatever number they get. If The Greens are genuinely concerned about this, they should encourage the Bar Association and the Law Society to suggest people in this situation request an Alcotest or, if the allegation is a narcotic substance, a blood test.

Mr DAVID SHOEBRIDGE [5.17 p.m.]: It is unfortunate that Mr Phelps makes these announcements without having any understanding—

The Hon. Niall Blair: Dr Phelps.

Mr DAVID SHOEBRIDGE: It is unfortunate Dr Phelps makes these announcements without having any understanding of the complexity of the criminal justice system. Quite often people are not arrested on the night of the incident but 24 or 36 hours later, following further investigations. All the examples fail to come to grips with the complexity of the situation confronted when trial judges try to deal with the legislation of this Parliament. There are many circumstances where such a simple solution would never be effected in practice.

The Government's rhetoric clearly convinces its members, but it should not convince anyone who understands that we make laws applied in a multiplicity of circumstances. Often it is very clear the legislators in this House have no understanding of the legislation.

Question—That The Greens amendments Nos 1 and 2 [C2014-019] be agreed to—put.

The Committee divided

Ayes, 5

Mr Buckingham
Dr Faruqi
Mr Shoebridge
Tellers,
Ms Barham
Dr Kaye

Noes, 31

Mr Ajaka	Mr Khan	Mr Searle
Mr Blair	Mr Lynn	Mr Secord
Mr Borsak	Mr MacDonald	Mr Veitch
Mr Brown	Mrs Maclaren-Jones	Ms Voltz
Mr Clarke	Mr Mason-Cox	Ms Westwood
Ms Cotsis	Mrs Mitchell	Mr Whan
Ms Cusack	Mr Moselmane	Mr Wong
Mr Donnelly	Reverend Nile	
Ms Ficarra	Mrs Pavey	*Tellers,*
Mr Gallacher	Mr Pearce	Mr Colless
Mr Green	Mr Primrose	Dr Phelps

Question resolved in the negative.

The Greens amendments Nos 1 and 2 [C2014-019] negatived.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [5.27 p.m.], by leave: I move Opposition amendments Nos 1 to 9 on sheet C2014-018B in globo:

No. 1 Page 3, schedule 1 [2] (proposed section 8A (1), lines 8 and 9. Omit ", 35 (1AA), 35 (IA), 35 (2A), 35 (3A)". Insert instead ", 34A".

No. 2 Page 4, schedule 1 [2] (proposed section 8B (I) line 25. Omit ", 35 (lAA), 35 (IA), 35 (2A), 35 (3A), 60 (38) and 60 (3C)". Insert instead "and 34A".

No. 3 Page 4, schedule 1 [2] (proposed section 8B). Insert after line 36:

(5) This section does not apply to the sentencing of a person for an offence under section 34A if the court finds that a special reason exists and states the special reason. The court may find that a special reason exists if:

(a) the person has substantially assisted the investigation or prosecution of that or any other offence (including by a plea of guilty), or

(b) the person is between 18 and 21 years of age and, because of psychosocial immaturity, has a substantially diminished ability to control the person's behaviour in comparison with the norm for persons of that age, or

(c) there are other substantial and compelling circumstances that justify the finding (having regard to the intention of Parliament that a minimum sentence and non-parole period should ordinarily be imposed and to the cumulative impact of the circumstances of the case that justify a departure from that minimum sentence and non-parole period).

(6) This section does not apply to the sentencing of a person for an offence if the person is not the principal offender but is liable (as an accessory or otherwise) to the same penalty as the principal offender.

No. 4 Page 5, schedule 1. Insert after line 21:

[11] Section 34A

Insert before section 35:

34A Reckless grievous bodily harm when intoxicated in public and in circumstances of gross violence

(1) A person of or above the age of 18 years who, when intoxicated in public and in circumstances of gross violence:

(a) causes grievous bodily harm to any person, and

(b) is reckless as to causing actual bodily harm to that or any other person,

is guilty of an offence.

Maximum penalty: Imprisonment for 16 years.

Minimum penalty: Imprisonment for 5 years.

(2) In this section, circumstances of gross violence means circumstances that involve anyone or more of the following:

(a) the alleged offender is in the company of another person or persons,

(b) the alleged offender causes the grievous bodily harm to the person after incapacitating the person or while the person is otherwise incapacitated,

(c) the alleged offender uses an offensive weapon or instrument to cause the grievous bodily harm to the person,

(d) the alleged offender causes the grievous bodily harm to the person in a random attack that was not provoked by any conduct of the person,

(e) the alleged offender planned in advance to engage in the conduct that caused the grievous bodily harm (being conduct that any reasonable person would have foreseen would be likely to result in actual bodily harm),

(f) the alleged offender causes the grievous bodily harm to a police officer while in the execution of the officer's duty (within the meaning of section 60).

(3) If on the trial of a person charged with an offence under this section the jury is not satisfied that the offence is proven but is satisfied that the person has committed an offence under section 35, the jury may acquit the person of the offence under this section and find the person guilty of an offence under section 35. The person is liable to punishment accordingly.

No. 5 Pages 5 and 6, schedule 1 [11] - [16], line 22 on page 5 to line 34 on page 6. Omit all words on those lines.

No. 6 Page 8, schedule 1 [25], line 40. Omit all words on that line.

No. 7 Page 9, schedule 1 [25], line 9. Omit all words on that line.

No. 8 Page 11, schedule 2 [2], lines 14 and 15. Omit ", 35 (lAA), 35 (lA), 35 (2A), 35 (3A)". Insert instead ", 34A".

No. 9 Page 13, schedule 3.2 [1], lines 10 and 11. Omit all words on those lines.

Although in nine parts the Opposition amendments are essentially in two pieces. Amendment No. 4 seeks to replace all the mandatory sentences proposed by the Government in this bill with a single offence of reckless grievous bodily harm when intoxicated in public and in circumstances of gross violence. That is set out in new section 34A. New section 34A provides for a maximum penalty but also a minimum ordinary penalty of five years and it does so in circumstances of gross violence as defined in section 34A (2).

That is, the alleged offender is in the company of another person or persons; the alleged offender causes the grievous bodily harm to the person after incapacitating the person or while the person is otherwise incapacitated; the alleged offender uses an offensive weapon or instrument; the alleged offender causes the grievous bodily harm to the person in a random attack that was not provoked by any conduct of the person; the alleged offender planned in advance to engage in the conduct that caused the grievous bodily harm; and the alleged offender causes grievous bodily harm to a police officer while in the execution of an officer's duty within the meaning of section 60.

This single provision, rather than the panoply of provisions proposed by the Government, provides for penalties of between 5 and 16 years, and provides a penalty that should ordinarily be imposed. This is subject to amendment No. 3, which provides that the section does not apply to the sentencing of a person for an offence under proposed section 34A if the court finds that a special reason exists; and it states that special reason. It defines special reason in three categories. The first is that the person has substantially assisted the investigation or prosecution of that or any other offence, including by a plea of guilty. This addresses one of the concerns I identified in my second reading contribution, in that one of the possibilities of the Government's approach was to increase the difficulties experienced by victims of crime and their families by providing a manifest disincentive for offenders to cooperate with the authorities, and not recognising such cooperation. We provide that as a sensible exception.

The second category is that the person is between 18 and 21 years of age and, because of psychosocial immaturity, has a substantially diminished ability to control the person's behaviour in comparison with the norm for persons of that age. Like other parts of the Opposition's proposal, this emerges from changes made by the Victorian Liberal Party Government in 2012. That legislation, in turn, emerged from a report of their Sentencing Advisory Council. Psychosocial immaturity is included as a factor in the Victorian Sentencing Act, section 10A, and, as I indicated, was recommended by the Sentencing Advisory Council's report "Statutory Minimum Sentences for Gross Violence Offences". That report suggests that most people attain psychosocial maturity by age 18, but that "a number of offenders, however, fall outside of the standard development trajectory, and those few individuals will display particular psychosocial immaturity that is out of step with their chronological age".

There is some academic research that suggests that such psychosocial immaturity relates to neurological and brain development; thus it may be caused by slow development of the brain and systems related to higher order executive functioning, such as impulse control, planning ahead, risk avoidance and the like. In the usual case, medical evidence would be required to satisfy any court of those grounds. The third category is that there are other substantial and compelling circumstances that justify the finding, but again subject to the intention of Parliament that in the ordinary case a minimum sentence and a non-parole period should be imposed, and to the cumulative impact of the circumstances of the case that justify a departure from that minimum sentence and non-parole period.

So courts will retain a discretion but will have to set out clearly what those substantial and compelling circumstances are, if they exist or are found to exist, balanced against the fact that there should in the ordinary case be the minimum sentence prescribed in this amendment. Section 34A, as we propose, will not apply to the sentencing of a person for an offence if the person is not the principal offender but is liable as an accessory or otherwise to the same penalty as the principal offender. We think this provision should apply only to the principal offender. So that is what Labor's amendments seek to do: To retain judicial discretion in the appropriate case, subject to those circumstances being provided for in the amendment, and the court having to clearly spell them out when there is proper evidence so to do.

I will just touch on the psychosocial immaturity point. There were reports of representatives of the Government suggesting, for example, that this was something that they had not expected from the Opposition when we flagged that the Opposition would be proposing amendments in line with the Victorian provisions. As I indicated earlier, this is lifted straight from those Victorian provisions. But of the case involving Mr Loveridge—which of course was one of those tragedies that most recently gave rise to community disquiet and significant community discussion of issues surrounding alcohol-fuelled violence—there was the suggestion, at least in some quarters, that if this provision were law perhaps it either would have enabled Mr Loveridge somehow to escape conviction or in some way would have reduced the penalties to which he may have been exposed under even the Opposition's proposed amendments.

I refer members to the sentencing remarks of Justice Campbell in *R v Loveridge* and in particular to paragraph 36, where the judge said that he had the benefit of reading the expert clinical psychologist's report and noted that the report "does not suggest that the offender is suffering from mental or emotional disorder other than some depression and anxiety reactive to his offending, incarceration and the sentencing process. Nor is the offender intellectually disabled." So it is quite clear that this aspect of Labor's amendments would not have enabled Mr Loveridge to escape conviction or punishment under the amendments that we propose to the Committee.

Labor's amendments are sensible, and they are balanced. They address what we regard as legitimate community concerns in this important area of public policy and discussion. But they do so in a balanced and principled way so that, while there is a minimum sentence that would be imposed in the ordinary case, there is,

in carefully defined and circumscribed circumstances, the retention of appropriate judicial discretion subject to key principles and proper cases being made out on the evidence. We urge all members to give close consideration to these amendments as a way of civilising and improving the bill that is now before the Committee.

The Hon. MICHAEL GALLACHER (Minister for Police and Emergency Services, Minister for the Central Coast, and Vice-President of the Executive Council) [5.37 p.m.]: I thank the Opposition for moving the amendments in globo. I intend to speak to amendment No. 3 first, because it deals with discretion not to impose a mandatory sentence, before I deal with amendments 1 and 2 and 4 to 9, which are the gross violence provisions. I preface my remarks by saying that the types of offences that we are talking about are at the serious level, the top end of violence and grievous bodily harm, just short of murder and manslaughter. It is important to put that on the record from the start, because I will be making some references in relation to 18- to 21-year-olds and the issue of psychosocial immaturity. What must be taken into consideration is the seriousness of the violence and the injuries occasioned to victims.

The Government will not be supporting amendment No. 3. It will give the court the discretion not to impose a mandatory sentence if the court finds that special reasons exist. The court may find that special reasons exist whenever it is satisfied that substantial and compelling circumstances exist. This amendment fundamentally changes the character of the bill and the sentencing exercise that the court is required to undertake. The minimum sentences specified in the bill would no longer be mandatory; they would be indicative. Such a provision significantly dilutes mandatory minimum sentencing and does not meet the community's expectations that serious violent offenders will serve a minimum period in prison. If this amendment is adopted, there will be very little effective difference between mandatory minimum sentences and standard non-parole periods. Standard non-parole periods must be taken into account by a court in determining the appropriate sentence for an offender, and the court must make a record of its reasons for setting a non-parole period that is longer or shorter than the standard non-parole period.

The Opposition's amendment will also allow a court not to impose a mandatory sentence where a person is aged between 18 and 21 and, because of psychosocial immaturity, has a substantially diminished ability to control their behaviour in comparison with the norm for persons of that age. It is not hard to imagine almost any accused person aged between 18 and 21 being able to find some evidence of a psychosocial immaturity that leads to diminished ability to control their behaviour. Indeed, the fact that the person has been charged with a personal violence offence while intoxicated in public may itself be an indication of such an immaturity. Young thugs should not be able to escape tough penalties just because they are less mature than their peers. That is why the Government opposes this amendment. There is simply no point in enacting a bill that purports to contain mandatory minimum sentences if the court is to have a wide-ranging discretion not to impose them. It is an exercise in smoke and mirrors and the community will easily see through it.

In relation to the comments of the Deputy Leader of the Opposition, a mental disorder or intellectual disability is different from immaturity. There is insufficient information for the Opposition to establish that Loveridge would not have escaped a mandatory sentence under the Opposition's proposal. I now turn to Opposition amendments Nos 1 and 2 and 4 to 9, relating to gross violence offences. These amendments are not supported. They will replace the Government's carefully constructed hierarchy of personal violence offences carrying a mandatory minimum sentence with one offence of gross violence. This offence will be one that is extremely difficult to prosecute. The circumstances of gross violence set out in the Opposition's amendments are far too restrictive, unclear and impractical. In debate on this bill yesterday, the Hon. Adam Searle said, "Criminal laws should strive for precision and certainty as much as possible." Let us consider the Opposition's amendment and its definition of circumstances of "gross violence". It says that a circumstance of gross violence includes where:

> … the alleged offender causes the grievous bodily harm to the person in a random attack that was not provoked by any conduct of the person.

Both "random attack" and "provoked" are left entirely undefined. The *Oxford English Dictionary* defines the adjective "random" as meaning:

> … having no definite aim or purpose; not sent or guided in a particular direction; made, done, occurring, etc., without method or conscious choice; haphazard.

The technical meaning in a statistical sense is:

> Governed by or involving equal chances for each of the actual or hypothetical members of a population.

Few if any of the incidents we have seen in recent times can properly be characterised as "random" in that ordinary dictionary sense. Is an assault against a particular person because of the way they were dressed or because of the way they looked a random attack? Is an assault against a person chosen because of their race, ethnicity or sexuality a random attack? Who knows under this provision? What we do know is that, if this provision is enacted, it will be difficult if not impossible for any prosecution to show that an attack was purely random, and any attempt to do so will become bogged down in lengthy legal argument in the courts.

The meaning of "provoke" is equally left undefined and unclear. The ordinary dictionary definition includes: "to cause anger, enrage, exasperate or vex". "The victim looked at me the wrong way. The victim did not look at me at all. The victim said something to me. The victim accidentally bumped me. I did not like the clothes the victim was wearing. I did not like the way the victim was talking to his girlfriend." We are likely to hear all of those sorts of arguments and more as to why an alleged offender will say that they were "angered, enraged, exasperated or vexed" by the victim.

The provision does not require any degree of reasonableness or proportionality between the alleged provocation and the offender's response to it. This provision will give rise to trials that become an exercise in victim blaming. Let us take another aspect of the Opposition's amendments—the requirement that the alleged offender planned in advance to engage in the conduct that caused the grievous bodily harm. To meet this requirement, the prosecution will be required to prove not only that the offender planned in advance to engage in some sort of violent conduct generally but also that the offender planned the specific conduct that he or she engaged in. This will be extremely difficult for the prosecution to establish.

It may be far more difficult to prove than the equivalent Victorian provision which only requires the prosecution to prove that the offender planned in advance to engage in conduct, not that he or she planned the specific conduct that did occur. And it simply does not reflect the reality of intoxicated street violence. Make no mistake. These Opposition amendments are simply an attempt to water down the Government's tough response to alcohol-related violence to the point where it is completely unworkable in practice.

Under the Opposition's amendments, serious offenders will be able to avoid a mandatory minimum sentence by requiring the prosecution to prove these unwieldy and uncertain elements of the offence of gross violence. That does not meet the community's expectations about mandatory sentencing, not one iota. Leaving aside these unworkable provisions, other aspects of the offence of gross violence merely replicate the Government's bill. But they do so through an oversimplification that does not facilitate giving appropriate weight to different kinds of wrongdoing.

The Government's bill imposes higher mandatory sentences for grievous bodily harm than wounding, which reflects the fact that grievous bodily harm involves more significant harm to the victim. The Government's bill also creates separate offences for different conduct, which is consistent with the long-established hierarchy of offences in the New South Wales Crimes Act. Offences are differentiated according to the degree of harm inflicted upon the victim, the culpability of the offender and the status of the victim, such as police officers.

This hierarchy ensures that an offender is charged and sentenced for the conduct that they actually engage in, taking into account the extent and nature of the injuries caused. Under the Opposition's amendments one mandatory minimum sentence may be imposed for any offence of gross violence. This collapses the hierarchy of offences and will inhibit the identification of the appropriate charge and penalty. The Opposition's amendments are an oversimplification, entirely unworkable and completely unnecessary. The Committee should oppose the amendments.

Mr DAVID SHOEBRIDGE [5.47 p.m.]: On behalf of The Greens I indicate that The Greens will be supporting the Opposition's amendments not because we support the direction that the Opposition's amendments would take criminal law in New South Wales—these are a kind of mandatory sentencing lite that the Opposition has put forward—but because this is a House of review and we must do what we can to limit the damage in these circumstances of the original bill. The Opposition's amendments make a significant reduction in the damage that would otherwise be done by the Government's bill.

I note the selective critique made by the Government about the proposed circumstances of gross violence in proposed subsection (2) to the new section 34A in the Opposition's amendments. These amendments propose that the court must impose a minimum penalty of five years where reckless grievous bodily harm is inflicted on another person by the accused who is intoxicated in public in circumstances of gross violence. The

circumstances of gross violence do not just include the elements that the Minister for Police and Emergency Services criticised but include other circumstances. If the offence is occasioned by a person who is intoxicated and in public and the alleged offender is in the company of another person or persons then the mandatory minimum sentence applies. There is no confusion or complication about whether the alleged offender is in the company of another person.

If that is proved, together with intoxication—and we know that the majority in this House are keen to lower the threshold for proving intoxication as a result of the last amendments—then the mandatory minimum applies. If the accused is in a public place and intoxicated and under section (2B) the alleged offender causes grievous bodily harm to the person after incapacitating the person or while the person is otherwise incapacitated the mandatory minimum sentence applies. If an alleged offender kicks someone while they are down or strikes someone who is otherwise unconscious or unable to respond in those circumstances the mandatory minimum applies.

If the alleged offender is intoxicated and in a public place and then uses an offensive weapon or instrument to cause grievous bodily harm to the person, then the mandatory minimum of five years applies. It was a very selective reading from the Minister for Police that critiqued a few of these potential bases in which circumstances of gross violence could be found that sought to inaccurately characterise Labor's amendments. I wish to be very clear: The Greens do not believe there should be even a presumptive mandatory minimum sentence in those circumstances; a judge should have the discretion to hear all of the evidence, to look to the antecedents and to get the full picture. The judge can then have the discretion to work out whether or not the maximum penalty of something like 16 years should be applied or a lesser penalty.

These kinds of mandatory minimum sentences only have statutory effect where the judge believes that the mandatory minimum sentence will impose an unjust sentence. The statute only kicks in where the judge, having heard all the evidence and the terrible set of personal circumstances that led to the person offending that at least explain in part the person's offending—enormous personal trauma, intolerable provocation from the person the subject of the assault—may in those circumstances say, "I have heard all that and in my view the maximum penalty should be three years. You have caused significant injury and harm to this person but I have heard everything you have said and in these circumstances I believe it should be three years." It is only in those circumstances where the judge has formed a view that a just penalty would be less that these statutory provisions kick in.

Under the Government's bill it is an absolute mandatory minimum; it can never be anything other than four or five years. Under Labor's bill the judges' hands are tied and seriously bound. Only if exceptional reasons are established can a judge give what he or she believes is a just sentence. Judges will inevitably know better than this Parliament and if a judge believes a lesser sentence is just, having heard all the evidence from both the prosecution and the defence and having weighed up the evidence, why is this Parliament proposing that a judge must give an unjust sentence in those circumstances? There is no rationale for it. It is a moral panic. It is this continuing attack, drip by drip, as we heard from the Government Whip, on an independent judiciary and on the separation of powers. It is flawed public policy, whether it comes in the mandatory minimum lite from Labor or the aggressive mandatory minimum stance from the Minister for Police.

The Hon. Dr Peter Phelps: I have not spoken on this bill.

Mr DAVID SHOEBRIDGE: That is why you are not the police Minister. This has been implemented for three decades in the United States and has failed. It has been implemented for more than a decade in the Northern Territory and Western Australia and failed. It will fail in New South Wales whether it is Labor's lite amendment or the Government's more severe mandatory amendment. All this attention, all this time, all this energy and we will not fix the recognised problem of alcohol-related violence and we will not make any street safer.

The Hon. MICHAEL GALLACHER (Minister for Police and Emergency Services, Minister for the Central Coast, and Vice-President of the Executive Council) [5.54 p.m.]: Whilst we are critiquing each other's contributions I draw the attention of members to an earlier amendment of The Greens with regard to intoxication. Whilst The Greens sought to amend the definition of "intoxication" in the bill, the reason they did so was to avoid complexity, in his words, and also the multiplicity of circumstances; that was the definition given.

Mr David Shoebridge: I did not say "to avoid complexity".

The Hon. MICHAEL GALLACHER: Your colleague did.

Mr David Shoebridge: Point of order: I think the Minister is inadvertently misleading the House. I never made those positions at all in debate.

The Hon. MICHAEL GALLACHER: The multiplicity of circumstances.

Mr David Shoebridge: It was not about the statutory provisions; it was about how they would be applied in practice.

The CHAIR (The Hon. Jennifer Gardiner): Order! There is no point of order. It is a debating point.

The Hon. MICHAEL GALLACHER: That is right; it was about simplifying it. The Greens' argument in the previous debate was about simplifying what they thought was the definition of intoxication.

Mr David Shoebridge: It wasn't.

The Hon. MICHAEL GALLACHER: Multiplicity of circumstances was the definition given. In their view it was about simplifying the approach to intoxication. The Greens now seek to support Opposition amendments that will not simplify the situation but make it more difficult and far more complex for the courts and the prosecution.

Reverend the Hon. FRED NILE [5.55 p.m.]: The Christian Democratic Party does not support Opposition amendments Nos 1 to 9. We are concerned that the whole direction of the amendments is basically to change the way in which the Government bill is to operate, the Opposition amendments being based on the Victorian model. It would appear that more discretion is being returned to the judiciary. The whole reason we are having this debate is the community's total dissatisfaction with sentences given out by the judiciary. It is a protest against our judicial system and our judges—not all judges—without going into detail. Because of the community backlash mandatory sentences have now been introduced. It has been forced on the Parliament and the Government by the actions of the judiciary.

If the judiciary had been more in step with community standards it would not have been necessary for the Parliament to introduce mandatory sentencing. The Opposition amendments seek to water down the Government's legislation and to raise the question of psychosocial immaturity when quite often much of the violence involves people between the ages of 18 and 21. The Opposition has not used in previous debates the argument of raising the legal age for drinking alcohol to 21 years, which wasa proposal in my bill. The Opposition has never previously shown any sympathy for that approach yet it is now uses that argument in support of its amendments to this bill.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [5.57 p.m.]: The Opposition is unapologetic in that we do seek to set aside the ragtag bundle of hastily cobbled together offences proposed by the Government in this ill-considered, badly drafted piece of legislation and we have replaced it with a single, carefully considered, carefully crafted offence that is not as imprecise or vague as the Minister alleges. New section 34A (2) defines the circumstances with precision and notions of "random" or "provoked" would be well understood by most persons in the community, even if they have to resort, as did the Minister, to a dictionary.

Instead of proposing mandatory sentences in every circumstance Labor proposes that a sentence should ordinarily be imposed subject to certain exceptions and, where the evidence justifies a departure, some area of judicial discretion. Picking up the point made by both the Minister and Reverend the Hon. Fred Nile, we do not say that persons aged between 18 and 21 are psychosocially immature in all circumstances. The provision refers to a person who is between those ages and because of psychosocial immaturity has a substantially diminished ability to control their behaviour.

In relation to the criticism made of this provision by the Minister, the amendment will not apply to every person in that age cohort or every person who would be affected by alcohol and caught up in circumstances of committing violence. As I indicated in my contribution when introducing Labor's amendments, this particular subset or provision would require clinical psychological medical evidence to persuade a court that the exemption applies. That is the experience from Victoria, from which this provision is borrowed. Labor does not make any global assertion that people under the age of 21 are psychosocially immature and deserving of particular protection. It is a cumulative requirement that a person is in that age cohort and has that immaturity

and, as I indicated, the person would not be able to readily persuade a court of that without clinical medical evidence. That is the experience from Victoria. That is certainly the intention from the Victorian Sentencing Advisory Council report, from which the amendments emerge.

In conclusion, the Opposition is not opposing the bill for the sake of opposition. The Opposition is engaging in this debate constructively, not blindly, in a balanced and sensible approach in line with principle. There has to be a careful and properly constructed set of circumstances that apply where these provisions are to operate. Labor urges that there be a sentence that is ordinarily imposed except where these circumstances can be established—but the bar is set very high. The residual judicial discretion has to be spelled out and the court will be required to set out the compelling circumstances that would justify a departure from the sentence that would ordinarily be imposed. It is a sensible and balanced engagement with the issue and we urge members to give close consideration to and support these amendments.

Mr DAVID SHOEBRIDGE [6.01 p.m.]: There is one matter that needs to be addressed. Reverend the Hon. Fred Nile stated that the judiciary handed out this terribly lenient sentence and that forced the Government's hand. I assume Reverend the Hon. Fred Nile is referring to the Loveridge case.

Reverend the Hon. Fred Nile: The community forced the Government's hand.

Mr DAVID SHOEBRIDGE: Reverend the Hon. Fred Nile interjects and says that the community forced the Government's hand. There are a couple of matters that need to be placed on the public record. First, the Loveridge case is still before the Court of Appeal. The Director of Public Prosecutions has appealed the leniency of the sentence. The court system is still dealing with the Loveridge case. Secondly, it is presumptuous to say that he knows the Court of Appeal will dismiss the appeal, or knows in any way what the Court of Appeal will do before the outcome of the Court of Appeal's decision on that case. This process has occurred before the existing judicial process has concluded. It is unseemly. The other point is that recent polling on the so-called broad community support for mandatory sentencing laws, shows that it is not there. The most recent poll done by the Nielsen Corporation found a lack of support for mandatory sentencing.

Reverend the Hon. Fred Nile: That was the *Sydney Morning Herald*.

Mr DAVID SHOEBRIDGE: It was a Nielsen poll. It found that there was not majority support for mandatory sentencing. If one looks at the people most likely to be affected, they are young and have extraordinarily strong opposition to mandatory sentencing. The repeated statement that there is huge community uproar is invalid. There is community concern about sentencing that is often driven by unfair reporting of individual cases and ignores the thousands of cases that are processed through our criminal justice system that provide sentences that few, if any, people would argue with. With a human system that produces 30,000 sentences per year we will always be able to find one, two or 20 high-profile cases to place on the front page of the *Daily Telegraph* to illustrate that the system is broken. That is an unfair, non-representative and a poor basis on which to make policy decisions about sentencing.

There are thousands of sentences delivered by magistrates and judges in this State each year and 99 per cent of them raise no comment or criticism—none at all. A tiny minority are selected, blown up and placed on the front page of the *Sydney Morning Herald*, the *Daily Telegraph* or the Channel Nine news and suddenly the whole system is broken. That is one case out of thousands in a human decision-making process that is seen to be out of whack. That is not the basis for this kind of law reform. It has never been the basis for mandatory sentencing and is the big lie that the Government Whip or those conservative members in this Government use to critique the judiciary.

I hope that this amendment will succeed and the chest beating between Labor and the Government concerning full-on mandatory sentencing, or mandatory lite from the Labor Party, will have the bill return to the lower House where the chest-beating Premier will refuse to accept it. In that case this bill in its entirety will fail. The Greens will be extremely pleased to see this bill fail in its entirety. The chest beating by this Premier, the ill-considered introduction of mandatory sentencing in January of this year, the ridiculous and the inflated proposal that is before the House will undoubtedly bring injustice. Hopefully the outcome of the chest beating of the Premier and the mandatory lite from the Labor Party will be the defeat of this ridiculous law and order auction. Hopefully, from the failure of this bill good legislation will emerge.

The Hon. Dr PETER PHELPS [6.06 p.m.]: I have a brief question for the member who introduced the amendment: Given that it is based on Victorian law can the member indicate how many times there have been successful prosecutions in Victoria for reckless grievous bodily harm in circumstances of gross violence?

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [6.06 p.m.]: I do not have access to the Victorian Government's database. Those opposite would be much better placed to answer that question.

Question—That Opposition amendments Nos 1 to 9 [C2014-018B] be agreed to—put.

The Committee divided.

Ayes, 20

Ms Barham	Mr Foley	Mr Shoebridge
Mr Borsak	Dr Kaye	Ms Westwood
Mr Brown	Mr Moselmane	Mr Whan
Mr Buckingham	Mr Primrose	Mr Wong
Ms Cotsis	Mr Searle	*Tellers,*
Mr Donnelly	Mr Secord	Ms Fazio
Dr Faruqi	Ms Sharpe	Mr Veitch

Noes, 19

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

Pair

Ms Voltz	Mr Ajaka

Question resolved in the affirmative.

Opposition amendments Nos 1 to 9 [C2014-018B] agreed to.

Schedule 1 as amended agreed to.

Schedule 2 as amended agreed to.

Schedule 3 as amended agreed to.

Title agreed to.

Bill reported from Committee with amendments.

Adoption of Report

Motion by the Hon. Michael Gallacher agreed to:

That the report be adopted.

Report adopted.

Third Reading

The Hon. MICHAEL GALLACHER (Minister for Police and Emergency Services, Minister for the Central Coast, and Vice-President of the Executive Council) [6.16 p.m.]: I move:

That this bill be now read a third time.

Question put.

The House divided.

Ayes, 33

Mr Blair	Mr Gay	Mr Primrose
Mr Borsak	Mr Green	Mr Searle
Mr Brown	Mr Khan	Mr Secord
Mr Clarke	Mr Lynn	Mr Veitch
Mr Colless	Mr MacDonald	Ms Westwood
Ms Cotsis	Mrs Maclaren-Jones	Mr Whan
Ms Cusack	Mr Mason-Cox	Mr Wong
Mr Donnelly	Mrs Mitchell	
Ms Ficarra	Mr Moselmane	
Mr Foley	Reverend Nile	*Tellers,*
Mr Gallacher	Mrs Pavey	Ms Fazio
Miss Gardiner	Mr Pearce	Mr Phelps

Noes, 5

Ms Barham
Mr Buckingham
Dr Faruqi
Tellers,
Dr Kaye
Mr Shoebridge

Question resolved in the affirmative.

Motion agreed to.

Bill read a third time and returned to the Legislative Assembly with a message requesting its concurrence in the amendments.

ADJOURNMENT

The Hon. DUNCAN GAY (Minister for Roads and Ports) [6.25 p.m.]: I move:

That this House do now adjourn.

INTERNATIONAL YEAR OF SOLIDARITY WITH PALESTINIAN PEOPLE

The Hon. AMANDA FAZIO [6.25 p.m.]: On 26 November 2013 the United Nations General Assembly voted to proclaim 2014 the International Year of Solidarity with the Palestinian People. The United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People was requested to organise relevant activities in cooperation with governments, the United Nations system, intergovernmental organisations and, significantly, civil society. The vote was 110 to seven with 56 abstentions, which is more or less reflective of the sentiments now present in international society. Among the seven opponents of the initiative, in addition to Israel, were unsurprisingly its three staunchest supporters, each once a British colony: the United States, Canada and Australia, with the addition of such international heavyweight states as Micronesia, Palau and the Marshall Islands. Europe and assorted States around the world were among the 56 abstentions, with virtually the entire non-West solidly behind the idea of highlighting solidarity with the Palestinian people in their struggle for peace with justice based on rights under international law.

The objective of the International Year of Solidarity with the Palestinian People is to promote solidarity with the Palestinian people as a central theme, contributing to international awareness of core themes regarding the question of Palestine, as prioritised by the committee; obstacles to the ongoing peace process, particularly those requiring urgent action such as settlements, Jerusalem, the blockade of Gaza and the humanitarian situation in the occupied Palestinian territory; and mobilisation of global action towards the achievement of a comprehensive, just and lasting solution for the question of Palestine in accordance with international law and the relevant resolutions of the United Nations. United Nations Secretary-General Ban Ki-moon voiced the United Nation's solidarity with the Palestinian people, noting the importance of peace talks aimed at a two-state solution. Ban Ki-moon said in a message read on his behalf:

> The goal remains clear—an end to the occupation that started in 1967 and the creation of a sovereign, independent, and viable State of Palestine based on the 1967 borders, living side by side in peace with a secure State of Israel. … We cannot afford to lose the current moment of opportunity.

Palestinians have made significant strides recently towards self-determination. In November 2013 the United Nations General Assembly granted the Palestinians observer status at the international organisation, thus implicitly recognising a Palestinian State. The Palestinian bid was upheld with 138 votes in favour, nine against and 41 abstentions. The new status could give the Palestinians more weight in peace talks with Israel, and gives them a greater chance of joining United Nations agencies and the International Criminal Court [ICC]. Joining the International Criminal Court would also grant the Palestinian delegation a greater legal basis for pursuing possible war crimes prosecutions against the Israeli military.

Next Monday I will travel to Canberra to attend the Australian launch of the United Nations Year of Solidarity with the Palestinian People, which is being held by Federal Parliamentary Friends of Palestine co-chairs Maria Vamvakinou, MP, and Craig Laundy, MP, together with United Nations Parliamentary Group chair Melissa Parke, MP. Guest speakers at the event will be Ambassador Izzat Abdulhadi, Head of the General Delegation of Palestine to Australia, New Zealand and the Pacific; Mr Christopher Woodthorpe, Director of the United Nations Information Centre for Australia, New Zealand and the South Pacific; and Bishop George Browning, President of Australian Palestinian Advocacy Network.

In January this year I participated in the first study tour to Lebanon, Palestine and Jordan organised by the Australian Palestinian Advocacy Network. In Beirut we met with the Palestinian Women's Humanitarian Organization, and Director Mrs Olfat Mahmoud gave us an overview of the situation for Palestinian refugees in Lebanon. This was followed by a visit to the Bourj el-Barajneh refugee camp, where we inspected the early education centre program—kindergarten and nursery, the women's centre program, the youth centre program and the community healthcare program.

The League of Red Cross Societies established the Bourj al-Barajneh camp in 1948 to accommodate refugees who fled from Galilee in northern Palestine. Bourj al-Barajneh suffered heavily throughout the Lebanese civil war from 1975 to 1990. Refugees' property was badly damaged and nearly a quarter of the camp's population was displaced. Men from the camp generally work as casual labourers in construction and women work in sewing factories or as cleaners. It is the most overpopulated camp around Beirut and living conditions are extremely poor. The camp also has narrow roads, an old sewerage system and is regularly flooded during winter. What struck me in a positive way about this camp was the resilience of the residents. What shocked me were the unhealthy living conditions, cramped accommodation, overall dampness and poor air quality.

We visited a recently arrived group of Palestinian refugees who had been displaced by the war in Syria. Two families of women and children—about a dozen in total—were living in two dank rooms with a couple of chairs and no natural light. We then travelled via Jordan to Israel where we were held up for 7½ hours at the Allenby Bridge crossing and one of our Australian tour guides was refused entry. In Palestine and Israel we were able to visit Jerusalem, Nablus, Haifa, Accra, Bethlehem, Hebron, Anata village, and Tel Aviv for a meeting with the Australian Ambassador, and Ramallah for meetings with members of the Palestinian Legislative Council. Our intended trip to Gaza did not eventuate because our visas were denied. The study tour was very educational and has strengthened my resolve to support the Palestinian cause and the Labor National Platform, chapter 11, relating to Australia and the world, which states:

> 99. Labor is committed to supporting an enduring and just two-state solution to the Israeli-Palestinian conflict, based on the right of Israel to live in peace within secure borders internationally recognised and agreed by the parties, and reflecting the legitimate aspirations of the Palestinian people to also live in peace and security within their own state.

I also support the right of Palestinian refugees to return to their homeland after being forced to live in exile for more than 60 years.

LOCAL GOVERNMENT CLOSED-CIRCUIT TELEVISION CAMERA SURVEILLANCE

Mr DAVID SHOEBRIDGE [6.30 p.m.]: Today I discuss the increasing use of closed-circuit television [CCTV] by local councils across New South Wales, and some of the financial, social and political implications of that increase. At the outset I acknowledge that this contribution is informed by the research undertaken by Dr Robert Carr from the University of Wollongong, who continues to carry out work in this area. I thank him for sharing his insights. In looking into this issue I discovered that there is much about closed-circuit television that we currently do not know. We do not currently know how many closed-circuit television cameras there are in public places in New South Wales. We do not know how many of these cameras are currently in use. We do not have any overall figures that suggest they work to prevent crime, to identify the perpetrators of

crime or to help people feel safe. There are no maps that we are aware of that show the locations of closed-circuit television cameras. There are also no New South Wales best practice guidelines for either the technical or operational aspects of closed-circuit television systems.

It is therefore somewhat remarkable that the Abbott Government, in tight financial circumstances, has committed $50 million in grants to local councils for the installation of closed-circuit television cameras. It has done so in the absence of solid evidence that such systems make us safer, or even make us feel safer. In fact, the Government's own Institute of Criminology recognises that cameras have limited efficacy at best for crime prevention. The Abbott Government shares with the O'Farrell Government a preference for announcements over data—a preference that means law and order programs are evaluated on what sounds best in a media sound bite rather than what will work.

The evidence that exists does not support closed-circuit television systems reducing crime overall. In fact, a review of the operation of such cameras in Nowra, for example, showed a modest increase in crime in the areas where the cameras were in operation. Passive surveillance of broad public areas does not work. However, there are instances where closed-circuit television cameras can work and make sense, such as at automatic teller machines or at the entrances of pubs and licensed premises. Their efficacy is difficult to establish though because there is no requirement or provision for the collection of crime statistics before the installation of closed-circuit television systems. What is relied on instead is anecdotal evidence from police and media reporting.

Given the impact of closed-circuit television systems on our civil liberties, a solid evidence-based approach should be in place before they are rolled out further. Support for closed-circuit television systems within the media is often high, with grainy pictures of public places providing a useful source of footage for the media, despite the quality being so low that an accurate identification of people filmed is generally impossible. It is for this reason that experts criticise the use of closed-circuit television footage in court cases. In New South Wales changes were made in May 2013 following a damning decision in the Administrative Decisions Tribunal that rejected the basis on which Shoalhaven council operated its closed-circuit television cameras. The O'Farrell Government hastily brought in regulations to exempt all council closed-circuit television operations from the requirements of the privacy laws. At the time The Greens tried to amend the legislation to provide that closed-circuit television cameras had to be useful, fit for purpose and compliant with privacy laws. That amendment was not supported, and we know why: the data that would allow those conclusions to be reached simply does not exist.

What are the risks of uncritically rolling out cameras across our communities? There may be more than one thinks. The most obvious are privacy rights, with Big Brother actually watching people in more and more public places. There are also financial implications and risks of police misuse of the systems. Local councils could be forgiven for accepting funding for the installation of closed-circuit television cameras in their local areas, but when they shake hands with their local Federal member to accept the one-off Federal grant they should be telling their local ratepayers that the much larger costs of monitoring and maintaining the systems will not be met by the Federal member, who will soon disappear. They will be met by council and ratepayers, and that may well have crippling financial implications down the track. In Mr Carr's research the cost burden of operating closed-circuit television systems was belatedly acknowledged by almost all responding councils.

In New South Wales these systems are often monitored by police, not councils, although Mr Carr's research shows that sometimes the monitoring is contracted out to private security firms. This has the effect that police have been able to acquire closed-circuit television systems more or less for their own use despite being prevented from doing so under policy and funding restrictions. There are substantial risks that the systems will be misused. One of the more obvious ways in which this could happen in New South Wales is where council-funded systems are monitored by police, who then use the systems for broader information gathering, rather than for public safety, which is the reason they were authorised.

All of this takes us back to the Abbott Government's funding program, and we see it now for what it is. Like the New South Wales Coalition Government, the Abbott Government wants to appear as though it is tough on crime. Closed-circuit television cameras appear to be tough on crime—after all, they invade our privacy in public places and civil libertarians criticise them. We need better than this. We need policy decisions that are based on data, not simply a media sound bite.

ASYLUM SEEKERS

The Hon. SHAOQUETT MOSELMANE [6.35 p.m.]: Today I speak on the humanitarian issue of asylum seekers. Some see it as a vexed issue; others see it as no more than a humanitarian issue where refugees

need to be handled with compassion. The issue of asylum seekers has been politicised to the extent that some might say it has been made politically toxic. It is an issue that engenders strong feelings across the community and reasonable and sensible voices are often drowned out. But, like all decent Australians, it is an issue I feel strongly about.

I sincerely believe that the vast majority of the Australian population are compassionate, generous and welcoming people. It is our culture to be compassionate, fair and welcoming. But sadly, Australia's story is now about how we treat our refugees and it is starting to seriously damage our international reputation. We are no longer seen as a compassionate, responsible people. That is a great shame because Australia is a compassionate country with a strong sense of a fair go and of giving people an opportunity. We have a significant history of working with the international community and international organisations and leading in our humanitarian work.

Australia was one of a number of countries that won the Nobel Peace Prize in 1981 for establishing regional processing of Vietnamese refugees after the Vietnam conflict. Millions of refugees were resettled in Australia, the United States of America, Canada and New Zealand after being processed in places such as Malaysia and Singapore. That was a regional solution where Australia stood up and met its international responsibilities and it stopped potentially thousands from drowning at sea. The parallels to the current situation could not be more evident. Australia is currently failing to meet its international responsibilities. Having hundreds of people languish away in Nauru and Papua New Guinea—out of sight and out of mind—seems to be the Abbott Government's mindset.

Australia's response to asylum seekers is being led by Scott Morrison, the member for Cook—a man who claims to be proud of his Christian values and who, according to his interviews, wants to be our Prime Minister. In public he avoids answering questions about the refugees and avoids taking responsibility as immigration Minister. It is as if he has forgotten that asylum seekers are real people and that under international and Australian law we are obliged to treat them with dignity and understanding.

One refugee has already been murdered and Minister Morrison's response to it was woefully unsatisfactory. First, he blamed the victim and suggested it was the victim's fault that he was murdered. Then he blamed the independent contractors. This provides a sense of deja vu or a flashback to Howard's manufactured refugees overboard scenario. To add insult to injury, Scott Morrison is proud of his performance. In the St George and Sutherland Shire *Leader* he boasts about his policies and about how, as he claims, his electorate is proud of him. He says that his inhumane attitude towards asylum seekers has never been criticised in his electorate—"Not in the Sutherland Shire", he boasts. That is another lie. The newspaper's website published some responses from his community in the comments section following the article and, despite what Mr Morrison says, they are not all supportive. This is what Amanda, a constituent of his, said:

> I am ashamed that he is my "representative" in Parliament. He does not represent my view in any way.

A reverend from Cronulla said:

> I live in Cronulla. Mr Morrison does not represent my view! He is not being honest in this article because I have challenged him in Cronulla mall. I'm ashamed of the policies he is implementing!

Susan M. wrote:

> Sorry Morrison, not everyone in my electorate supports you. No, he is doing a horrible secretive job.

It seems not only is Scott Morrison out of touch with the way to treat human beings; he is also out of touch with the views of his electorate. I do not pretend that there are easy answers; but, just as there was a regional solution in the Pacific after the Vietnam War, can we not find a solution today? The Australian people deserve transparency and information about what is happening on their borders. They also need a Minister who will not lie and who will take responsibility for the people under his care. His attitude is appalling and displays him for the man he is.

WIND FARMS

The Hon. JEREMY BUCKINGHAM [6.40 p.m.]: Tonight I speak about the great leap forward for jobs and development in regional New South Wales and Australia that has occurred with the recent approval of the Flyers Creek wind farm at Blayney near my home, in Orange, in the Central West. This is a $200 million, 43-turbine, 132-megawatt wind farm which will provide significant amounts of clean and sustainable energy,

regional development, local jobs in the Central West and additional income for landholders hosting the wind turbines. This project will give a guaranteed yearly income to 22 landholders in the region who will get $8,000 to $10,000 a year for each turbine they have on their property. Wind turbines do not destroy vast amounts of vegetation. They do not pollute aquifers. They do not choke our atmosphere with heat-trapping gasses and particles that are bad for our health. They simply harvest wind, which is both clean and free.

It is time the O'Farrell Government stopped fast-tracking coal seam gas and recognised that clean energy, not dirty fossil fuels, is the best form of regional development. Clean energy will provide long-term economic activity and employment in our regions, but the industry needs a more supportive government to provide the investment certainty. The Greens are the only party that has consistently provided that certainty. Through our work federally in establishing the Clean Energy Finance Corporation, The Greens have leveraged more than $1.5 billion in private finance from $536 million of government investments. On top of this, at the end of last year there were 179 proposals, which had an estimated value of $14.9 billion of investment in clean technology, before the corporation.

There are billions of dollars sitting on the sidelines, waiting to be invested in clean energy, but those investors and financial analysts need policy certainty and longevity to ensure this money flows to regional New South Wales. I am led to believe that there are up to $12 billion worth of wind energy projects in New South Wales awaiting regulatory approval. That $12 billion equates to jobs, jobs, jobs in New South Wales. At the last Federal election The Greens leader Christine Milne launched The Greens' Clean Energy Roadmap, which sets out a framework to build regional Australia. My colleague Dr John Kaye has launched his 100% Renewable NSW Campaign, which sets out a similar road map for New South Wales. Our plans would increase clean energy finance by up to $3 billion per year for 10 years to drive more change and private investment. It will connect clean energy hotspots in our regions to the national energy grid.

It will help energy-intensive farmers install clean energy to power their operations, and save money and drive energy efficiency. And it will help local community groups plan, build and own their clean energy resources. This model of community ownership of renewable energy is one of the most exciting aspects of the Flyers Creek development. As a resident and councillor in Orange I have supported the Central NSW Renewable Energy Cooperative [CENREC] plan to have a community-owned wind turbine for many years. Community renewable energy champions democracy, regional energy security, local leadership, as well as financial, social and environmental investment. Community-owned power is an important model for the future, as shown by the almost 150,000 investors in Denmark's 2,100 or so cooperatively owned wind farms. I conclude by giving the final word to Flyers Creek farmer Kim Masters:

> A project like this invests a lot of money back into the community, and historically, farmers—when they earn a dollar they spend it. All the bureaucrats keep saying 'farmers, you've got to drought proof your property; think outside the square'. By doing this, you get a guaranteed income 52 weeks of the year irrespective of what current market prices are.
>
> The beauty of wind turbines is, in 20 years' time if there is some silver bullet produced for generating electricity, all you do is come along, pick them up with a crane; they're gone. It is not like the legacy left after a coal mine, where the landscape has all been degraded.

The future of energy in New South Wales, and the future for jobs and development in this State, especially in our regions, is clean, renewable energy. It is about jobs and investment, and the O'Farrell Government should get the hell out of the way.

BALLINA SHIRE KOALAS

The Hon. CATHERINE CUSACK [6.45 p.m.]: Pity the plight of Ballina shire koalas. A report by Biolink Ecological Consultants titled "Koala Habitat and Population Assessment: Ballina Shire Council LGA" estimates we have just 285 to 380 koalas. We are all sadly familiar with the reasons for their demise—loss of habitat, road strike, dog attacks and most of all disease that is triggered by stress. The good news in the study is that Ballina does have one outstanding area of significant habitat, west of Wardell, where koalas can still thrive. It is one of the best tracts of native vegetation left in our shire, and is remarkably free of the camphor laurel invasion that afflicts much of our region. This area also is home to many endangered and vulnerable species including the long-nosed potoroo. Its significance for koalas is described on page 34 of the Biolink report:

> This population is also likely to be nationally significant as the historical source population for koalas both in adjoining areas of the Lismore LGA and the lower lying areas of the Byron coast to the north, a hypothesis readily testable by genetic analysis.

Unfortunately, Roads and Maritime Services plans to construct a four-lane freeway through the middle of this koala colony. Lorraine Vass of Friends of the Koala in Lismore invited me to inspect their work with injured and sick koalas. Sadly, many injured or blind koalas that cannot be re-released must be euthanased. However, orphaned baby koalas that have a good chance of survival can be re-released. The only area south of Lismore where these soft releases can take place is west of Wardell, where Roads and Maritime Services plans to build a four-lane freeway, truck stop and heavy vehicle inspection centre.

On Sunday I met with a dozen local landowners who have been quietly caring for the koalas that roam their land, planting suitable trees, rescuing them and protecting them. One local, Gwen Seznec, has successfully soft released 14 baby koalas into the bush. They have thrived. For six years one healthy female returned to her garden annually, each time with a new baby. One day Gwen was contacted to rescue a koala hit by a car and was saddened to see it was the same female, which subsequently passed away. Another soft release koala was an adult who had on three occasions been hit by a car trying to cross the same road at Byron Bay. This highlights one of the most challenging aspects of saving our koalas—they do not learn from experience, and struggle to adapt to any change. If one day a new obstacle such as a fence blocks their way, they will spend hours pushing at it, confounded as to what to do.

Roads and Maritime Services is undertaking the important task of upgrading the Pacific Highway. In 2004 the Roads and Traffic Authority released maps showing two Wardell bypass options under consideration—one to the east, which impacted cane farms, and one to the west, which impacted Aboriginal land. The koala colony was nowhere near the "bubble" identifying the area under investigation. In 2006 a new options map was published and suddenly a route appeared swerving west and then turning north, cutting right through the koala colony, then turning east to rejoin the existing route. By the way, it adds 1.2 kilometres to the highway. Friends of the Koala put submissions to the then Roads and Traffic Authority, and the Blackall residents association made a detailed scientific submission. But in 2008 the Roads and Traffic Authority published a new map and the koala colony was shown as the preferred route.

Advice from Roads and Maritime Services has been facilitated by the Minister's office and I thank them sincerely. But I have some concerns with the information that has been provided to the Minister. A map was attached showing the six options considered for the new route. Having attended the consultation at Wardell a year ago I believed six options were being considered, but it has now become apparent that in fact only one route, the koala colony, has been properly developed. For example, all the route costings are dated 2005 and take no account of the new technologies developed for the construction of the Ballina bypass. Ballina shire's koala study has not been considered. The Roads and Traffic Authority resumed numerous properties to establish a corridor, even prior to the community consultation, leaving everyone with the impression it was a sham.

The community has repeatedly asked for a route to be developed along the existing corridor, which would avoid all these problems. This request has never been addressed. The claim that the community has been consulted is doubtful. The detailed submissions of Blackall Range residents have never had a response. Roads and Maritime Services has its own koala study but nobody with the necessary records was interviewed and the study has not been released. Roads and Maritime Services says it is concerned about koalas, but the roadside koala crossing signs on its own proposed new route have vanished and not been replaced. The houses purchased by Roads and Maritime Services are becoming derelict and are tenanted by people with large dogs and who seemingly have no awareness of the impact their animals are having on local koalas.

Roads and Maritime Services does not seem to be a responsible landlord in koala awareness and care. The advice from the department also confirms its costings are nine years old and no effort has been made to modify route option 2F in the wake of community opinion or the new Ballina bypass technology. In my view pushing a four-lane motorway through our region's largest, healthiest koala colony, likely triggering a local extinction event in Ballina and Lismore, falls below community expectations of government.

LITTLE WINGS CHARITY ORGANISATION

The Hon. MELINDA PAVEY (Parliamentary Secretary) [6.50 p.m.]: Kevin Robinson does not see barriers, just opportunities. Having worked in the corporate world and run his own business for the past 15 years, Kevin felt it was time to put something back into the community. He settled on Little Wings after a meeting at the Children's Hospital at Westmead in 2011 where he learned about the plight of many rural and regional New South Wales families with seriously ill children. Having learnt to fly at the age of 16, Kevin realised a need to provide air travel—the first of its kind flight service—for seriously ill children so they can undergo specialist medical treatment in Sydney thereby alleviating the long car journeys many families face.

Returning children and their families home safely and quickly after treatment enables them to remain together as much as possible during a very traumatic time, which supports them financially, logistically and emotionally. Sadly in many cases, the accumulated stress causes families to separate permanently. The charity began operations in September 2012. It began slowly but since February 2013 Little Wings has provided 165 free flights and moved 290 people, patients and families at a cost of approximately $190,000. Little Wings has supported children from 19 regional towns and cities to date—Port Macquarie, Coffs Harbour, Armidale, Tamworth, Moree, Forbes, Dubbo, Parkes, Lismore, Bathurst, Orange, Broken Hill, Moruya, Merimbula, Cooma, Tumut, Nowra, Wagga Wagga, and Canberra. With demand only set to increase Kevin would like to be able to offer 250 flights in the coming year.

Every journey is a personal one for Kevin and his highly experienced co-pilot Adrian Nisbet who oversees about 80 per cent of flights and holds an Airline Transport Pilot Licence—highly regarded within the aviation industry. Setting a high benchmark is part of Kevin's nature. Our friend, 14-year-old Jacob Mercy-Ireland from Coffs Harbour, has travelled with Little Wings on three occasions during the course of his treatment at the Children's Hospital at Westmead. He finally headed home last Thursday after three months of ongoing treatment. Thankfully he was able to travel with his mum, his pop and his cheeky little nine-month-old brother, Oliver, enhancing Jacob's quality of life and recovery, and maintaining family cohesiveness.

It is not just oncology patients who are touched by Little Wings. There are Angel and April and their mother, Jodie, from Port Macquarie. Angel and April are 11-year-old identical twins who at 12 months old were diagnosed with Rett syndrome. Once a year the girls and their mother need to travel to Westmead Children's Hospital for treatment. One can imagine the enormous strain on their mother travelling with two luggage bags, two girls and two wheelchairs. Jodie is so grateful for the service provided by Little Wings as it would be impossible to travel on her own. Others supported by Little Wings include two-year-old Blayze from Coffs Harbour who travels to Sydney every month, 11-year-old Brodie from Forbes, 13-year-old Sophie from Cowra, and 13-year-old Chloe from Dubbo.

As resources are limited, unfortunately not all families are able to access the Little Wings service which is coordinated through the amazingly brilliant Outreach Rural Clinical Nurse Consultant based at Westmead, Bridget McGinley. Bridget has been involved with supporting rural and regional families for several years and has the unenviable job of determining which families have the greatest need for the service. Under the professional leadership of Kevin, Little Wings has now signed a memorandum of understanding with the Children's Hospital at Westmead to further support rural and regional communities. I congratulate all those involved in signing up to that memorandum of understanding.

Being able to expand this service would build on the capacity for children's hospitals to provide outreach services and flexible, swift treatment to rural children living with a serious illness. Demand outstrips funding at the moment. I acknowledge the incredible support that Kevin has received from some in the corporate sector. To date Little Wings has been propped up, so to speak, by Kevin's own financial generosity and goodwill as well as through engaging some wonderful organisations such as Clubs NSW, the Automation Group, Midea Air Conditioner, Hyundai and Bankstown Sports Club. Hyundai is supporting Little Wings through the donation of five vehicles to use as transport to and from Bankstown airport and the hospital.

Clubs NSW has generously donated $5,000. But my favourite donation is from Bankstown Sports Club; it goes to the spirit of the city and country relationship that exists. Bankstown Sports Club has never before approached a charity. It contacted Kevin's Little Wings following an article in the local paper and immediately committed $25,000 and 15 nights accommodation in the Bankstown area for families. On behalf of country people I thank Bankstown Sports Club for that incredible donation and its support for regional and country kids through that donation. It is a wonderful sign of support and I think an insight into the collaboration that genuinely exists between city and country folk. Recently Kevin Robinson received the Community, Action, Leadership and Inspiration [CALI] award, which is presented to inspiring and awesome people who are creating positive change—everyday heroes who are making the world a better place. The world needs more people like Kevin Robinson.

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

Motion agreed to.

The House adjourned at 6.55 p.m. until Thursday 20 March 2014 at 9.30 a.m.